

## Male Nurse, Female Supervisor: Court Validates Gender-Discrimination Lawsuit.

A male nurse working at a VA hospital sued the US Department of Veterans Affairs over his treatment by a female supervisor.

The US District Court for the District of Columbia ruled the nurse has a valid *prima facie* case and will be given his day in court to present his case to a jury. If his allegations can be proven, he will be entitled to damages.

### Sexual Harassment

#### Hostile Work Environment

A male nurse working with a female supervisor is a member of a class of persons protected by the gender-discrimination laws.

As the courts phrase it, a hostile work environment exists when an employee is a member of a protected class, is subjected to harassment based upon his membership in a protected class, the harassment unreasonably interferes with his work performance and creates an intimidating, hostile or offensive working environment and the employer knows or should have known of the harassment and fails to take action to prevent it. When a person is harassed by a supervisor, the corporation or government agency who is the person's actual employer is considered to know

that the harassment is taking place and to have decided to allow it to continue.

### Evidence of Harassment

From the start of their relationship, the supervisor repeatedly told the nurse he did not belong on the unit, did not fit in and the supervisor hoped he would quit.

He was treated differently than female nurses. His work was more closely audited and he was placed under a more detailed plan of improvement than had ever before been applied to a female nurse by this particular nursing supervisor.

He was given a janitor's closet as his office so that his former office could be re-painted, re-carpeted and given to a female nurse.

The court said there was also a pervasive pattern of personally abusive conduct by the supervisor including abusive language, threats to write him up, false accusations, etc., which the court said a jury could interpret as harassment in violation of the gender-discrimination laws. **Evans v. Principi**, 2005 WL 485743 (D. D.C., February 17, 2005).

## Adult Diaper Not Changed: Lawsuit For Loss Of Dignity, Nursing Home Residents' Bill Of Rights.

The Court of Appeal of Louisiana accepted the premises behind the civil lawsuit the family filed against the nursing home after their ninety-nine year-old family member had passed.

The court noted that the resident's care plan required her adult diaper to be changed every two hours whether or not it was soiled. She was also to be checked and changed more often than that if needed.

Instead, the resident was allowed at times to remain in her own waste. The court noted the Nursing Home Residents' Bill of Rights protects residents from wrongful conduct by nursing home staff that deprives them of the right to personal dignity. The resident or legal representative does not need an expert witness for the claim.

***After she passed, the family sued the nursing home for damages under the Nursing Home Residents' Bill of Rights because her adult diaper was not changed every two hours or sooner as needed, as required by her care plan.***

***The suit claimed the resident suffered a loss of personal dignity while being left in her own waste. That is valid grounds for a suit.***

COURT OF APPEAL OF LOUISIANA  
March 2, 2005

It was also alleged the resident developed problems with skin integrity as a result of her diaper not being changed as needed. The court ruled this does not come under the Nursing Home Residents' Bill of Rights, but instead is a claim for professional malpractice. The family, as required by state law, did submit this aspect of the case for review by a medical review panel and was prepared to go forward with expert testimony on the skin-care issue.

It does not take expert testimony, however, for a jury to conclude that aides are negligent for not changing a diaper, as aides have no discretion to exercise professional judgment whether to follow the directives of a personal care plan. **Henry v. West Monroe Guest House, Inc.**, \_\_ So. 2d \_\_, 2005 WL 474878 (La. App., March 2, 2005).