

## Unexplained Fracture: No Basis For Suit Against Nursing Home, Court Says.

The seventy-eight year-old nursing home resident had right-side hemiparesis from strokes which led to contractions of her right arm and leg.

When a fracture of her right humerus was discovered the physician was contacted. He ordered x-rays and had her sent to the hospital for treatment.

The family sued the nursing home on her behalf for the fracture. The Court of Appeal of Louisiana dismissed the case.

The Court accepted expert medical testimony that fractures are not uncommon in the course of competent routine care of debilitated elderly patients.

The family had no evidence of any specific departure from the standard of care by the nursing home's personnel.

The documentation in her chart could have been more thorough and complete. However, the Court was impressed by the documentation of the care the patient received for pressure ulcers she had on admission, which tended to prove the nurses were attentive to her needs. **Vanner v. Lake-wood Quarters**, \_\_ So. 3d \_\_, 2013 WL 2476549 (La. App., June 7, 2013).

## Diaper Change: Resident's Rights Were Violated, CNA's Firing Upheld.

**Employment discrimination can manifest itself through uneven enforcement of disciplinary measures.**

**Necessary elements of proof are that the victim is a minority, the victim was qualified for his or her job, the victim's job performance was satisfactory, the victim was reprimanded or terminated and at least one non-minority was not disciplined or was disciplined less harshly for basically the same offense.**

**The employee's job performance is often the employer's focus in rebutting a minority employee's allegations of discrimination.**

**It is not satisfactory job performance for a healthcare employee to violate a patient's rights, assuming the same standard for that is applied to non-minorities.**

UNITED STATES DISTRICT COURT  
NORTH CAROLINA  
June 6, 2013

A CNA was terminated from her position in a nursing home after fourteen years at the same job over an incident in which she went ahead with a wet-diaper change even though the resident verbally refused and physically resisted.

The CNA's nursing supervisor concluded from her investigation that the CNA did not abuse the resident but nevertheless violated the resident's rights by providing treatment for the resident that the resident at least twice expressly refused.

The CNA, a minority, sued the nursing home for race discrimination. The US District Court for the Middle District of North Carolina dismissed her case.

In her lawsuit the CNA pointed to a Caucasian male CNA who was accused of resident abuse but was never terminated over the allegation of abuse. For the Court it was sufficient that the nursing home's investigation failed to substantiate the truth of the abuse allegation. His case was not similar enough to the CNA's, except for the fact that he was not a minority, to prove that discrimination was the reason behind the minority CNA's termination.

The Court ruled there was a legitimate, non-discriminatory reason behind the minority CNA's termination. She violated a resident's rights, or at least her employer had reason to believe the CNA violated the resident's rights. The CNA herself admitted she went ahead with the wet-diaper change even though the resident had refused and despite the fact the resident was actively resisting. **Franklin v. Sunbridge Regency**, 2013 WL 2456088 (M.D.N.C., June 6, 2013).

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