

## Age Bias: Court Turns Down Nurse's Lawsuit.

A nurse with fifteen years nursing experience gave a diabetic patient the same insulin dose twice during her twelve-hour shift.

The patient was only supposed to receive one such dose every twenty-four hours.

The nurse quickly recognized she had made a mistake and called the nursing home's director of nursing. The nursing director called the medical director and orders were given to start treatment to counteract the nurse's medication error.

Even though the patient suffered no significant harm the medical director expressed major concerns about the gravity of the nurse's error and its implications for her ability to function as a nurse. The director of nursing agreed and started the paperwork to have the nurse terminated.

***One way to prove discrimination is to show that a younger individual was treated more favorably without any justification for such differential treatment.***

COURT OF APPEALS OF OHIO  
November 2, 2012

The Court of Appeals of Ohio ruled the nurse did not have grounds for an age-discrimination lawsuit.

The nurse's lawsuit pointed to the fact that a graduate nurse newly hired at the facility who was much younger than she had done basically the same thing but was only reprimanded and not fired.

That is, the new graduate nurse had erroneously duplicated doses of medication to a patient during one work shift, also under circumstances that posed a significant threat to the patient's safety.

However, according to the Court, the nursing home did not discriminate by holding a more experienced, albeit much older nurse to a higher standard than an inexperienced graduate nurse and by imposing much more drastic discipline on the older nurse for basically the same mistake. ***Bo-rad v. April Enterprises***, 2012 WL 5383023 (Ohio App., November 2, 2012).

## Racial Bias: Court Turns Down Nurse's Lawsuit.

The nurse who was in charge on the hospital's surgical orthopedic unit was concerned about a patient on the unit who was still in a lot of pain.

The patient in question was actually a day-surgery patient recovering on the unit after an appendectomy and was supposed to be discharged late that evening.

The patient's physician gave a phone order to the patient's nurse, a newly hired graduate, for six Percocets for the patient to take home pending being able to have a prescription filled at an outpatient pharmacy the next day, but neither the graduate nurse nor the charge nurse could get the pills from the hospital pharmacy.

However, the charge nurse had special access to the system that dispensed narcotics on the unit. She overrode the fact that no order was on file for inpatient use and withdrew the Percocets the physician wanted the patient to take home.

The graduate nurse had to enter her code as a witness for the override to occur.

The hospital did not allow nurses to dispense take-home meds. The Hispanic charge nurse was fired. The non-minority graduate nurse was only reprimanded.

***One way to prove discrimination is to show that a non-minority individual was treated more favorably without any justification for such differential treatment.***

UNITED STATES DISTRICT COURT  
NEVADA  
November 8, 2012

The US District Court for the District of Nevada ruled that the two nurses, who were treated very differently for the very same violation of hospital policy, were not in a similar situation for purposes of comparison in a discrimination lawsuit.

The minority charge nurse was in a supervisory position and used her authority to order the non-minority graduate nurse to take part. The minority nurse had no right to sue for discrimination. ***Mandoki v. Carson-Tahoe Reg. Med. Ctr.***, 2012 WL 5465829 (D. Nev., November 8, 2012).

## Panic Attack: Nurse's Rights Were Violated.

A nurse who worked in the facility's rehab unit was told by a nursing supervisor that she had to float to the long-term care unit, where she had never oriented or worked and for which she did not believe she was adequately trained.

She had been having anxiety at work, and now this was too much. She went to the HR director's office. She was crying and shaking, apparently having a panic attack. Rather than call an ambulance the HR director sent her home for the day.

First thing the next morning she got a note from her physician that she needed a week off due to anxiety and came in and delivered the note to human resources.

Her nursing supervisor, however, decided that her leaving the previous day and not reporting for work that day amounted to abandonment of her nursing responsibilities and terminated her from her job and reported her to the state board of nursing.

***An employer cannot defeat an employee's right to medical leave guaranteed by the US Family and Medical Leave Act by considering the employee to have quit, if the employee is not present being on leave to which he or she is entitled.***

UNITED STATES COURT OF APPEALS  
EIGHTH CIRCUIT  
November 13, 2012

The US Court of Appeals for the Eighth Circuit (Minnesota) ruled the nurse did give proper notice by bringing in a note from her physician as soon as practicable which said how long she needed to be out and provided the medical justification.

She had rights under the US Family and Medical Leave Act which her employer was not honoring.

It was not a valid argument that she was no longer eligible for leave because she had quit her job by going out on medical leave to which she was entitled. ***Clink-scale v. St. Therese***, \_\_ F. 3d \_\_, 2012 WL 5476190 (8th Cir., November 13, 2012).