

## Confidentiality: Court OK's Aide's Firing, Copied Patients' Records For Her Legal Case.

A forty-nine year-old African-American nurses aide filed formal accusations of discrimination against her employer, a nursing home, with the US Equal Employment Opportunity Commission (EEOC) after she was disciplined for alleged errors in charting for her patients.

For her case the aide photocopied and sent the local office of the EEOC copies of pages from other patients' charts. She wanted to show that other aides, younger than she and non-minorities, had committed the same charting errors with their patients but were not disciplined.

After she filed her accusations with the EEOC the aide was kept on staff and worked more than a year before management at the facility first learned that she had copied materials from the charts.

When management learned she had done that they reported the aide to the state Department of Health and terminated her employment.

### **Violation of Medical Confidentiality Misappropriation of Residents' Personal Property**

The state Department of Health concluded its own investigation and issued a decision that the aide was guilty of patient abuse, that is, she misappropriated personal property belonging to a resident, the information in the residents' charts being considered their personal property.

The aide sued the nursing home, not for discrimination but for retaliation.

The US Court of Appeals for the Tenth Circuit agreed in general terms that an employee cannot be targeted for retaliation for filing accusations of discrimination with the EEOC.

It is totally irrelevant on the issue of employer retaliation whether or not the employee's underlying accusations of discrimination are valid.

Retaliation was not the issue in this case, the court ruled. The nursing home had a legitimate reason for terminating the aide, violation of medical confidentiality. **Vaughn v. Epworth Villa**, \_\_\_ F. 3d \_\_\_, 2008 WL 3843340 (10th Cir., August 19, 2008).

***The US anti-discrimination laws do not protect a healthcare employee who copies patients' medical records for use in the employee's legal case.***

***The employee did not have consent from the patients.***

***The employee did not even try to white out the patients' names to conceal their identities.***

***The employee could have prepared a written statement as to the charting errors she believed the patients' charts revealed were committed by younger, non-minority co-workers who were not disciplined like she was.***

***The employee's discrimination claim against her employer was pending with the EEOC for over a year before her employer learned she had violated patient confidentiality and fired her for that reason.***

***Whether or not her discrimination claim was valid, her employer had a legitimate reason, in fact a legal duty, to fire her.***

***Her employer's motivation for firing her was not retaliation for accusing her supervisors of discrimination.***

UNITED STATES COURT OF APPEAL  
TENTH CIRCUIT  
August 19, 2008