

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Gabbe v. Eliot at Erie Sta.

2026 NY Slip Op 01943 · No. 2024-00065 · Decided April 1, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying Orange Regional Medical Center and Greater Hudson Valley Health System's request for a protective order concerning an incident report. The court held that although the defendants established that the report was created as part of a quality-assurance review program protected under Education Law § 6527(3) and Public Health Law § 2805-m(2), they failed to show that the report's statements were not made by a party to the action. Accordingly, the incident report was subject to disclosure.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Paul Wooten, J.; Laurence L. Love, J.; Susan Quirk, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Judicial Department
DECIDED	April 1, 2026
DOCKET	2024-00065
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants Orange Regional Medical Center and Greater Hudson Valley Health System, Inc. appealed from an order denying their CPLR 3103(a) motion for a protective order concerning an incident report.
PRECEDENTIAL VALUE	published
PARTIES	Orange Regional Medical Center, Greater Hudson Valley Health System, Inc. v. Carol Francis Gabbe, deceased, by and through Jacqueline G. Goldman, as administrator of Gabbe's estate

TOPICS

- discovery dispute
- privilege
- medical malpractice
- health law
- civil procedure

PRACTICE AREAS

medical malpractice

health law

civil procedure

evidence

QUESTIONS PRESENTED

1. Whether the April 26, 2016 incident report was protected from disclosure under Education Law § 6527(3) and Public Health Law § 2805-m(2).
2. Whether the defendants met their burden to establish that statements in the incident report were not statements made by a party and therefore did not fall within the statutory exception to the privilege.

HOLDINGS

1. An entity seeking the statutory medical quality-assurance privilege must establish that the documents were prepared or maintained in accordance with the relevant statutory review procedure. The defendants met that threshold by submitting an affidavit establishing that the incident report was created as part of ORMC's required quality-assurance review program.
2. The statutory quality-assurance privileges do not protect statements made by a person attending the quality-control or medical-malpractice meeting who is a party to an action concerning the subject matter reviewed. The defendants failed to meet their burden of demonstrating that the statements in the report were not made by a party because they did not identify the speaker.

KEY QUOTATIONS

“It is the burden of the entity seeking to invoke the privilege to establish that the documents sought were prepared in accordance with the relevant statutes” ([*2])

“However, both Education Law § 6527(3) and Public Health Law § 2805-m(2) contain identical exceptions for the discovery of 'statements made by any person in attendance at such a [quality control or medical malpractice] meeting who is a party to an action or proceeding the subject matter of which was reviewed at such meeting'” ([*2])

FACTUAL BACKGROUND

Carol Francis Gabbe was injured after allegedly falling while being escorted to a bathroom by a member of Orange Regional Medical Center's staff. In the resulting medical-malpractice action, the plaintiff sought accident and incident records, including a report dated April 26, 2016. The defendants asserted that the report was protected by medical quality-assurance and malpractice-prevention privileges, but did not identify the speaker or establish that the statements in the report were not made by a party to the action.

PROCEDURAL HISTORY

The plaintiff sought accident and incident records in discovery in a medical-malpractice action. The defendants moved for a protective order, asserting that the incident reports were privileged under Education Law § 6527(3) and Public Health Law § 2805-m. After an in camera review, Supreme Court, Orange County, denied protection for the April 26, 2016 incident report because the report was not attributed to any person. The Appellate Division affirmed that portion of the order.

DISPOSITION

affirmed

CASES CITED

- Logue v. Velez, 92 NY2d 13
- Hernandez v. City of New York, 207 AD3d 450
- Siegel v. Snyder, 202 AD3d 125
- vanBergen v. Long Beach Med. Ctr., 277 AD2d 374
- Marte v. Brooklyn Hosp. Ctr., 9 AD3d 41, 46
- Kneisel v. QPH, Inc., 124 AD3d 729, 730
- Kivlehan v. Waltner, 36 AD3d 597, 599
- Bush v. Dolan, 149 AD2d 799, 800-801
- Robertson v. Brookdale Hosp. Med. Ctr., 153 AD3d 743, 744
- Lamacchia v. Schwartz, 94 AD3d 712, 714

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-supreme-court-appellate-division-second-judicial-department-supreme-court-of-the-state-of-n/2026/gabbe-v-eliot-at-erie-sta-j3kbj3ms>