

## Diversion: Nurse's No-Contest Plea Does Not Stop Defamation Suit.

Nurse managers at a mental health and addiction center suspected a particular nurse was diverting Adderall XL by tampering with capsules in the medication room and removing granules of the drug.

One afternoon the nurse was put in charge of the med room and other nurses were told not to enter the med room during the p.m. shift. When Adderall XL capsules were found tampered with the nurse was fired for this and two prior incidents.

The nurse was terminated expressly for diversion of a controlled substance and was reported to the local police and to the state Board of Nursing.

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***The nurse was denied unemployment benefits on the grounds of gross misconduct. He entered into a consent order with the Board of Nursing and pled no contest to criminal charges.***

***None of the above prevents him from suing his former employer for defamation.***

SUPREME COURT OF VERMONT  
August 10, 2012

Without ruling one way or the other on the allegations raised in his defamation lawsuit against his former employer, the Supreme Court of Vermont ruled the nurse being turned down for unemployment, entering into a consent order with the Board of Nursing and pleading no contest to criminal charges did not prevent him from suing for defamation.

To defend itself in the defamation suit the facility will have to prove the truth of the reason given for his termination, that he did in fact three times divert a controlled substance, not just less inflammatory accusations of substandard documentation or medication errors. Shaddy v. Brattleboro Retreat, \_\_\_ A. 3d \_\_\_, 2012 WL 3239280 (Vt., August 10, 2012).

## Discrimination: Minority Nurse's Suit Dismissed.

A minority nurse was promoted from staff nurse to a supervisory clinical nurse position, with the stipulation that in her new job she would be on probationary status for a period of one year.

Two months into her probationary period her supervisor began to hear a good deal of negative feedback from the nurses she supervised. A chaplain at the facility was asked to conduct sensitivity sessions where the nurses were encouraged openly to voice their concerns about the nurse's leadership style.

The upshot was that the nurse's appointment to the supervisory clinical nurse position was terminated and she was demoted back to staff nurse status. The reason given to her was that her management skills and leadership style did not meet the facility's expectations.

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***A Caucasian nurse who was not demoted over problems with his leadership style is not a valid basis of comparison because he was no longer on probationary status at the time concerns surfaced about his job performance.***

UNITED STATES DISTRICT COURT  
KANSAS  
August 9, 2012

The US District Court for the District Court of Kansas dismissed her discrimination lawsuit.

The basics of a discrimination case were present. She is a minority, she was subjected to adverse employment action she and was replaced by a non-minority.

However, according to the Court, the very purpose of serving a probationary period is to assess the newly appointed person's management skills and leadership style in the new position. These were lacking, in her supervisors' opinion, in that she consistently offended those beneath her with her rude personal attitude. Gaskins v. Dept. of the Army, 2012 WL 3245455 (D. Kan., August 9, 2012).

## Discrimination: Minority Nurse's Suit Will Go Forward.

A minority nurse's relationship with her supervisor was filled with tension caused by her impression that her Caucasian supervisor held a bias against her as an African-American from Nigeria, based in part on comments from her supervisor that another Nigerian was "dumb" and should be forced out of his position.

A nurse she supervised had a known drug problem. He got an order for himself from a physician at the facility for Phenergan, ostensibly because he was nauseous, had a non-licensed technician inject him and then fell asleep on duty. The next day the nurse had the technician inject him again, this time with no physician's order, and again he fell asleep. The nurse wrote him up, reported him to the Board of Nursing and then told her supervisor.

Friction over this episode and over complaints to her supervisor about staffing issues led to the nurse's termination.

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***The nurse's supervisor criticized her for taking disciplinary action and reporting her subordinate to the Board of Nursing without asking her first.***

***This was a restriction the supervisor did not place on non-minority nurses and it is discriminatory.***

UNITED STATES DISTRICT COURT  
MARYLAND  
August 8, 2012

The US District Court for the District of Maryland ruled that the nurse had rights under the employment anti-discrimination provisions of the US Civil Rights Act, under the state's nurse practice act which unequivocally required her to report her subordinate's conduct and protects her from reprisals for doing so and under the whistleblower statute for her complaints about critical staffing issues. Ezeh v. Bio-Medical Applications, 2012 WL 3263868 (D. Md., August 8, 2012).