



## **Acceding to Patient Demand for Same-Race Provider Declared Illegal**

By Kathleen Henderson, King & Ballow Partner & Healthcare Practice Chair

[khenderson@kingballow.com](mailto:khenderson@kingballow.com)

Providers who accede to patients' racial preferences when making employee assignments risk violating Title VII of the Civil Rights Act. A federal court of appeals held recently that an Indianapolis area nursing home illegally discriminated against a black nursing assistant for adopting such a policy.

When Plainfield Healthcare Center was informed by one of its nursing home residents that she preferred white-only healthcare providers, Plainfield complied and told its employees that "no black" assistants were to enter the resident's room or provide her care. This direction was also issued on a daily basis to employees via written assignment sheets.

Brenda Chaney, a black certified nursing assistant (CNA), complied with this direction for fear of losing her job. Co-workers also continued to remind her that certain residents were off limits because she was black. Chaney alleged the policy and reminders were a source of humiliation and hostility. A panel of three federal court judges agreed.

The decision, issued July 20 by the U.S. Court of Appeals for the Seventh Circuit (having jurisdiction over federal courts in Indiana, Illinois, and Wisconsin), reversed a federal district court decision accepting Plainfield's position that it was obligated by federal and state laws to accede to patients' racial preferences. Federal law and Indiana regulations, as well as laws and regulations in many other states, contain provisions recognizing a patient's right to choose his or her personal health care provider. However, those provisions do not allow for racial discrimination, the court of appeals held. Moreover, they do not outweigh an employer's obligations under federal law with respect to racial non-discrimination in the workplace.

Adoption of a racial preference policy could also violate the standard of care providers owe to patients. The court of appeals noted Chaney's testimony of an incident when she found the resident who preferred care from "white-only" assistants lying on the floor needing help to get up. Although Chaney wanted to help, she had to search the facility for a white CNA to assist.



Plainfield's arguments defending its racial preference policy as a means of protecting employees against racial harassment were also rejected. Providers can take action to protect employees against such harassment by adopting a nondiscrimination policy and informing patients of the policy and obtaining their written consent to it. Other important measures for providers include non-discrimination training and procedures to provide assistance to employees when they encounter racial harassment from patients.

Chaney v. Plainfield Healthcare Center, No. 09-3661, 2010 U.S. App. LEXIS 14804 (7th Cir. July 20, 2010)

**For more information contact:** Kathleen Henderson, Partner & Health Care Practice Chair at King & Ballow, [khenderson@kingballow.com](mailto:khenderson@kingballow.com), phone (615) 726-5489.

**For more posts of interest to health care professionals go to:**  
[www.kingballow.com/healthcare.php](http://www.kingballow.com/healthcare.php)

***These opinions and comments are intended only for the purpose of providing recent updates and general information and are not intended, and should not be used, as a recommendation for any specific situation or entity or as a substitute for legal counsel. Always consult with an attorney for specific legal counsel concerning your particular situation.***