

## Hospital Granted Summary Judgment on Surgeon's Discrimination Claims

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The hospital did not discriminate against a 73-year-old surgeon on the basis of his age or perceived disability or breach his contract when it required him to undergo neuropsychological and physical exams and have a proctor when conducting lower bowel surgeries following the death of one of his patients, a federal district court has found, granting the hospital summary judgment. *Morris v. Mary Rutan Hosp.*, No. 2:18-cv-00543 (S.D. Ohio Oct. 7, 2020). This decision provides helpful analysis for hospitals considering remedial action for physicians following poor medical outcomes.

Dr. Larry Morris had worked for several years at the Hospital when one of his patients died shortly after being discharged following a colon surgery he performed. The Hospital then engaged three independent general surgeons to review the case. Based on the results of the review, the Hospital required the following of Morris:

1. Submit to neuropsychological and physical exams and share the results with the Hospital;
2. Take a course on medical record documentation;
3. Not perform surgeries until the first two requirements are completed;
4. Not perform any more lower bowel surgeries or agree to have at least 10 of those surgeries proctored by another surgeon; and
5. Undergo a six-month Focused Professional Practice Evaluation.

After Morris refused to comply with these requirements, his employment with the Hospital ended. Morris filed suit in federal district court, alleging that the Hospital discriminated against him on the basis of his age and perceived disability and breached his contract, among other claims. The court granted the Hospital's motion for summary judgment on all these counts.

The court found no age discrimination because the "mere imposition of the additional requirements as a condition of Plaintiff's employment does not constitute an adverse employment action." It further found that "even if the conditions imposed on [Plaintiff] were intolerable and difficult to operate under, he has not offered any evidence to show that the requirements were imposed due to his age." The court also found that the Hospital articulated a legitimate nondiscriminatory reason for the requirements imposed following the review by the independent surgeons. Morris failed to establish this reason was a pretext for age discrimination because he did not point to any evidence demonstrating the Hospital did not honestly believe its reason for imposing these requirements or did

not honestly have concerns about his abilities.

Similarly, the court found no disability discrimination because Morris's failure to submit to the examinations, in and of itself, entitled the Hospital to summary judgment; and that even if this did not bar Morris from bringing the disability discrimination claim, the court found the requirements imposed by the Hospital were job-related and consistent with business necessity.

Finally, the court granted the Hospital summary judgment on the breach of contract claim because the contract provided for general oversight and the imposition of additional requirements by the Hospital, including by committees contributing to its management and oversight; and because the conditions the Hospital imposed did not terminate Morris's ability to practice.

The decision demonstrates that so long as hospitals exercise due diligence, they can take remedial measures to ensure patient safety in ways that are consistent with anti-discrimination laws and their contractual obligations.

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