

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Physician vs. Nurse Confrontation: Nurse's Discrimination Lawsuit Dismissed By Court.

The pediatric emergency room patient needed to be transferred to another facility for a higher level of care than what was available at the facility.

The emergency physician decided the child should be transported to the other facility by ambulance.

The child's mother was quick to voice her disagreement with the physician. She insisted she be allowed to drive her child to the other facility in her own car, believing that would be quicker than waiting for an ambulance.

The emergency physician became very irate with the mother for questioning his judgment as to her child's treatment.

The physician began arguing loudly with the mother and then started shouting obscenities at her.

The emergency department nurse could see what was going on, and stepped in to take the mother's side in the heated exchange with the physician.

The physician began shouting obscenities at the nurse and threw a punch at him, which did not land.

Afterward the nurse became upset that the hospital was not responding to his satisfaction to his complaints against the physician. He believed he was a victim of discrimination based on being a male nurse who was fifty-eight at the time.

He quit his job and sued for discrimination.



***The alleged victim is a male nurse over forty years of age who has sued for gender and age discrimination.***

***The problem with his case is that there is nothing in the nurse's rendition of the incident, or the physician's, or another nurse's or the hospital's investigation that implicates the nurse's gender or age as a factor in what transpired.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
July 31, 2024

The US District Court for the Middle District of Pennsylvania dismissed the nurse's gender and age discrimination lawsuit that he filed against the physician and the hospital.

The nurse could muster no proof that his gender or age was a factor in the way the physician acted out toward him, or in the way the hospital handled, that is, basically ignored his complaint against the physician afterward.

Discrimination must be based on adverse treatment that was motivated by the victim's gender, age, color, disability, etc., or the alleged victim has no legal case.

Persons with protected characteristics, like male nurses and older employees are regularly turned away by the courts when they allege only that they have a legally protected characteristic and have been treated by their employer in a manner they find objectionable.

There must be proof that the employer or other alleged source of discrimination not only took adverse action, but took adverse action because of the alleged victim's legally protected characteristic.

In some circumstances the alleged victim will have the benefit of a legal presumption in their favor, but that presumption can be rebutted with proof of a nondiscriminatory justification. ***Bonna v. Hospital, 2024 WL 3605957 (M.D. Penna., July 31, 2024).***

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