

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Gordon v. Envision Physician Servs., LLC

Gordon, 2026 NY Slip Op 03857 (Appellate Division of the Supreme Court of the State of New York Third Department 2026) · No. CV-25-0154 · Decided June 18, 2026

SUMMARY

The New York Appellate Division, Third Department, affirmed dismissal of a nurse practitioner's claim alleging that prospective employers unlawfully inquired into a sealed felony conviction under Executive Law § 296(16). The court held that the statute's specifically enumerated prohibited inquiries do not include a generalized question asking whether an applicant has ever been convicted of or pleaded guilty to a felony, and the complaint did not allege that Envision specifically inquired into a sealed conviction or took adverse action based on it.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Ryba, J.; Aarons, J.P.; Reynolds Fitzgerald, J.; Powers, J.; Corcoran, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	June 18, 2026
DOCKET	CV-25-0154
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion to dismiss the complaint for failure to state a cause of action under Executive Law § 296 (16).
STANDARD OF REVIEW	On a motion to dismiss for failure to state a cause of action, the court accepts the complaint's factual allegations as true, accords the nonmoving party the benefit of every favorable inference, and determines whether the alleged facts fit within any cognizable legal theory.
PRECEDENTIAL VALUE	published
PARTIES	O'Dell Gordon v. Envision Physician Services, LLC, Kingston Emergency Medical Associates, PLLC

TOPICS

employment discrimination

statutory interpretation

plain meaning rule

appellate procedure

standard of review

PRACTICE AREAS

employment law

employment discrimination

civil rights

QUESTIONS PRESENTED

1. Whether Executive Law § 296 (16) prohibits a prospective employer from asking a generalized question about whether an applicant has ever been convicted of or pleaded guilty to a felony.
2. Whether the complaint alleged that Envision made a specifically prohibited inquiry concerning a conviction sealed under CPL § 160.59 or took adverse action based on that conviction.
3. Whether Supreme Court properly dismissed the complaint against Envision for failure to state a cognizable cause of action.

HOLDINGS

1. Executive Law § 296 (16) does not prohibit a generalized inquiry asking whether a job applicant has ever been convicted of or pleaded guilty to a felony because the statute enumerates specific protected criminal dispositions and does not include felony convictions or guilty pleas generally.
2. The complaint failed to state a claim against Envision because it did not allege that Envision specifically inquired whether Gordon had a conviction sealed under CPL § 160.59, conducted the background search that disclosed the conviction, or took adverse action against Gordon based on that conviction.
3. Supreme Court properly dismissed the complaint against Envision for failure to state a cause of action under Executive Law § 296 (16).

KEY QUOTATIONS

*“In other words, we cannot read Executive Law § 296 (16) to prohibit an inquiry that is not specifically enumerated in the statute, as we must construe the Legislature's failure to include such matter as an indication that its exclusion was intended.” (*2)*

*“The fact that the Legislature established a comprehensive list of specific criminal dispositions and adjudications protected from inquiry but elected not to include a felony conviction or guilty plea among those dispositions implies in the strongest sense that the omission was intentional and not inadvertent.” (*2-*3)*

*“Indeed, had the Legislature intended a blanket prohibition against prospective employers inquiring into the existence of any felony conviction whatsoever, it would have stated so in explicit language, and we cannot create a limitation in the statute that the Legislature chose not to enact.” (*3)*

FACTUAL BACKGROUND

Gordon, a licensed nurse practitioner with a felony conviction sealed under CPL § 160.59, applied for an emergency-department nurse position using an application prepared by Envision. The application asked whether he had ever been convicted of or pleaded guilty to a felony, and Gordon answered no. Hospital defendants allegedly discovered the sealed conviction through a background investigation and rejected his application because of his allegedly untruthful answer; the complaint did not allege that Envision specifically asked about a sealed conviction, conducted the background search, or took adverse action based on the conviction.

PROCEDURAL HISTORY

Gordon, a licensed nurse practitioner, sued Envision and other defendants, alleging that an employment application unlawfully inquired about his sealed felony conviction. Supreme Court, Ulster County, granted Envision's motion to dismiss the complaint against it. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Van Amburgh v. Boadle, 231 A.D.3d 187, 189 (3d Dep't 2024)
- De La Roca v. Schacht, 244 A.D.3d 1570, 1572 (3d Dep't 2025)
- Colt v. Nathan Littauer Hosp., 236 A.D.3d 1216, 1217 (3d Dep't 2025), lv. denied, 44 N.Y.3d 903 (2025)
- 306 Wall St. Owners, LLC v. City of Kingston, 241 A.D.3d 1692, 1694 (3d Dep't 2025)
- Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y.3d 137, 142 (2017)
- Doe v. Tobin & Dempf, LLP, 247 A.D.3d 1320, 1322 (3d Dep't 2026)
- He v. Apple, Inc., 189 A.D.3d 1984, 1985 (3d Dep't 2020)
- Matter of Raynor v. Landmark Chrysler, 18 N.Y.3d 48, 56 (2011)
- Hauser v. Fort Hudson Nursing Ctr., Inc., 202 A.D.3d 45, 48 (3d Dep't 2021)
- Matter of Verizon N.Y., Inc. v. New York State Pub. Serv. Commn., 137 A.D.3d 66, 69 (3d Dep't 2016)
- Matter of Jose R., 83 N.Y.2d 388, 394 (1994)
- Colon v. Martin, 35 N.Y.3d 75, 78 (2020)
- Cruz v. TD Bank, N.A., 22 N.Y.3d 61, 72 (2013)
- Matter of Gonzalez v. Northeast Parent & Child Socy., 2026 NY Slip Op 01443, *2 (2026)
- Matter of Walker v. Commissioner, N.Y. State Dept. of Corr. & Community Supervision, 241 A.D.3d 1, 3 (3d Dep't 2025)
- Matter of Matzell v. Annucci, 183 A.D.3d 1, 6 (3d Dep't 2020)
- Matter of Smith v. City of Norwich, 205 A.D.3d 140, 144 (3d Dep't 2022)