

## Medical Confidentiality: Court Turns Down Fired Employee's Defamation Lawsuit.

A behavioral health technician who worked in the hospital system's mental health facility was terminated after she accessed the facility's computerized records system to see whether a coworker had had surgery at the hospital.

The patient was never a patient in the mental health facility. Accessing the patient's health information had nothing to do with the technician's job.

After her firing the technician sued the hospital system for alleged defamation committed by the LPN who reported what she did and by the director of nursing, HR director, HIPAA officer and others who discussed the matter among themselves before reaching the decision to fire her.

The US District Court for the Eastern District of Kentucky dismissed the case.

### Truth as a Defense to Defamation

The Court accepted the testimony of the LPN who reported the technician to their superiors. At 1:00 a.m. while on the computer the tech asked the LPN how to access the computer for information on the particular person she wanted to look up.

The LPN told her directly that what she was trying to do was a violation of the facility's medical confidentiality policy.

### Legal Privilege

#### As a Defense to Defamation

Even if the facility was not able to establish truth as a defense, the facility was still protected by a legal privilege.

Society must protect the free flow of communication in the context of employees' evaluations by their superiors.

All of the people who met to discuss the charges against the technician had jobs in the facility's hierarchy which required them to investigate and deliberate among themselves as to the possibility of improper medical records access by a staff member that amounted to a HIPAA violation or breach of patient privacy.

The Court could still disregard the privilege and allow the victim to sue if the victim could show malicious intent to disparage her with false information, but that did not occur. **White v. Bourbon Comm. Hosp.**, 2016 WL 208303 (E.D. Ky., January 15, 2016).

***Defamation is a false statement with a derogatory meaning that is communicated to another person and thereby damages the victim's reputation and is not protected by a legal privilege.***

***Truth is one defense to a defamation lawsuit. A person cannot be defamed by a true statement.***

***Privilege is another defense to a defamation lawsuit.***

***Privilege is a defense even in some circumstances where the defense of truth is not available. In some contexts a false statement is not defamatory.***

***A privilege against being sued for defamation covers statements in evaluations by superiors of employees' conduct and qualifications.***

***Employment references to potential new employers are also covered by the same legal privilege.***

***Society has an interest in the good-faith free flow of information in the employment-evaluation context.***

***Society's interest in this context outweighs the individual's interest in protecting his or her reputation by suing for defamation.***

UNITED STATES DISTRICT COURT  
KENTUCKY  
January 15, 2016

## Credentials Committee: Court Turns Down Physician's Defamation Suit.

A physician sued the hospital itself and various persons at the hospital for defamation after his privileges were taken away following an investigation by the credentials committee of numerous complaints of inappropriate behavior.

***Statements to the credentials committee were made by various personnel at the hospital including physicians and nurses.***

***The physician in question was accused of raising his voice in the ICU, making rude and inappropriate remarks in front of patients, confusing and intimidating the nurses, making the nurses feel uncomfortable and making inappropriate entries in patients' charts.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
January 13, 2016

The New York Supreme Court, Appellate Division, turned down the physician's lawsuit.

Statements made about a physician to a hospital credentialing committee are legally privileged against a lawsuit by the physician for defamation.

This privilege, as defined by a US Federal statute, is not an absolute privilege. It is a qualified privilege. A qualified privilege does not shield a person who provides information if the information communicated to the committee is false and the person who provided it knew it was false.

The alleged victim of defamation has the burden of proof that the information was false and that the person who gave the information to the committee did so maliciously, that is, knowing it was false. **Colantonio v. Mercy**, \_\_ N.Y.S.3d \_\_, 2016 WL 143698 (N.Y. App., January 13, 2016).