

LEGAL EAGLE EYE NEWSLETTER

November 1996

For the Nursing Profession

Volume 4 Number 14*

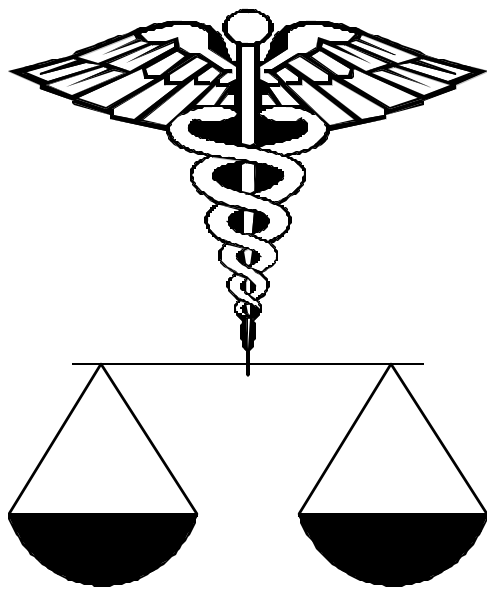
Reduction-In-Force: Court Condemns Hospital For Displacing Older Employees.

The U.S. Court of Appeals for the Fifth Circuit (Mississippi) was willing to look at the evidence and to second-guess the motivation behind a hospital's decision to eliminate certain management positions through a hospital-wide reduction-in-force.

The Circuit Court decided to uphold a lower Federal court judge who not only awarded monetary damages against the hospital in accordance with a jury's civil verdict, but also ordered a fifty-three-year-old nurse reinstated at the hospital in a clinical nursing position, on the grounds that the hospital had violated the Age Discrimination in Employment Act in eliminating her management position and effectively terminating her from the hospital.

The evidence was mixed as to whether there was a real necessity for a reduction-in-force. The hospital lost \$1.2 million one year. The next year, when the nurse in question lost her job, the hospital did much better financially and re-hired most of the people it had laid off. Total employment at the hospital actually grew by thirty-five persons by the time the nurse's employment discrimination case went to trial.

The court thought the real issue was not whether the hospital had a le-



Reduction-in-force cannot be used as ruse to displace a hospital's older employees.

Eliminating a position based on the age of the employee in the position is a violation of the Age Discrimination in Employment Act.

A court can award damages to a victim of age discrimination and order her reinstated.

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT (MISSISSIPPI), 1996.

gitimate need to eliminate some employees in general, but whether the hospital had any way to justify its decision to eliminate qualified older persons while retaining younger ones.

The evidence in this case most damaging to the hospital's position came in the form of remarks by hospital administrators, overheard and then related in court second- and third-hand, that the list of predominantly management positions to be eliminated had been compiled by looking at the ages of the persons in the positions, with a view toward carrying out a deliberate plan of displacing older employees.

The nurse in question, a twenty-five-year hospital employee, had been in management and out of clinical nursing for fourteen years. The hospital refused to place her in a clinical nursing vacancy existing at the time she was laid off, trying to claim that she had been out of clinical nursing too long.

The court, however, not only awarded her past and future lost earnings to compensate her for the elimination of her management position for illegal discriminatory reasons, but also ordered the hospital to accept her back in a clinical nursing position. **Woodhouse vs. Magnolia Hospital, 92 F. 3d 248 (5th Cir., 1996).**

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