

## Discrimination: US Appeals Court Upholds Religious Institutions' Exemption.

A court decision has been reversed which we reported in June 2010: *Religious Discrimination: Court Defines the Limits Of Exemption For Religious Institutions*, Legal Eagle Eye Newsletter for the Nursing Profession (18)6, Jun. '10, p. 8.

A geriatric nursing assistant was a member of the Church of the Brethren. She worked in a nursing home run by an order of Catholic nuns and operated in all respects as a Catholic religious facility.

The nursing assistant's supervisor told her the long dresses and head coverings she wore on the job due to her own religious beliefs were inappropriate in a Catholic institution and were making some residents and their families feel uncomfortable. The nursing assistant refused to alter her attire and was fired.

***The exemption for religious healthcare institutions from Title VII of the US Civil Rights Act applies across the board to all aspects of religious discrimination in employment, not just hiring decisions.***

UNITED STATES COURT OF APPEALS  
FOURTH CIRCUIT  
September 14, 2011

The lower Federal court ruled in 2010 that the nursing assistant could sue for religious discrimination in the form of on-the-job harassment directed at her for her manner of dress mandated by her own faith.

The US Court of Appeals for the Fourth Circuit reversed the lower court on the grounds that the exemption from religious-discrimination lawsuits the US Congress gave to healthcare institutions associated with a particular religious faith applies to all aspects of employment, not just initial hiring decisions. Kennedy v. St. Joseph's Ministries, \_\_\_ F. 3d \_\_\_, 2011 WL 4068458 (4th Cir., September 14, 2011).

## Misconduct: Nurse Terminated, Failed To Document Narcotics.

A registered nurse was terminated after a hospital medication audit found four instances in a two-month period where the nurse withdrew narcotics from the dispensing machine but did not document in the patients' charts that the drugs were actually administered to the patients.

There were also twenty-four instances in the same time period where he apparently did give the narcotic medications to the patients but failed to document the follow-up assessment that was required by hospital policy within sixty minutes.

When questioned by his supervisor about these incidents the nurse said he was not able to recall exactly what happened but assumed he simply forgot to finish his charting.

***The nurse claimed he did not divert narcotics for personal use as he believed his termination implied.***

***However, he was not fired for narcotics diversion. He simply failed on numerous occasions to properly document administration of narcotics to his patients.***

COURT OF APPEALS OF MINNESOTA  
September 12, 2011

The Court of Appeals of Minnesota ruled the hospital had grounds to terminate the nurse for misconduct. It was not necessary for the hospital to prove the nurse diverted narcotics for his own use.

Failing to document administration of narcotics properly is a patient-safety issue, the Court said, the risk being that a patient could potentially suffer a negative outcome if another dose was administered because an earlier dose was not documented.

Being aware of the potential consequences and failing to do the required documentation is serious misconduct for a nurse. Nimoh v. Allina Health, 2011 WL 4008313 (Minn. App., September 12, 2011).

## Discrimination: Nurse Did Not Give Adequate Report, No Racial Job Bias Found.

A nurse wanted to leave work an hour early. She asked another nurse if she could give report early. The other nurse told her she was too busy to take responsibility for the first nurse's patients or even to take report at that time.

A few moments later the first nurse told the other she had not had a lunch break, felt a migraine headache coming on and had to pick up her children from school. Even though she knew the other nurse had patients of her own on the opposite end of the floor she gave a brief report about her own patients and said she was leaving her cell phone number at the unit secretary's desk if she had any questions.

After the first nurse walked off the unit the other nurse went to the charge nurse with the fact the first nurse had left and she really could not manage that nurse's patients and her own at that time. The charge nurse paged the first nurse who reportedly heard her name being paged but walked out of the hospital.

***There were legitimate, non-discriminatory grounds to terminate the nurse.***

***The nurse left her patient assignments without authorization, without properly reporting and under circumstances that amounted to patient abandonment.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
September 8, 2011

The US District Court for the Eastern District of Pennsylvania ruled the nurse, a minority, had no grounds to sue for race discrimination as she was fired for creating a situation which posed serious jeopardy to her patients' safety. Morrison v. Thos. Jefferson Univ. Hosp., 2011 WL 4018252 (E.D.Pa., September 8, 2011).