

# WORDS MATTER: NURSING HOME SUPERVISOR'S COMMENTS LEAD TO DISCRIMINATION CLAIM

Insights  
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A federal court in Pennsylvania recently ruled a discharged nurse's disability discrimination claim can proceed to trial based on her request for an accommodation during her interview and alleged comments by her supervisor expressing concerns over her health, alleged medical condition, and the impact on performing her job duties. The court's June 21 ruling provides a jarring illustration of why words matter – and a cautionary tale for employers on the impact that comments about employees' health and medical conditions may have in disability discrimination claims. What are three main lessons you can take from this case?

## What Lead to the Nurse's Claims?

During her job interview with a nursing and rehabilitation facility in July 2016, Dana Rice-Smith disclosed to Misericordia Convalescent Home's Director of Nursing Michael Urban, who later became her direct supervisor, that she had multiple sclerosis. Rice-Smith said she requested to use a cane when working. Urban had previously worked with her at another facility and recommended she be hired.

Soon after her hire in August 2016, however, Rice-Smith began exhibiting troubling behavior that continued throughout her employment. This including using her phone while working, attending to personal matters during work time, abusing her authority, making improper scheduling changes, instigating confrontations, insubordination, and acting to disrupt patient care and business operations.

## Related People



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Associate



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In early October 2016, Rice-Smith reportedly suffered an on-the-job injury and began receiving workers' compensation benefits. She claimed the injury aggravated her multiple sclerosis. None of her workers' compensation documents referenced her having multiple sclerosis, however.

Following several absences due to a "stomach bug" in late November and early December, Rice-Smith texted Urban about returning to work. He responded to let her know that she had been placed back on the schedule and stated, "we will talk tomorrow about how you are feeling and how to adjust your schedule to keep you healthy."

The following day, Rice-Smith instigated a confrontation with another employee. Although she denied the incident, she claimed medication she was taking for her alleged multiple sclerosis caused "agitation."

A few days later, Urban recommended she be discharged due to her ongoing disciplinary issues and Misericordia's management discharged her as a result the next day. Rice-Smith claimed that Urban mentioned "concerns" about her multiple sclerosis and its impact on her work during the termination meeting. Urban denied he ever made such comments.

### **What Happened in the Lawsuit?**

Rice-Smith filed suit against the facility, alleging disability discrimination under the Americans with Disabilities Act (ADA), among other federal and state law claims. The nursing home asked the court to dismiss all of her claims. While the court agreed with the nursing home that most of Rice-Smith's claims should be dismissed, it did not dismiss the disability discrimination claims because it concluded there were questions that must be resolved by a jury.

### **How Did the Court Reach Its Conclusion?**

The court's decision in this case raises two important points for employers.

First, the court determined that, although Rice-Smith produced no evidence she actually had multiple sclerosis, she met her burden under the ADA by simply disclosing her alleged multiple sclerosis and requesting to use a cane during her interview. This evidence alone was sufficient to establish that her employer may have "regarded" her as

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having a disability – which in this case was enough for her claim to survive the employer’s motion.

Second, although it found that Rice-Smith’s disciplinary infractions to amount to a legitimate, nondiscriminatory reason for her discharge, the court determined the alleged comments by Urban were sufficient to undermine the facility’s argument that the infractions were the true reason for the decision. In reaching this conclusion, the court relied on the disputed claim that Urban had expressed “concerns” about Rice-Smith’s alleged multiple sclerosis during the termination meeting and the text message he sent five days before her discharge referencing how she was feeling and adjusting her schedule to keep her healthy.

In addition to the nurse’s own allegations pertaining to Urban’s alleged comments in the termination meeting, Rice-Smith also submitted an affidavit from another former employee stating they had “learned that Misericordia had trepidations and concerns” about Rice-Smith’s alleged multiple sclerosis and “her ability to perform her work.”

In the court’s view, these disputed statements constituted circumstantial evidence that raised a question of whether Urban perceived her alleged multiple sclerosis as “wrongfully informing the decision to fire her.” It denied the employer’s request to have the case dismissed and cleared the case to proceed to a jury trial later this year.

### **What Can You Learn from the Decision?**

It’s important to remember that, at this stage of the game, the court views all evidence submitted in the light most favorable to the plaintiff. Which means that even if the employer and employee disagree about what was said in a particular exchange, the court will always assume the employee’s version is correct for the purpose of deciding on a motion. It will now let a jury decide which version should be believed.

But regardless of the case posture, this case can teach valuable lessons to all healthcare employers. Here are three key takeaways:

#### **1. *A Little Information Goes a Long Way***

As demonstrated by this case, it is often very easy for an employee to meet their burden for an ADA claim to

survive past early motions filed by the employer – especially “regarded as” claims. An employee does not always need a record of medical treatment or an obvious disability.

Often something as simple as requesting an accommodation at the beginning of employment may be enough for a court to find that an employer may have perceived an employee to have a disability. Managers and human resources professionals must be mindful of this information when making employment decisions.

## **2. *Good Intentions are Not Always Rewarded***

This case marks the most recent of several cases relying on comments by supervisors and other management personnel serving as the basis for disability discrimination claims. As a result, you should ensure your personnel understand the impact of seemingly innocent comments. Even those expressing concern for employees’ health or wellbeing can be perceived in a negative light by the time a dispute lands in court.

As illustrated in this case, simply mentioning changes to an employee’s schedule to “keep them healthy” or expressing concerns over how an employees’ medical conditions’ may impact their ability to perform their job can be used as evidence that their disability – or perceived disability – played a role in employment actions, regardless of any legitimate justifications.

## **3. *Train Management on How to Handle Discussions***

When engaging in conversations about employees’ disabilities, medical conditions, or health in general, there must be a delicate balance to ensure any comments made cannot be construed as displaying animus toward employees’ actual or perceived conditions. To accomplish this goal, train managers to understand the potential impact of their words.

Not only should they understand that they must respect employee privacy, they must be mindful of boundaries in conversations with employees about medical conditions and overall health. They also need to avoid discussing any employee’s medical condition with another employee or member of management who does not have a legitimate need to know. And, of course, advise managers

to seek assistance from appropriate human resources personnel when employees disclose a medical condition or any concerns arise about employees' ability to perform their job functions as a result of any health condition.

## Conclusion

We will continue to monitor developments in this area and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Healthcare Industry Group](#).