

## Libel, Slander: Statements To Nursing Board Are Protected By Law, Court Says.

A nurse sued her former employer for defamation. Her lawsuit focused on a letter sent by her employer to the State Board of Nursing summarizing the findings of the hospital's internal peer-review process. The hospital's conclusion was the nurse was guilty of negligence resulting in injury to a patient which justified termination.

The US District Court for the Eastern District of Missouri ruled when the case went to trial the hospital would have no absolute judicial immunity from suit but would have to prove the existence of a qualified privilege.

### Libel / Slander / Defamation

Defamation is the modern legal term that encompasses both libel and slander. In the old common law libel was defined as a defamatory written statement and slander was spoken.

### Absolute Judicial Immunity versus

### Qualified Privilege

For reasons of public policy, the law gives certain classes of statements a qualified privilege or even outright immunity from defamation lawsuits.

In these special situations the court does not look at whether the statement was true or false, only at the circumstances to see if the author is protected from a lawsuit even if the statement was untrue.

Just as in a court of law, persons who testify before the Board of Nursing have absolute judicial immunity from defamation lawsuits over their testimony.

However, when a nurse is being reported to the Board only the rule of qualified privilege applies. The law values both candid reporting and the rights of persons being reported. If the author had reasonable grounds to believe the statement was true and no malicious motivation, qualified privilege is a defense to a defamation lawsuit even if the statement turns out to have been untrue. Haynes-Wilkinson v. Barnes-Jewish Hospital, 131 F. Supp. 2d 1140 (E.D. Mo., 2001).

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***The Board of Nursing is performing a judicial function when taking sworn testimony in a hearing to resolve issues relating to a nurse's license to practice.***

***The same rules are in effect that apply in a court of law.***

***Persons who give testimony before the Board relating to the matter under the Board's consideration have absolute judicial immunity for their testimony.***

***Judicial immunity means a witness cannot be sued after the fact for defamation by the person who was the subject of the testimony. Judicial immunity is a complete defense to a lawsuit without weighing the truth or falsity of what was said.***

***The rule is different when a private individual initiates a complaint to the Board about a nurse.***

***Qualified privilege applies in this situation. To avoid a civil defamation lawsuit a person reporting a nurse must be able to demonstrate a genuine belief in the truth of the report based upon reasonable investigation and an absence of malicious motivation.***

UNITED STATES DISTRICT COURT,  
MISSOURI, 2001.

## Maternity Leave: Hospital Must Justify Decision To Eliminate Position.

While the hospital's director of perioperative services was out on maternity leave her position was eliminated and a new position was created. She was allowed to apply for the new position of surgical services director if she wanted to return to work. Suspecting physician retaliation for taking her maternity leave, she sued for pregnancy discrimination.

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***When an employee is not restored to her previous position when she is ready to return from maternity leave, a court will use principles of pregnancy discrimination law as the framework to judge the employer.***

***The employer can invoke the need to reorganize management functions and cite budgetary considerations, but the court will look carefully to see if that was what was really going on.***

UNITED STATES COURT OF APPEALS,  
FIRST CIRCUIT, 2002.

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The Federal District Court dismissed her case. The US Circuit Court of Appeals for the First Circuit upheld the dismissal. However, the court made strong general statements to the effect that an employer does not have *carte blanche* to cite management restructuring as a excuse for eliminating a position while an employee is out on maternity leave. If the employee feels justified in claiming pregnancy discrimination the burden is on the employer to justify the legitimacy of its actions. Weston-Smith v. Cooley Dickinson Hospital, Inc., 282 F. 3d 60 (1st Cir., 2002).