

Gonzalez v St. Lukes Roosevelt Hosp. Ctr.
2026 NY Slip Op 31516(U)
April 6, 2026
Supreme Court, New York County
Docket Number: Index No. 158979/2023
Judge: Leslie A. Stroth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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SHAYRETT GONZALEZ	INDEX NO. <u>158979/2023</u>
Plaintiff,	MOTION DATE <u>11/26/2025</u>
- v -	MOTION SEQ. NO. <u>001</u>

ST. LUKES ROOSEVELT HOSPITAL CENTER D/B/A
MOUNT SINAI MORNINGSIDE,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 47

were read on this motion to/for

PROTECTIVE ORDER

Plaintiff commenced this action after seeking care at Defendant hospital, St. Lukes Roosevelt Hospital Center d/b/a Mount Sinai Morningside (“Defendant”). Plaintiff states she sought care at Defendant hospital on March 13, 2023, for stomach issues and vomiting. While she was at Defendant’s Emergency Department, Plaintiff alleges that she was wrongfully restrained by security staff after she was advised that she could not leave, resulting *inter alia*, in a broken arm. On October 28, 2025, the parties met for a compliance conference, wherein Plaintiff’s counsel asserted entitlement to relevant hospital incident/accident reports. Defendant posited that such documents, should they exist, are protected by privilege. The Court ultimately directed Defendant to produce any incident/accident reports for *in camera* review to determine whether they are discoverable.

Defendant asserts that the incident/accident reports sought in discovery are privileged. As such, Defendant moves for a protective order pursuant to CPLR § 3103, against production of accident/incident reports in relation to the alleged incident as privileged and confidential.

Defendant also moves to recall and vacate the portion of this Court's prior conference order, dated October 28, 2025, that requires production of said documents for *in camera* review.

Plaintiff argues that the incident/accident report is not privileged.

Defendant states that the incident/accident reports are privileged under New York Public Health Law §§ 2805-M and 2805-L; and New York Education Law § 6527(3), while Plaintiff states that Defendant has failed to meet its burden for a protective order. For the reasons outlined below, Defendant's motion is denied.

CPLR § 3103 permits protective orders to "prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice." Defendant principally relies on New York Public Health Law § 2805-M(2), which states, in relevant part, that incident reports prepared under New York Public Health Law § 2805-L are not subject to disclosure under "[CPLR Article 31], except as hereinafter provided or as provided by any other provision of law."

New York Public Health Law § 2805-L governs "adverse event reporting," and specifically lists the following "adverse events" that are required to be reported: patient death or impairment in circumstances other than those related to natural course of illness, disease or proper treatment; fires; equipment malfunction; poisoning; strikes by hospital staff; disasters or other emergency situations external to the hospital environment; and termination of any services vital to the continued safe operation of the hospital.

Defendant also relies on New York Education Law § 6527(3), which reads: "[n]either the proceedings nor the records relating to... any report required by the department of health pursuant to Public Health Law § 2805-L (adverse event reporting)... shall be subject to disclosure under [CPLR Article 31] except as hereinafter provided or as provided by any other provision of the law."

A movant seeking to invoke the above privileges has the burden of establishing that the hospital was required to investigate and report an adverse event to the Department of Health pursuant to the statute (*Marte v. Brooklyn Hosp Center*, 9 AD3d 41, 46 [2d Dept 2004] citing *Katherine F v. State of New York*, 94 NY2d 200, 205 [1999]). Indeed, “[i]t 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” (*id.* [citations omitted]).

Defendant cannot establish that a report was actually prepared, let alone that a report was prepared pursuant to one of the above legal provisions. Defendant submits that “not even Your Affirmant’s office as defense counsel has been permitted to review any incident report(s) which *might* have been made relative to Plaintiff’s allegations since, as this Court held as a general matter in *Midgett v. Beth Israel Med. Ctr.*, 30 Misc. 3d 224, 231-232 (Sup. Ct. N.Y. Co. 2010), a hospital may not even disclose privileged material to defense counsel without running afoul of the privilege” (NYSCEF Doc. No. 28 at 6-7 [emphasis added]). Defendant continues, “the Court must err on the side of caution and consider any such incident reports, *to the extent that they exist*, to have been drafted for the purpose of quality assurance and to be thusly privileged and confidential” (*id.* at 10 [emphasis added]). In its reply, Defendant states that “[i]t has never been established that the subject incident has a corresponding incident or accident report in existence despite Plaintiff’s representation to the contrary” (NYSCEF Doc. No. 44 at 3).

Defendant falls short of meeting its burden of showing how an incident/accident report fits under a statute with clearly defined “adverse events” that require reporting to the Department of Health. Defendant cannot even say for certain whether an incident report exists, but nevertheless, moves to protect it. Defendant’s motion for a protective order is therefore denied, because Defendant fails to meet its burden in demonstrating that the hospital was required to

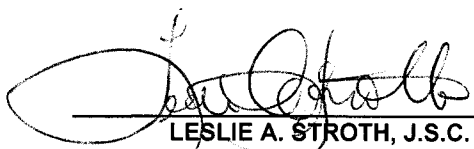
investigate and report the assault to the Department of Health pursuant to the cited statutes. The part of Defendant’s motion, seeking to vacate the Court’s prior conference order requiring production of any such accident or incident report made in connection with the subject incident on March 13,2023, is similarly denied.

Accordingly, it is hereby

ORDERED that Defendant St. Lukes Roosevelt Hospital Center d/b/a Mount Sinai Morningside’s motion for a protective order, and to vacate the Court’s conference order of October 28, 2025, is denied in its entirety.

The foregoing constitutes the decision and order of the Court.

4/6/2026
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE