

# LEGAL EAGLE EYE NEWSLETTER

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## Home Health: Alzheimer's Patient's Crude Remarks No Grounds To Sue, Court Says.

A home health nurse was fired for insubordination after she insisted on charting her complaints about her patient's inappropriate sexual remarks in the nursing progress notes, rather than preparing a separate incident report for sexual harassment as she was instructed by her supervisor.

The nurse sued for sexual harassment and employer retaliation. The US Circuit Court of Appeals for the Fifth Circuit ruled there were no grounds for a lawsuit against her former employer.

### **No Sexual Harassment**

When an employer creates or knowingly tolerates a sexually hostile work environment there are grounds for an employee adversely affected by the hostile environment to sue for sexual harassment, as a general rule.

However, the court saw the special circumstances of this nurse's job as an exception to the general rule.

The patient was an elderly man suffering from Alzheimer's and Parkinson's. He was often irritable and disoriented. He had been legally declared mentally incompetent.

The Circuit Court said that the home health care industry was created to assist persons who are unable to care for themselves, due to illnesses like Alzheimer's and Parkinson's, and a nurse working in the field knows what



***Home health nursing is available to assist individuals who cannot care for themselves due to debilitating illnesses like Alzheimer's.***

***This elderly and obviously impaired patient's remarks, while clearly crude, humiliating and insensitive, were not grounds for a home health nurse to sue her employer for sexual harassment.***

UNITED STATES COURT OF APPEALS,  
FIFTH CIRCUIT, 2001.

to expect from these patients. This nurse knew what to expect from her patients and this man in particular. Lewd, offensive and obscene remarks and gestures are customary signs of the patient's illness, the court said.

The nurse actually was offered another assignment, but chose to continue with this patient, the court pointed out.

The court said there never was any physical contact or conduct which made the nurse feel threatened for her safety. Her employer would have had to protect the nurse from that.

### **No Employer Retaliation**

The court also threw out the nurse's claim of employer retaliation. The court believed the nurse's supervisor was correct to require the alleged sexual harassment to be documented in an incident report, since it pertained more to potential legal issues than to the patient's care.

The nurse was not within her rights continuing to chart the alleged harassment in the nursing progress notes over her supervisor's objections. Therefore, the nurse could not claim retaliation. She was in the wrong and her supervisor had valid grounds to fire her, the court ruled. ***Cain v. Blackwell***, 246 F. 3d 758 (5th Cir., 2001).

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