

Young v Dickerson

2026 NY Slip Op 32008(U)

May 8, 2026

Supreme Court, Kings County

Docket Number: Index No. 520606/2020

Judge: Brian L. Gotlieb

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART CCP-OA

-----X Index Number: 520606/2020

CRAIG YOUNG,

Motion Sequence Numbers: 004 & 005

Plaintiff,

DECISION AND ORDER

-against-

LASHAWN DICKERSON, and PERSONAL-TOUCH
HOME CARE INC., and INDEPENDENCE CARE
SYSTEMS INC.,

Defendants.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in review of these motions are, as follows:

PAPERS	NYSCEF DOCUMENT NUMBERS
Plaintiff’s Motion to Compel	97-105
Defendant Personal-Touch’s Cross-motion	121-23
Plaintiff’s Opposition to Cross-motion	135
Defendant’s Reply	137
Order ordering in camera review	146

Pursuant to the undersigned’s order of February 18, 2026, the court conducted an in-camera inspection of documents provided by defendant Personal-Touch in response to plaintiff’s outstanding demands for discovery, including plaintiff’s First Set of Interrogatories and Request for Document Production (NYSCEF # 95, 100). Plaintiff moved to compel outstanding discovery responses from defendant Personal-Touch (MS 004) Defendant Personal-Touch cross-moved for a protective order over the requested documents, claiming the documents provided are privileged under the Quality Assurance Privilege, Public Health Law, Education Law, HIPPA, and CPL 160.50 (MS 005).

Defendant Personal-Touch’s motion for protective order is, for the reasons stated below, granted in part and denied in part.

Defendant provided the following exhibits for in camera review: Exhibit A: documents in connection with an investigation by Personal-Touch as required by the Department of Health; Exhibit B: summary of statements of non-party employees; Exhibit C: sealed documents pertaining to dismissed criminal charges of Defendant Dickerson from 2014; and Exhibit D: Defendant Dickerson’s personnel file.

Defendant Personal-Touch's motion is **granted** as to Exhibit A: documents in connection with an investigation by Personal-Touch as required by the Department of Health.

Defendant Personal-Touch asserts the documents provided in Exhibit A are privileged under Education Law § 6527(3), arguing the exhibits were required reporting under the law to the department of health. Education Law § 6527(3) states that quality assurance reporting mandated by the department of health under Public Health Law § 2805-1 is not subject to disclosure under article 31 of the CPLR. N.Y. Educ. Law § 6527(3). Yet this argument is misplaced, as Public Health Law § 2805-1 only applies to "hospitals," defined as "any general hospital or diagnostic and treatment center." NY Pub Health L § 3616-A(1)(a-b). Defendant Personal-Touch is not a hospital, but a licensed home care services agency. (*NYS Health Profile: Personal-Touch Home Care [New York State Health Profiles]* <https://www.nycourts.gov/reporter/files/2022-SM.pdf>).

As such, the correct privilege to analyze can be found in Article 36 of Public Health Law. Public Health law § 3616(3): "none of the records, documentation or committee actions or records required to be maintained by...licensed home care services agencies... pursuant to subdivision one of this section and as required by paragraphs (a) and (d) of subdivision five and subdivision six of section thirty-six hundred twelve of this chapter shall be subject to disclosure under...article thirty-one of the civil practice law and rules." (N.Y. Public Health Law 3616-A(3)). Public Health Law § 3612 grants the public health and planning council with the authority to establish a statewide quality assurance system and create uniform standards of care. N.Y. Public Health Law § 3612. NYCRR § 766.9 orders the operator of a home health care agency to:

- (j) Ensure the development and implementation of a patient complaint procedure to include:
 - (1) documentation of receipt, investigation and resolution of any complaint, including the maintenance of a complaint log indicating the dates of receipt and resolution of all complaints received by the agency;
 - (2) review of each complaint with a written response to all written complaints and to oral complaints, if requested by the individuals making the oral complaint:
 - (i) explaining the complaint investigation findings and the decisions rendered to date by the agency within 15 days of receipt of such complaint; and
 - (ii) advising the complainant of the right to appeal the outcome of the agency's complaint investigation and the appeal procedure to be followed;
 - (3) an appeals process with review by a member or committee of the governing authority within 30 days of receipt of the appeal; and
 - (4) notification to the patient or his or her designee that if the patient is not satisfied by the agency's response, the patient may complain to the Department of Health's Office of Health Systems Management.

(NYCRR § 766.9(j)). As such, patient complaint procedures pursuant to NYCRR § 766.9 are not subject to disclosure under chapter 31 of CPLR.

Exhibit A as provided states the requirements NYCRR § 766.9 and outlines the results of an investigation pursuant to the requirements in the statute. Furthermore, the document is signed by a member of Personal Touch's Quality & Compliance Team and clearly labeled "confidential."

Exhibit A is thus not discoverable under Public Health Law Public Health law § 3616(3) and NYCRR § 766.9. Defendant Personal-Touch's protective order is **granted** as to Exhibit A.

Defendant Personal-Touch's motion is **denied** as to Exhibit B: summary of statements of non-party employees for failure to properly assert the quality assurance privilege.

This court requires that the party asserting the quality assurance privilege to, "at minimum...show that it has a review procedure and that the information for which the exemption is claimed was obtained or maintained in accordance with that review procedure." (*Siegel v. Snyder*, 202 A.D.3d 125 [2d Dept. 2021]; see *Bush v. Dolan*, 149 A.D.2d 799 [3d Dept. 1989]). The court has denied the privilege where movants have "merely asserted that a privilege applied to the requested documents without making any showing as to why the privilege attached." (*Kneisel v. QPH, Inc.*, 124 A.D.3d 729 [2d Dept. 2015]). The court requires a demonstration that the documents in question were generated pursuant to the quality assurance review process. In *Kivlehan v. Waltner*, the court held a defendant failed to properly assert the quality assurance privilege when their credentials coordinator submitted an affirmation asserting the documents in question "only contain[] information that was collected for quality assurance purposes and to comply with relevant provisions of the Public Health Law" because that affirmation failed to demonstrate the documents "were actually generated at the behest of Good Samaritan's Quality Assurance Department." (*Kivlehan v. Waltner*, 36 A.D.3d 597 [2d Dept. 2007]).

In this matter, plaintiff's do not do more than "merely assert[]" that the privilege applies to Exhibit B. (See *Kneisel*, 124 A.D.3d 729). As held in *Kivlehan v. Waltner*, *supra*, Defendant Personal-Touch does not provide an affirmation from any member of Personal-Touch's quality assurance team asserting the documents were created pursuant to Personal-Touch's quality assurance review process. Defendant Personal-Touch's motion papers do not address the requirement that movant demonstrate the existence of review procedure and that the materials in question were obtained pursuant to that procedure. Defendant Personal-Touch simply states that they were "generated as part of the defendant Personal-Touch's quality review and personnel oversight processes," without providing details as to what those processes are. (NYSCEF # 122). The privilege log provided also fails to properly assert the privilege, simply stating the exhibit "was created as a Quality Assurance material to improve the quality care for patients." (NYSCEF #120). As outlined in *Kneisel v. QPH, Inc.*, *supra*, this is insufficient to assert the Quality Assurance Privilege. Finally, the exhibit itself does not make clear the document was generated as part of the quality assurance process. Exhibit B's document is not on Personal-Touch letterhead, does not have any sort of document heading indicating its purpose, and does not include the name and title of the author of the document that would indicate its generation by the quality assurance department. As such, Defendant Personal-Touch has failed to assert the Quality Assurance privilege, and are to provide plaintiffs with Exhibit B.

Defendant Personal-Touch's motion is **granted** as to Exhibit C: sealed documents pertaining to dismissed criminal charges of Defendant Dickerson from 2014. Defendant Personal-Touch properly asserted privilege under CPL 160.50. CPL 160.50 requires that

Upon the termination of a criminal action or proceeding against a person in favor of such person...the record of such action or proceeding shall be sealed. Upon receipt of

notification of such termination and sealing:...(c) all official records and papers, including judgments and orders of a court...relating to the arrest or prosecution... on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency.”

(CPL 160.50(1)(c)). The documents at issue here pertain to a criminal charge against defendant Dickerson that was dismissed. Pursuant to CPL 160.50, these documents were sealed. While CPL 160.50(1)(d) outlines scenarios where the records may be unsealed, none of those apply to this case. *See* CPL 160.50(1)(d). Furthermore, this Court has held that those exceptions are “narrowly defined,” and “if there is to be an exception to the general rule proscribing the release of sealed records...it should be created by the Legislature, not by the courts.” *Matter of Joseph M. (New York City Bd. of Educ.)*, 82 N.Y.2d 128, 132, 134 (1993). The legislature has thus far declined to do so. As such, Defendant Personal-Touch’s protective order is **granted** as to Exhibit C.

Defendant Personal-Touch’s motion is **granted** as to Exhibit D: Defendant Dickerson’s personnel file. Defendant Personal-Touch properly asserted privilege under HIPPA. The personnel file includes defendant Dickerson’s medical documentation such as vaccination records, health screenings, drug testing and lab results. As such, these files are protected under HIPPA. Furthermore, Defendant Dickerson has not placed her medical condition at issue. Defendant Personal-Touch’s protective order is granted as to Exhibit D.

Pursuant to the February 18, 2026, order, Defendants shall produce Exhibit B in its entirety on or before June 28, 2026.

Accordingly, plaintiff’s motion is **GRANTED** to the extent listed above. Any remaining contentions not addressed here are denied. This constitutes the Decision and Order of the Court.

Dated: May 8, 2026
Brooklyn, NY

Hon. Brian L. Gotlieb, J.S.C.

HON. BRIAN L. GOTLIEB, J.S.C