

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

Adams v. Bassett Healthcare Network

Adams, 2026 NY Slip Op 02706 (Appellate Division of the Supreme Court of the State of New York Third Department 2026) · No. CV-25-0867 · Decided April 30, 2026

SUMMARY

The Appellate Division, Third Department, held that two hospital RL6 incident reports were not shown to be protected from discovery under Education Law § 6527 (3) or the Patient Safety and Quality Improvement Act. The court found that the hospital's generalized affidavit and boilerplate confidentiality language did not establish that the reports were prepared for or reviewed in a qualifying medical review process or reported to a patient safety organization. The court modified the lower court's order by granting the plaintiff's motion to compel production of the reports and denying the defendant's cross-motion for a protective order.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Corcoran, J.; Clark, J.P.; Ceresia, J.; Fisher, J.; Powers, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	April 30, 2026
DOCKET	CV-25-0867
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, Otsego County, that denied his motion under CPLR 3124 to compel production of two RL6 reports and granted defendant's cross-motion for a protective order.
STANDARD OF REVIEW	The court reviewed the discovery and privilege determination for error as a matter of law, including whether defendant met its burden to establish the asserted statutory privileges.
PRECEDENTIAL VALUE	published
PARTIES	Richard C. Adams v. Bassett Healthcare Network

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QUESTIONS PRESENTED

1. Whether Bassett established that the two RL6 reports were exempt from discovery under Education Law § 6527 (3).
2. Whether Bassett established that the RL6 reports constituted privileged patient safety work product under the Patient Safety and Quality Improvement Act of 2005.
3. Whether Supreme Court properly denied Adams's motion to compel and granted Bassett's cross-motion for a protective order.

HOLDINGS

1. Bassett failed to establish that the RL6 reports were prepared for, submitted to, or actually reviewed through a medical review or quality-assurance process protected by Education Law § 6527 (3); the reports therefore were not exempt from discovery under that statute.
2. Bassett failed to establish that the RL6 reports constituted privileged patient safety work product because it did not show that the specific reports were actually provided to and reviewed by a patient safety organization.

KEY QUOTATIONS

*"The statutory privilege is designed to "encourage a candid peer review of physicians, and thereby improve the quality of medical care and prevent malpractice, but such protections are not automatically available and do not prevent full disclosure where it should otherwise be provided"" (*1)*

*""[A] party does not obtain the protection of Education Law § 6527 (3) merely because the information sought could have been obtained during the course of a hospital review proceeding[.] . . . The exemption applies only where the information was in fact so obtained"" (*2)*

FACTUAL BACKGROUND

Adams worked as a nursing assistant and technician in Bassett's secure unit for patients with behavioral health and psychiatric conditions. He alleged that Bassett terminated him after he reported unsafe workplace practices and conditions. During discovery, Bassett identified two RL6 reports—one authored by Adams in June 2022 and another authored by a hospital security employee in July 2022—and claimed that both were privileged.

PROCEDURAL HISTORY

Adams brought a wrongful-termination and retaliation action under Labor Law §§ 740 and 741. During discovery, Bassett asserted that two RL6 reports were protected by Education Law § 6527 (3) and the Patient

Safety and Quality Improvement Act. Supreme Court reviewed the reports in camera, denied Adams's motion to compel, and granted Bassett's protective-order motion. The Appellate Division modified the order by reversing those portions and granting the motion to compel as to the RL6 reports.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified on the law by reversing the portions that denied Adams's motion to compel production of the RL6 reports and granted Bassett's cross-motion for a protective order; the motion was granted and cross-motion denied to that extent. The order was otherwise affirmed.

CASES CITED

- Katherine F. v. State of New York, 94 N.Y.2d 200, 204 (1999)
- Estate of Savage v. Kredentser, 150 A.D.3d 1452, 1454-1455 (3d Dep't 2017)
- Carter v. County of Erie, 255 A.D.2d 984, 985 (4th Dep't 1998)
- Bellamy v. State of New York, 154 A.D.3d 1239, 1240-1241 (3d Dep't 2017)
- Matter of Coniber v. United Mem. Med. Ctr., 81 A.D.3d 1329, 1330 (4th Dep't 2011)
- Bamberg-Taylor v. Strauch, 181 A.D.3d 432, 433 (1st Dep't 2020)
- Drum v. Collure, 161 A.D.3d 1509, 1510 (4th Dep't 2018)
- DiPasquale v. Lim, 218 A.D.3d 1182, 1183-1184 (4th Dep't 2023)
- Slayton v. Kolli, 111 A.D.3d 1314, 1315 (4th Dep't 2013)
- Brown v. St. Mary's Hosp., 2015 U.S. Dist. LEXIS 179597, *11-*12 (D. Conn. Aug. 26, 2015) (No. 3:14CV228 (DJS))
- Francis v. United States, *6, *21 (S.D.N.Y. May 31, 2011) (No. 09 Civ. 4004 (GBD) (KNF))
- Pal v. New York Univ., *7, *21-*22 (S.D.N.Y. Dec. 10, 2007) (No. 06 Civ. 5892 (PAC) (FM))
- Siegel v. Snyder, 202 A.D.3d 125, 127 (2d Dep't 2021)
- Nowelle B. v. Hamilton Med., Inc., 174 A.D.3d 1345, 1347 (4th Dep't 2019)

OPINION

Adams v. Bassett Healthcare Network 2026 NY Slip Op 02706

PER CURIAM.

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<p>2026 NY Slip Op 02706</p> <p>April 30, 2026</p> <p>Appellate Division, Third
Department</p> <p>Published by New York State Law Reporting Bureau pursuant to Judiciary
Law § 431.</p> <p>This decision is uncorrected and subject to revision before publication in the
Official Reports.</p> </div> <div> <p>Richard C. Adams, Appellant,</p> <p>v</p> <p>Bassett
Healthcare Network, Respondent.</p> </div> <p>Decided and Entered: April 30, 2026</p>
<p>CV-25-0867</p> <p>Calendar Date: March 23, 2026</p> <p>Before: Clark, J.P., Ceresia,
Fisher, Powers And Corcoran, JJ.</p> <div> <p>Hinman, Howard & Kattell, LLP,
Binghamton (Gabriella K. Read of counsel), for appellant.</p> <p>Crowell & Moring LLP,
Washington, DC (Andrew W. Bagley of counsel), for respondent.</p> [*1]
<p>Corcoran, J.</p> <p>Appeal from an order of the Supreme Court (John Lambert, J.), entered
April 29, 2025 in Otsego County, which, among other things, denied plaintiff's motion to compel
disclosure of certain documents.</p> <p>Plaintiff was employed as a nursing assistant and
technician within defendant's secure unit for patients with behavioral health and psychiatric
conditions. He commenced this action for wrongful termination and retaliation under Labor Law
§§ 740 and 741, claiming that defendant unlawfully fired him after he reported unsafe workplace
practices and conditions. During discovery, plaintiff demanded copies of his statements to
defendant, including his June 2022 report of safety concerns submitted to defendant's electronic
reporting system. Plaintiff also requested the parties' communications about the secure unit and
defendant's responses to prior related complaints or concerns. The parties agreed to terms of a
confidentiality stipulation. Defendant objected, served a privilege log identifying two "RL6"
reports, and asserted that both reports were immune from disclosure pursuant to statutory
privileges under Education Law § 6527 (3) and the Patient Safety and Quality Improvement Act of
2005 (42 USC § 299b-21 *et seq.* [hereinafter PSQIA]). One of the reports was authored by
plaintiff in June 2022; the other was written by a hospital security staff member in July 2022 after
the incident that led to plaintiff's termination. Plaintiff moved pursuant to CPLR 3124 to compel
production of the reports and defendant cross-moved for a protective order. Supreme Court
inspected the reports in camera, then denied plaintiff's motion to compel and granted defendant's
cross-motion for a protective order. Plaintiff appeals.</p> <p>Supreme Court erred in concluding
that both RL6 reports were exempt from discovery pursuant to Education Law § 6527 (3). Under
certain conditions, this statute exempts from disclosure records related to medical review and
quality assurance functions, records of participation in a medical malpractice prevention program
and certain reports required by the Department of Health (*see Katherine F. v State of
New York*, 94 NY2d 200, 204 [1999]). The statutory privilege is designed to "encourage a
candid peer review of physicians, and thereby improve the quality of medical care and prevent
malpractice, but such protections are not automatically available and do not prevent full disclosure
where it should otherwise be provided" (*Estate of Savage v Kredentser*, 150 AD3d 1452,

1455 [3d Dept 2017] [internal citations omitted]). "The exemption from discovery conferred by that statute pertains only to medical review functions" (*Carter v County of Erie*, 255 AD2d 984, 985 [4th Dept 1998] [citation omitted]). As the party seeking to invoke the privilege, defendant bore the burden of establishing that a review procedure was in place and that the requested documents were prepared in accordance with the relevant statute (*see Bellamy v State of New York*, 154 AD3d 1239, 1240 [*2] [3d Dept 2017]; *Estate of Savage v Kredentser*, 150 AD3d at 1454). Absent proof that a document was reviewed as contemplated by the statute, a conclusory statement that it was prepared for a protected purpose will not trigger the statutory privilege (*see Estate of Savage v Kredentser*, 150 AD3d at 1455; *Matter of Coniber v United Mem. Med. Ctr.*, 81 AD3d 1329, 1330 [4th Dept 2011]).

Defendant's vice president, Paula Moshier, averred that hospital staff use RL6 reports to register a variety of incidents, such as accounts about medical procedures, "all near miss events," falls, medication reactions, employee injuries and certain other events not normally subject to the privilege. Moshier's description of the breadth of incidents reported through this electronic system demonstrated that it constitutes a tool to document an assortment of issues or events in the hospital, some of which relate to the medical review process. Contrary to defendant's argument, the mere fact that a report was created through the hospital's reporting system does not establish that it was made to promote quality assurance or for another purpose specified by Education Law § 6527 (3). Moshier described the policies and forms used to implement defendant's "Patient Safety Evaluation System" in general terms but she did not aver that the reports at issue were created for or submitted to any medical review process; her affidavit failed to even mention the specific reports at issue (*compare Bamberg-Taylor v Strauch*, 181 AD3d 432, 433 [1st Dept 2020]; *Drum v Collure*, 161 AD3d 1509, 1510 [4th Dept 2018]; *Bellamy v State of New York*, 154 AD3d at 1241). Nor do the generic statements on the RL6 forms establish that they were composed for a protected purpose. Although Moshier explained that all RL6 forms contain boilerplate language indicating that they are "[c]onfidential quality assurance material pursuant to Education Law § 6527, Public Health Law § 2805, and Mental Hygiene Law § 29.29," nothing in the record suggests that these particular reports were ever reviewed for any privileged purpose. "[A] party does not obtain the protection of Education Law § 6527 (3) merely because the information sought *could* have been obtained during the course of a hospital review proceeding[.] . . . The exemption applies only where the information was in fact so obtained" (*DiPasquale v Lim*, 218 AD3d 1182, 1183-1184 [4th Dept 2023] [internal quotation marks, brackets, ellipsis and citation omitted]). In short, the administrator's conclusory affidavit is insufficient to satisfy defendant's burden under Education Law § 6527 (3) (*see Estate of Savage v Kredentser*, 150 AD3d at 1454; *Slayton v Kolli*, 111 AD3d 1314, 1315 [4th Dept 2013]; *Matter of Coniber v United Mem. Med. Ctr.*, 81 AD3d at 1330). Moreover, defendant conceded, both in its brief and at oral argument, that the RL6 reports were *not* submitted to a quality assurance or peer review committee.

Next, we address defendant's claim that the reports at issue ³are protected from disclosure by PSQIA. While defendant submits that the reports constitute privileged "patient safety work product," that term of art applies, as relevant here, to statements that are (1) assembled or developed by a provider for the purpose of reporting to a patient safety organization (hereinafter PSO) and (2) reported to a PSO (42 USC § 299b-21 [7] [A] [i] [internal quotation marks omitted]). Assuming, without deciding, the doubtful proposition that PSQIA applies to this state law claim, defendant failed to demonstrate that the RL6 reports at issue constitute privileged patient safety work product. Neither Moshier's affidavit, nor anything else in the record, establishes that these particular reports were actually provided to and reviewed by a PSO (*see Brown v St. Mary's Hosp.*, 2015 US Dist LEXIS 179597, *11-12 [D Conn, Aug. 26, 2015, No. 3:14CV228 (DJS)]; *Francis v United States*, 2011 WL 2224509, *6, 2011 US Dist LEXIS 59762, *21 [SD NY, May 31, 2011, No. 09 Civ. 4004 (GBD) (KNF)]; *Pal v New York Univ.*, 2007 WL 4358463, *7, 2007 US Dist LEXIS 91051, *21-22 [SD NY, Dec. 10, 2007, No. 06 Civ. 5892 (PAC) (FM)]). Accordingly, defendant failed to show in the first instance that the reports were privileged under the cited state or federal statutes.

In light of this determination, we need not consider plaintiff's alternative arguments that the reports fell within the narrow party-statement exception to the Education Law privilege (*see Siegel v Snyder*, 202 AD3d 125, 127 [2d Dept 2021]; *Nowelle B. v Hamilton Med., Inc.*, 174 AD3d 1345, 1347 [4th Dept 2019]), and that public policy disfavors applying PSQIA and/or Education Law § 6527 (3) to healthcare whistleblower actions.

Clark, J.P., Ceresia, Fisher and Powers, JJ., concur.

ORDERED that the order is modified, on the law, without costs, by reversing so much thereof as denied plaintiff's motion to compel production of the RL6 reports and granted defendant's cross-motion for a protective order; motion granted to that extent and cross-motion denied to that extent; and, as so modified, affirmed.

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PER CURIAM.

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pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Richard C. Adams, Appellant, v Bassett Healthcare Network, Respondent. Decided and Entered: April 30, 2026 CV-25-0867 Calendar Date: March 23, 2026 Before: Clark, J.P., Ceresia, Fisher, Powers And Corcoran, JJ. Hinman, Howard & Kattell, LLP, Binghamton (Gabriella K. Read of counsel), for appellant. Crowell & Moring LLP, Washington, DC (Andrew W. Bagley of counsel), for respondent. [*1] Corcoran, J. Appeal from an order of the Supreme Court (John Lambert, J.), entered April 29, 2025 in Otsego County, which, among other things, denied plaintiff's motion to compel disclosure of certain documents. Plaintiff was employed as a nursing assistant and technician within defendant's secure unit for patients with behavioral health and psychiatric conditions. He commenced this action for wrongful termination and retaliation under Labor Law §§ 740 and 741, claiming that defendant unlawfully fired him after he reported unsafe workplace practices and conditions. During discovery, plaintiff demanded copies of his statements to defendant, including his June 2022 report of safety concerns submitted to defendant's electronic reporting system. Plaintiff also requested the parties' communications about the secure unit and defendant's responses to prior related complaints or concerns. The parties agreed to terms of a confidentiality stipulation. Defendant objected, served a privilege log identifying two "RL6" reports, and asserted that both reports were immune from disclosure pursuant to statutory privileges under Education Law § 6527 (3) and the Patient Safety and Quality Improvement Act of 2005 (42 USC § 299b-21 et seq. [hereinafter PSQIA]). One of the reports was authored by plaintiff in June 2022; the other was written by a hospital security staff member in July 2022 after the incident that led to plaintiff's termination. Plaintiff moved pursuant to CPLR 3124 to compel production of the reports and defendant cross-moved for a protective order. Supreme Court inspected the reports in camera, then denied plaintiff's motion to compel and granted defendant's cross-motion for a protective order. Plaintiff appeals. Supreme Court erred in concluding that both RL6 reports were exempt from discovery pursuant to Education Law § 6527 (3). Under certain conditions, this statute exempts from disclosure records related to medical review and quality assurance functions, records of participation in a medical malpractice prevention program and certain reports required by the Department of Health (see Katherine F. v State of New York , 94 NY2d 200, 204 [1999]). The statutory privilege is designed to "encourage a candid peer review of physicians, and thereby improve the quality of medical care and prevent malpractice, but such protections are not automatically available and do not prevent full disclosure where it should otherwise be provided" (Estate of Savage v Kredentser , 150 AD3d 1452, 1455 [3d Dept 2017] [internal citations omitted]). "The exemption from discovery conferred by that statute pertains only to medical review functions" (Carter v County of Erie , 255 AD2d 984, 985 [4th Dept 1998] [citation omitted]). As the party seeking to invoke the privilege, defendant bore the burden of establishing that a review procedure was in place and that the requested documents were prepared in accordance with the relevant statute (see Bellamy v State of New York , 154 AD3d 1239, 1240 [*2] [3d Dept 2017]; Estate of Savage v Kredentser , 150 AD3d at 1454).

Absent proof that a document was reviewed as contemplated by the statute, a conclusory statement that it was prepared for a protected purpose will not trigger the statutory privilege (see *Estate of Savage v Kredentser* , 150 AD3d at 1455 ; *Matter of Coniber v United Mem. Med. Ctr.* , 81 AD3d 1329, 1330 [4th Dept 2011]). Defendant's vice president, Paula Moshier, averred that hospital staff use RL6 reports to register a variety of incidents, such as accounts about medical procedures, "all near miss events," falls, medication reactions, employee injuries and certain other events not normally subject to the privilege. Moshier's description of the breadth of incidents reported through this electronic system demonstrated that it constitutes a tool to document an assortment of issues or events in the hospital, some of which relate to the medical review process. Contrary to defendant's argument, the mere fact that a report was created through the hospital's reporting system does not establish that it was made to promote quality assurance or for another purpose specified by Education Law § 6527 (3). Moshier described the policies and forms used to implement defendant's "Patient Safety Evaluation System" in general terms but she did not aver that the reports at issue were created for or submitted to any medical review process; her affidavit failed to even mention the specific reports at issue (compare *Bamberg-Taylor v Strauch* , 181 AD3d 432, 433 [1st Dept 2020]; *Drum v Collure* , 161 AD3d 1509 , 1510 [4th Dept 2018]; *Bellamy v State of New York* , 154 AD3d at 1241). Nor do the generic statements on the RL6 forms establish that they were composed for a protected purpose. Although Moshier explained that all RL6 forms contain boilerplate language indicating that they are "[c]onfidential quality assurance material pursuant to Education Law § 6527, Public Health Law § 2805, and Mental Hygiene Law § 29.29," nothing in the record suggests that these particular reports were ever reviewed for any privileged purpose. "[A] party does not obtain the protection of Education Law § 6527 (3) merely because the information sought could have been obtained during the course of a hospital review proceeding[.] . . . The exemption applies only where the information was in fact so obtained" (*DiPasquale v Lim* , 218 AD3d 1182, 1183-1184 [4th Dept 2023] [internal quotation marks, brackets, ellipsis and citation omitted]). In short, the administrator's conclusory affidavit is insufficient to satisfy defendant's burden under Education Law § 6527 (3) (see *Estate of Savage v Kredentser* , 150 AD3d at 1454 ; *Slayton v Kolli* , 111 AD3d 1314, 1315 [4th Dept 2013]; *Matter of Coniber v United Mem. Med. Ctr.* , 81 AD3d at 1330). Moreover, defendant conceded, both in its brief and at oral argument, that the RL6 reports were not submitted to a quality assurance or peer review committee. Next, we address defendant's claim that the reports at issue [*3] are protected from disclosure by PSQIA. While defendant submits that the reports constitute privileged "patient safety work product," that term of art applies, as relevant here, to statements that are (1) assembled or developed by a provider for the purpose of reporting to a patient safety organization (hereinafter PSO) and (2) reported to a PSO (42 USC § 299b-21 [7] [A] [i] [internal quotation marks omitted]). Assuming, without deciding, the doubtful proposition that PSQIA applies to this state law claim, defendant failed to demonstrate that the RL6 reports at issue constitute privileged patient safety work product. Neither Moshier's affidavit, nor anything else in

the record, establishes that these particular reports were actually provided to and reviewed by a PSO (see *Brown v St. Mary's Hosp.* , 2015 US Dist LEXIS 179597 , *11-12 [D Conn, Aug. 26, 2015, No. 3:14CV228 (DJS)]; *Francis v United States* , 2011 WL 2224509 , *6, 2011 US Dist LEXIS 59762 , *21 [SD NY, May 31, 2011, No. 09 Civ. 4004 (GBD) (KNF)]; *Pal v New York Univ.* , 2007 WL 4358463 , *7, 2007 US Dist LEXIS 91051 , *21-22 [SD NY, Dec. 10, 2007, No. 06 Civ. 5892 (PAC) (FM)]). Accordingly, defendant failed to show in the first instance that the reports were privileged under the cited state or federal statutes. In light of this determination, we need not consider plaintiff's alternative arguments that the reports fell within the narrow party-statement exception to the Education Law privilege (see *Siegel v Snyder* , 202 AD3d 125, 127 [2d Dept 2011]; *Nowelle B. v Hamilton Med., Inc.* , 174 AD3d 1345 , 1347 [4th Dept 2019]), and that public policy disfavors applying PSQIA and/or Education Law § 6527 (3) to healthcare whistleblower actions. Clark, J.P., Ceresia, Fisher and Powers, JJ., concur. ORDERED that the order is modified, on the law, without costs, by reversing so much thereof as denied plaintiff's motion to compel production of the RL6 reports and granted defendant's cross-motion for a protective order; motion granted to that extent and cross-motion denied to that extent; and, as so modified, affirmed. Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.