

## Profanity: Nurse Fired, Court Sees No Discrimination.

A nurse was fired after he raised his voice at the nurses station and said, "That's bullshit!" when his supervisor told him he could not have a day off he wanted because he had no vacation time left.

The reason given to him for his firing was a violation of hospital policy prohibiting use of vulgar, profane or obscene language directed at a supervisor, co-worker, physician, patient or visitor.

He sued for gender and age discrimination.

***The female nurse alluded to as a comparison did not use offensive language under the same circumstances and, therefore, was not a valid comparison to support an allegation of gender discrimination.***

UNITED STATES DISTRICT COURT  
SOUTH CAROLINA  
February 4, 2014

The US District Court for the District of South Carolina dismissed his case.

The male nurse pointed to a female nurse who was not terminated for her use of profanity. However, she used offensive language in a casual conversation in an area of the hospital where patients and visitors were not present and the language was not directed at a supervisor in anger. She was not a valid basis for comparison.

In a discrimination case, according to the Court, it is not sufficient for the alleged victim to make vague assertions that unspecified co-workers did the same thing but were treated less harshly.

The alleged victim must identify specifically one or more "comparators" and must show that what they did was very much the same, but the repercussions to the victim were significantly different.

People who are disciplined differently under the very same circumstances whose only real difference is gender, age, race, nationality, etc., are victims of discrimination. Duheme v. Columbia HSA, 2104 WL 68943 (D.S.C., February 4, 2014).

## Misconduct: Nurse Did Not Prove Others Were Valid Comparisons.

After a long series of patient complaints over mistreatment and at least one episode of being away from her assigned unit without permission, a female psychosocial nurse was terminated.

She sued for gender discrimination.

***The ten male nursing assistants offered as comparisons had in their files patient complaints of mistreatment or complaints by supervisors of being absent from their units without permission. One of them was suspended. One was reprimanded. None were fired.***

***However, unlike the female nurse who was terminated, none of them had numerous patient complaints and a supervisor's complaint for being unaccountably absent.***

UNITED STATES DISTRICT COURT  
MICHIGAN  
December 23, 2013

The US District Court for the Eastern District of Michigan dismissed her case.

The Court took a very exacting approach to the requirement that the co-workers an alleged victim of discrimination wants to cite for comparison must be very similar in all relevant respects, except for differences in gender, age, race, nationality, etc., and differences in the severity with which they were disciplined.

In this case some of the males had received patient complaints, although not as many as the female nurse in question, and some had been away from their stations without permission. However, none of them had received a patient complaint and been caught AWOL from the unit. Green v. Shinseki, 2013 WL 6801119 (E.D. Mich., December 23, 2013).

## Reverse Discrimination: Court Turns Down Nurse's Case.

Shortly after President Obama's election a nurse was sent an email at work by a family member lamenting Mr. Obama's election and asserting that the nurse and her co-workers could expect cutbacks and layoffs due to higher taxes.

The nurse circulated the email to certain co-workers. Others to whom it was not directly sent also read it. Some complained to management about a perceived racially offensive tone in the email.

The nurse was terminated for violating the hospital's policy which prohibited racially offensive communications.

She sued for reverse race discrimination.

***Violation of the hospital's policy against racially offensive communications was the reason for the action taken by her employer.***

***Just because racial overtones were present and a racial difference existed between the employee who was terminated and those whose complaints prompted her termination does not necessarily mean that race was the reason.***

UNITED STATES COURT OF APPEALS  
THIRD CIRCUIT  
January 27, 2014

The US Court of Appeals for the Third Circuit (Pennsylvania) dismissed the case.

The Court agreed in principle that a Caucasian nurse has the same right as anyone else not to be the victim of discrimination based on race.

Although racial overtones and racial differences were issues in this case, it was racially offensive action by the nurse and not her race itself that motivated the hospital to terminate her. DeCarolis v. Presbyterian, \_\_ Fed. Appx. \_\_, 2014 WL 279765 (3rd Cir., January 27, 2014).