LEGAL EAGLE EYE NEWSLETTER

October 2024 — *For the Nursing Profession* — Volume 32 Number 10

Defamation: Doctoral Level Nurse's Lawsuit Against Physician Will Go Forward.

A physician with practice privileges at the hospital approached the hospital's Director of Inpatient Nursing near a nurses station and within earshot of several hospital employees and confronted her over the title "Doctor [Last Name]" on her uniform.

The physician asked her who Doctor [Last Name] is. When the Director replied that she is the Doctor, the physician asked her whom she had to sleep with to earn the title Doctor.

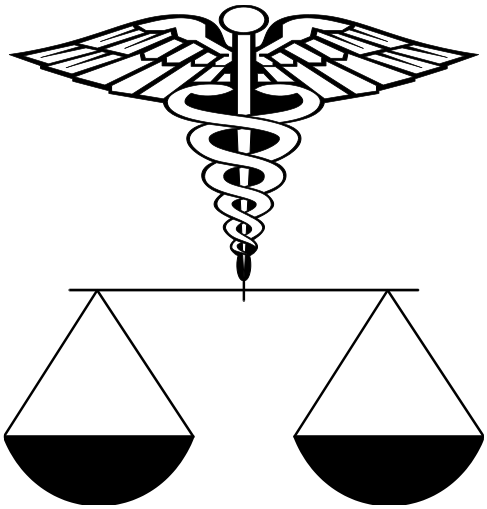
The Director sued the physician for defamation and intentional infliction of emotional distress.

She claimed damages in the form of medical expenses, lost future wages, anxiety and being held up to ridicule.

Her legal theory behind her case is that the physician falsely accused her of achieving her title and status which she did not deserve, not through years of hard work and competent training, but by providing sexual favors to those who were able to advance her career.

The US District Court for the Northern District of Mississippi ruled that the defamatory meaning of the physician's remark was clear from the remark itself, and no further explanation was needed for a jury to construe the remark as defamatory.

The Court went on to rule that the Director did not have to prove any actual pecuniary loss from the physician's remark.



It is beyond speculation that the physician's remark clearly accused the hospital's director of nursing of sleeping her way to the title of Doctor.

In fact, the director has a Doctor of Nursing Practice and other advanced degrees and certifications.

The physician's remark is actionable as it would tend to hold the victim up to ridicule.

UNITED STATES DISTRICT COURT
MISSISSIPPI
September 23, 2024

The physician's remark carried a clearly defamatory meaning from which the law would presume harm was done.

Defamation is a false statement of fact that tends to injure another person's reputation, or to diminish the esteem, respect, goodwill or confidence by which the victim is held in the eyes of others.

Defamation can also be a statement about the victim that excites adverse, derogatory or unpleasant feelings or opinions by others.

The Court took special note of the context in which the physician's remark was uttered.

It was in the victim's place of employment within earshot of persons with whom the victim worked and over whom the victim had a degree of supervisory authority.

The victim needed the respect and loyalty of her coworkers and subordinates to do her job in any meaningful way, and could not afford any diminution of that respect and loyalty.

The remark clearly took issue with the victim's competence for her job and alleged that dishonest and reprehensible means were employed to get her job.

Discrediting a professional person in a pertinent professional setting is particularly troubling, as it could easily damage the victim in the ability to practice her profession. **Director v. Physician, 2024 WL 4267987 (N.D. Miss., September 23, 2024).**

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Defamation: Physician Sues Nurse Who Accused Physician Of Alcoholism.

During his surgical residence at the hospital the physician had a consensual romantic relationship with a nurse who worked at the hospital.

Five months after he broke off the relationship and began dating someone else, the nurse contacted hospital management with a number of accusations about the physician.

The nurse accused him of being an alcoholic. She went on to say that he was taking benzodiazepines for alcohol withdrawal while on duty at the hospital and that two other residents the nurse identified went to his apartment and took away his alcoholic beverage supplies on more than one occasion.

Two weeks after contacting hospital management the nurse quit her job at the hospital and moved out of state.

Based on the nurse's report to management, the physician's hospital privileges were revoked and his employment with his medical group was terminated.

The physician sued the nurse for defamation.

Statement of Opinion as Grounds For Defamation Lawsuit

The nurse asked for a summary judgment of dismissal in her favor on the grounds that accusing someone of alcoholism is a statement of opinion, rather than fact, and an opinion does not suffice to create liability for defamation.

The US District Court for the Northern District of West Virginia agreed with the nurse, but that was not the end of the case.

The nurse also made specific statements of fact about the benzodiazepines and confiscation of the physician's booze.

Each of those specific statements was either true or false, either happened or did not happen, with no room for ambiguity. At the summary judgment phase of the litigation the Court cannot rule on that issue, which will have to be decided at trial.

If proven true, the statements cannot be the basis for a lawsuit for defamation. It could happen that the accusation of alcoholism will be proven a true fact after all. **Physician v. Nurse, 2024 WL 4228629 (N.D. W. Va., September 18, 2024).**

A derogatory statement of opinion about another person cannot be grounds for a defamation lawsuit.

Accusing another person of alcoholism is an expression of an opinion, unless the accusation implies directly that facts exist to support the accusation, facts that are not true and are derogatory.

On the other hand, statements of objective facts can be the basis for a defamation lawsuit.

The statement of fact must be untrue and it must damage the person's reputation in a way that can lead to a calculation of damages to be awarded by the court.

A false statement of fact that does, or would tend to damage a person's business or ability to work in their chose field is considered defamatory.

It is true in this case that the nurse's statements had a profound effect on the physician's career.

A false statement of fact that merely demeans a person's social standing in the eyes of others could be defamatory, but there would be considerable difficulty in calculating a monetary value to loss of personal esteem in the eyes of others.

UNITED STATES DISTRICT COURT
WEST VIRGINIA
September 18, 2024

Positioning For Surgery: Court Sees Case Of *Res Ipsa Loquitur*.

After her surgery to revise a previous breast implant the patient complained of numbness, weakness and tingling in the left arm that radiated into her fingers.

A neurologist eventually diagnosed the patient with brachial plexopathy based on abnormal EMG data. The patient claims the pain, numbness and loss of full function in her left arm are permanent.

The judge in her malpractice case against the surgical team ruled her experts, a nurse anesthetist, an anesthesiologist, a neurologist and a plastic surgeon could not testify, as their opinions as to improper surgical positioning were just assumptions.

The only direct reference in the surgical record to positioning of the patient is a note that she was placed in a supine position for the case that lasted one hour and forty-five minutes.

There was no direct reference to positioning of the patient's left arm, which the patient's experts opined was injured due to what must have been incorrect positioning for her surgery.

COURT OF APPEALS OF MICHIGAN
September 19, 2024

The Court of Appeals of Michigan reopened dismissal of the case, which can go forward based on *Res Ipsa Loquitur*.

The patient's experts could not testify as to what happened, given the paucity of the facts in the surgical record. However, they could testify that a brachial nerve injury does not ordinarily happen in the absence of negligent positioning.

Further, the surgical team were wholly in control of the patient and of the fact that no actual documentation was created as to proper positioning of the patient's left arm. **Franke v. Hospital, 2024 WL 4246175 (Mich. App., September 19, 2024).**

Involuntary Mental Health Commitment: Video Conference Did Not Violate Deaf Patient's Rights.

The fifty-eight year-old patient had a long history of involvement with the mental health system.

He was taking medication for mental illness while residing in a group home for deaf persons. While residing there he was able to hold down a job in a restaurant.

When the group home was forced to close due to lack of funding, the patient fell on hard times. He lost his job and became homeless.

While living in a homeless shelter he decompensated after apparently stopping taking his medications.

A community health outreach agency obtained an order for an emergency hold. While being held he was diagnosed with unspecified psychosis, mood disorder, anxiety disorder and post-traumatic stress.

He was committed to a state mental health facility by a court in one city, and then transferred to another state facility more than one hundred miles from the location of the court that had jurisdiction over his commitment.

A decision was made to have his case heard by the judge from the court which committed him, with the persons from the facility where he was being held and the patient himself to participate via remote video conferencing from the state facility miles away.

The patient claimed his right to due process of law was violated by having his commitment proceeding conducted by remote video conference.

The parameters of the proceeding were set up without any clear guidance from state law.

State law requires an evidentiary hearing to extend a ninety-day involuntary hold to a lengthier period of involuntary commitment.

However, state law is silent as to the nuts and bolts governing how such a hearing is to be conducted, if conducted outside the usual process of physically appearing live in a regular courtroom before a judge.

The circumstances may unusual here, but the evidence demonstrates that ample deference was given to insuring the patient understood what was going on and could be heard.

COURT OF APPEALS OF INDIANA
September 20, 2024

The Court of Appeals of Indiana ruled that the patient's rights were not violated by the impromptu arrangement made on the fly for his hearing.

The patient was asked whether he wanted to exercise the option of being transferred back to the court which initially committed him. He indicated he was more comfortable where he was and did not want to make the trip.

He was given a conference room at the state facility for only himself and his lawyer where they could communicate out of sight and hearing of the video. The private room tended to make the patient seem more at ease with the whole process.

There was always a qualified ASL interpreter present in the room with the patient to interpret for the patient as to the video feed coming in and what the patient wanted to communicate going out.

The interpreters repeatedly verified with the patient that he knew what was going on and could see and understand the incoming video.

The interpreters also checked the patient's video monitor to make sure the patient could see who it was on the other end who was talking, be it the judge, the state's lawyer or a caregiver giving testimony in the case.

Although the circumstances were unusual and there was no step-by-step guidance from state regulations as to how a remote video mental health hearing was to take place, the Court was satisfied this patient's rights were fully protected. **Commitment of G.W., __ N.E. 3d __, 2024 WL 4245931 (Ind. App., September 20, 2024).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
ISSN 1085-4924

Published monthly, twelve times per year.

Print edition mailed First Class Mail

Electronic edition distributed by email file attachment to our subscribers.

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Age Discrimination: Nurse Not Able To Prove Her Case.

A nurse with many decades of relevant nursing clinical work experience was hired for a bedside staff nurse position at the hospital.

Adhering to the hospital's standard practice, the seasoned new-hire was nevertheless placed on ninety days probation and assigned to a work-along preceptor to evaluate her competence.

The nurse in question actually had to work at different times with three different preceptors. They all agreed that the nurse had poor time management skills, was unable to multitask and produced charting that was incomplete or inaccurate.

The decision was that the nurse had not successfully completed her probation and she was not offered continued employment after her first ninety days.

Nurse Unable to Prove Age Discrimination

The nurse sued for age discrimination. The US Court of Appeals for the Third Circuit (New Jersey) dismissed her case.

The Court first pointed out the courts adamantly require that an employee who claims age-related discrimination must come forward with evidence they were replaced with someone significantly younger. The nurse had no such evidence .

A person in the forty-to-seventy age bracket will generally not succeed on this point unless they were replaced with someone younger than forty, as opposed to a fellow forty-to-seventy who happens to be younger but still forty-to-seventy.

The strongest evidence the hospital had to offer in its defense is that more than a quarter of its staff nurses are older than the forty-nine year-old alleged victim. One nurse at the hospital is eighty-three.

A somewhat murky area is the question whether the alleged victim was competent for the job and meeting the employer's legitimate expectations, before being let go on account of age.

In hindsight the court will not sit as a tribunal that second-guesses human resource management, but will look at whether there is a documented history of misconduct that shows the employer legitimately believed the victim was not a suitable employee. **Brown v. Med. Ctr., 2024 WL 3934219 (3rd Cir., August 26, 2024).**

The strongest argument for the hospital in defense of the nurse's age discrimination case is that twenty-five of its ninety-eight nurses are older than the forty-nine year-old nurse claiming age discrimination.

There is one eighty-three year-old nurse still working at the hospital.

An essential element of the nurse's case of age discrimination against the hospital is proof that the nurse was replaced with someone significantly younger after her termination for alleged performance shortcomings.

That essential element for the victim's case is the victim's responsibility to produce. No such evidence was offered by this alleged victim, most likely because it does not exist.

Another essential element for the alleged victim to prove is that the victim was competent for the victim's job and was performing the job to the employer's satisfaction, before being subjected to discriminatory treatment.

That element of the case is naturally subject to a certain degree of interpretation that leave open the possibility for legitimate dispute.

However, the numbers and ages of the hospital's other nurses are hard to dispute.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
August 26, 2024

Discrimination: Supervisor Cannot Be Sued As An Individual.

A minority nurse sued her former employer and her former supervisor alleging that a racially hostile environment forced the minority nurse to quit.

The record of the case in the US Court of Appeals for the Third Circuit (Pennsylvania) contained many instances of unmistakably racist and wholly inappropriate remarks by the supervisor to and about the nurse that appeared to the Court to validate the nurse's claim of a racially hostile work environment aided and abetted by the supervisor.

A racially hostile work environment is one form of discrimination that gives the victim the right to sue their employer.

Title VII of the US Civil Rights Act makes it unlawful for an employer to discriminate against a current or prospective employee.

The definition of employer under Title VII does not include an employee of the employer, even an employee with supervisory status.

Although it appears the supervisor participated in a racially hostile work environment, the supervisor is entitled to dismissal.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
September 4, 2024

However, Title VII of the US Civil Rights Act gives employees and prospective employees only the right to sue the employer for employment discrimination, not a coworker, even a coworker who happens to be the supervisor.

Contrast this ruling with the law that pertains to negligence, where an individual can be held personally liable in a civil lawsuit as an individual, in addition to their employer's liability for their errors or omissions. **Brown v. Sulli, 2024 WL 4043443 (3rd Cir., September 4, 2024).**

Labor Law: Court Says Hospital Had To Bargain With The Union.

While adapting to the partial shutdown mandated by the COVID-19 pandemic, the hospital placed eleven employees on furlough that was intended to be only temporary.

They were employees who greeted and processed patients arriving for the surgery department, a department which had suspended all but minimal operations.

At a certain point the hospital decided that the temporary furlough would be changed to permanent layoff without the possibility of returning.

The hospital contacted the employees directly, notified them of the layoff and attempted to negotiate severance agreements with them that did not allow them to contest their being laid off without compensation for being laid off.

The hospital was not required to bargain with the union as to the temporary furloughs.

However, when the furloughs were made permanent and the hospital wanted a severance agreement, the hospital was required to bargain with the union.

The NLRB is correct to argue that the hospital cannot negotiate directly but must go through its employees' union representatives.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
September 19, 2024

The US Court of Appeals for the Sixth Circuit (Michigan) ruled it was improper for the hospital to negotiate directly with the employees being laid off as to the terms and conditions under which they were being laid off. That was a matter for collective bargaining with the employees' union. **NLRB v. Hospital, 2024 WL 4240545 (6th Cir., September 19, 2024).**

Pregnancy Discrimination: Circumstantial Evidence Of Employer's Illegal Motivation.

The courts routinely find circumstantial evidence of illegal discrimination when an employer treats employees more favorably who do not share the victim's protected status.

Circumstantial evidence makes a case for the victim without any direct proof of a discriminatory motivation by the victim's employer.

Here the employer kept employees on the job who are male and/or who are not or were not recently pregnant, and terminated the nurse who had recently undergone a cesarean and was still recovering.

The timing of events does not go in favor of the employer's legal position.

The nurse was told not to return to work until further notice, due to the closing of the location where she worked.

Months later she notified human resources she was pregnant. Then she delivered by cesarean and went on medical leave.

While out on medical leave for her recent pregnancy and childbirth, she was formally terminated, which cut off her access to health insurance and disability benefits.

She has the right to sue.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
September 17, 2024

A Certified Registered Nurse Practitioner with over ten years satisfactory job experience at the same facility was informed her location was closing, and she should not report for work until further notice.

At that time she was not pregnant and had never informed her employer she was pregnant or intended to become pregnant.

Four months later she notified her employer she was pregnant. She was advised to begin using her accumulated sick leave which would entitle her to continue with employer-paid health insurance. She was told that when her sick leave was gone she should file for unemployment.

After another four months she delivered her baby via cesarean section. Her status on medical recuperation qualified her for short term disability.

A month later she was formally told she had been terminated. The nurse filed charges of sex and pregnancy discrimination with state and Federal agencies, and eventually sued her former employer.

Court Sees Circumstantial Evidence Of Discrimination Upholds Right to Sue

The US District Court for the Middle District of Pennsylvania ruled the nurse was allowed to prove discrimination without any direct proof that her termination was motivated by her recent pregnancy and childbirth.

The courts see circumstantial evidence of discrimination when an employee with a protected classification like race, color, creed, sex, disability, pregnancy, etc., is treated less favorably by the employer compared to employees outside the protected classification.

In this case no males or less qualified females or females who were not or recently had not been pregnant were terminated in connection with the employer's closing and reorganization of its clinical locations.

As an aside, the Court also ruled that the state agency's finding of no discrimination did not force the Federal Court's hand in deciding the case. **Denaples v. Clinic, 2024 WL 4216969 (M.D. Penna., September 17, 2024).**

Discrimination: Victim Must Prove Facts That Show Differential Treatment.

A minority patient care technician had a difficult relationship with her supervisor.

The technician's mother allegedly accused another relative of the technician of stealing from her, which led to an altercation between the two on the job.

Rumors began to circulate within the facility as to what happened, rumors which may or may not have been true.

Then the technician began to feel her supervisor was watching her more closely than others, following her around on the job and asking others about her.

The technician went to court for a restraining order against her supervisor. At this point she was told she was being transferred to another of the parent corporation's facilities. She declined, was terminated and sued for discrimination.

To prove a case of discrimination a minority employee must show the court actual facts that point to differential treatment of the minority compared to non-minorities under the same circumstances.

It is not sufficient to allege a subjective feeling or belief that the minority is being treated differently than others.

UNITED STATES DISTRICT COURT
KANSAS
August 30, 2024

The US District Court for the District of Kansas dismissed the allegations of race discrimination, on the grounds that the technician failed to show any concrete evidence that a non-minority was treated better under the same unusual circumstances. **Technician v. Hospital, 2024 WL 4006115 (D. Kan., August 30, 2024).**

Nursing Expert: Nurse Practitioner Offered As Expert On Standards For Bedside Nurses.

After the resident's passing the family sued the nursing home where the resident had lived, claiming that substandard nursing care was a factor in the resident's death.

For the lawsuit the family's lawyers retained a nurse practitioner as an expert witness to testify as to lapses in the standard of care by the nursing home's staff.

Although the nurse practitioner had exemplary qualifications as a nurse practitioner, the judge would not allow her to testify, on the grounds that a nurse practitioner is not a similar healthcare professional to a bedside nurse in a nursing home.

A healthcare professional who will testify against another healthcare professional must have recent comparable experience in the same clinical area as the professional against whom they will testify.

As a rule, a nurse practitioner is not considered a similar professional to a bedside nurse and cannot testify against a bedside nurse as to the standard of care for a bedside nurse.

COURT OF APPEALS OF VIRGINIA
August 27, 2024

On appeal of the judge's dismissal of the family's case for want of an acceptable expert witness, the Court of Appeals of Virginia ruled this particular nurse practitioner should have been allowed to testify.

The nurse practitioner verified that she spent at least half her time in the nursing home on basic nursing tasks like turning patients and expediting physicians' orders. **Clements v. Medical, 2024 WL 3940642 (Va. App., August 27, 2024).**

FMLA: Short Term Employee Had No Rights, Employer Could Not Interfere With Rights.

A nurse became pregnant five months into her employment with a home health agency.

The nurse promptly sent an email notifying her supervisor that she was pregnant and that her physician wanted her to stop working until after she gave birth.

The nurse's email stated she wanted to take medical leave under the US Family and Medical Leave Act (FMLA) at least until her infant was born.

The nurse specifically asked that she be sent the agency's forms for requesting FMLA leave and indicated she would be contacting the supervisor for assistance with the forms.

Within minutes the supervisor phoned her and explained that she had no right to FMLA leave after only five months employment, and that her recent email was considered her voluntary resignation.

An employee with less than one year on the job has no FMLA rights and cannot claim employer interference with such rights that do not exist.

UNITED STATES DISTRICT COURT
NEW YORK
August 27, 2024

The US District Court for the Eastern District of New York ruled the nurse could not claim interference with her FMLA rights, because she had no such rights as an employee on the job only five months.

Ordinarily an employee who has sufficient time on the job to qualify for FMLA leave would have the right to the same help from the employer this employee requested in order to apply and be granted those rights, and could sue for so-called FMLA interference if the employer stonewalled or stood in the way of the employee obtaining what was due. **Guerrero v. Health Services, 2024 WL 3949293 (E.D. N.Y., August 27, 2024).**

Defamation: Common Interest Privilege Allowed Employer And Agency To Discuss Employee.

A patient care worker was employed by a personnel agency to work at a hospital. She was terminated by the agency after persons at the hospital shared information about her with the agency that questioned her competence, professionalism and caring attitude toward her job.

She sued the hospital for defamation. The US Court of Appeals for the Ninth Circuit (Arizona) dismissed her case.

The Court ruled that the hospital had the benefit of a conditional legal privilege to share derogatory information about the alleged victim with persons who had a need to know, that is, ones who had a common interest along with the hospital in the worker's job performance.

The qualified common interest privilege is a defense to liability for defamation, even when derogatory information has been exchanged that has a proven tendency to affect the alleged victim's work reputation and causes actual loss of income.

The common interest privilege presupposes that derogatory information is shared only with persons who share the common interest and not outside the bounds of the common interest.

Another basis to void the common interest privilege against lability for defamation would be actual malice.

Actual malice has a special legal meaning in this context. It refers to dissemination of information known to be false that is disseminated with full knowledge of its falsity.

Oddly the phrase actual malice in this legal context has nothing to do with the state of personal feelings by the one who disseminated the information to the person who was defamed.

The alleged perpetrator's state of mind is relevant only to the question whether they knew the statement in question was false, not whether they hated the alleged victim or had any intent to harm.

A victim of alleged defamation has the option to prove that what was disseminated was false, but must do so with actual evidence beyond an unsupported allegation of falsity. **DeJesus v. Health, 2024 WL 4249499 (9th Cir., September 20, 2024).**

The employer is entitled to the common interest privilege, which shields it from liability for defamation.

An otherwise defamatory statement will be found to be conditionally privileged if the circumstances lead any one of several persons having a common interest in a particular subject matter correctly or reasonably to believe that there is information that another person sharing the same common interest has the right to know.

In this case the hospital employer and the personnel agency who sent the employee to the hospital share a common interest in provision of patient care and the hospital and the competence and professionalism of persons providing that care at the hospital.

Common interest is not an absolute privilege against liability for defamation.

Common interest is a qualified privilege which can be dissolved by abuse.

Abuse of the privilege can occur with disclosure of derogatory information outside the circle of common interest, or with intentional dissemination of matters known to be false and defamatory.

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT
September 20, 2024

Emergency Room: Criminal Suspect, No Reasonable Expectation Of Privacy.

A criminal defendant insisted his Constitutional rights were violated when police were allowed into the emergency department trauma room where he was being treated.

He objected to his clothes being seized by a police detective after the clothes were removed from his body by the emergency triage nurse at the start of her nursing assessment.

The clothes contained not only the defendant's blood but also the blood of another person the defendant was convicted of shooting to death.

A major exception to the rules for medical confidentiality is the absolute requirement that any nurse or physician who treats persons in a medical facility must notify law enforcement as soon as practicable that a person presenting for treatment appears to be the victim of an injury resulting from the discharge of a firearm.

SUPREME COURT OF ILLINOIS
September 19, 2024

The Supreme Court of Illinois accepted testimony from the triage nurse that she left the clothes in plain sight of any of the many persons who come and go in an emergency trauma room, doctors, nurses, technicians and police personnel.

The defendant patient had no control over who came and went and saw them.

Bloody clothes in plain sight gave the police probable cause to seize the clothes and conduct DNA analysis of the blood.

It was not medically confidential vis a vis the police hat he was being treated for a gunshot wound. **People v. Defendant, __ N.E. 3d __, 2024 WL 4231452 (Ill., September 19, 2024).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Personal Grooming Standards: Court Upholds African-American Employee's Lawsuit For Retaliation.

An African-American man was hired in 2016 at the hospital as a patient access specialist in the emergency department.

In 2020 he was promoted to the lead patient access specialist in his department.

During his entire tenure of employment the hospital had personal appearance guidelines.

The guidelines required men's beards to be trimmed to one inch in length, and required all employees to keep their hair secured if it was two inches or more in length.

After lengthy discussions with human resources, the employee in question agreed and did trim his beard to less than one inch.

However, he still insisted that he was entitled to wear the hair on his head in a modified afro that was more than two inches long.

The controversy went on and on. He was placed on twelve months probation, but never brought his hair length in line with the hospital's standards as reflected in the guidelines and interpreted by human resources.

Termination For Civil Rights Complaint

He was finally terminated only four days after he first raised the issue that the hospital's guidelines were discriminatory toward African-Americans.

The US District Court for the Middle District of Georgia upheld his right to allege his firing was retaliatory, but dismissed his allegation that the personal appearance guidelines were discriminatory.

The Court ruled the guidelines were phrased without any apparent attempt to target any group in particular. The guidelines were neutral on their face.

The former employee was not able to muster proof the guidelines had a disparate impact on African-Americans, which could have been an alternate legal theory for his case.

However, the fact pointed to retaliation that he was fired four days after complaining about what he considered to be a violation of his civil rights.

He had never been warned, and the guidelines themselves were silent on the issue that noncompliance could result in termination. **Bright v. Health, 2024 WL 4216492 (M.D. Ga., September 17, 2024).**

Arbitration: Health Care Power Of Attorney And General Power Of Attorney Supported Arbitration.

The resident died in the nursing home following a fall that resulted in a serious head injury.

The fall also resulted in a civil lawsuit filed against the nursing home alleging negligence by nursing home staff in monitoring the resident's safety that was responsible for the fall.

The nursing home insisted that the civil lawsuit be put on hold while the liability and damages issues in the case were decided in an arbitration hearing.

The nursing home pointed to the arbitration agreement the resident's daughter signed at the time of admission.

The personal representative of the estate argued the daughter's agreement to arbitrate was not valid, because arbitration can go forward only with a valid agreement to arbitrate signed by a person with legal authority to do so.

The person named in a durable healthcare power of attorney has authority to make healthcare decisions for the patient, like the decision to consent to a medical procedure or placement in a particular care setting.

In this case the durable healthcare power of attorney the resident signed also gave her daughter express authority to consent to arbitration on behalf of her heirs and her estate.

UNITED STATES DISTRICT COURT
NEW MEXICO
September 19, 2024

The US District Court for the District of New Mexico ruled for arbitration.

Although a healthcare power of attorney generally does not authorize the named person to agree to arbitration, the healthcare power of attorney in this case expressly did that.

That was not necessary, however, given that the resident had also named her daughter in a general power of attorney.

A general power of attorney applies not to healthcare issues, but to the person's finances, assets, business matters and potential or existing legal claims.

A general power of attorney is sufficient to allow the named person to consent to arbitration of legal claims that happen to have involved healthcare, under the rubric of authority to sue to enforce or protect the patient's personal assets. **Nursing Home v. Murphy, 2024 WL 4241548 (D. N.M., September 19, 2024).**