

## Patient Fall: Court Rules Nurse's Disciplinary Action Record Is Available To Family's Lawyers.

After his wife died after a fall the husband sued the nursing home for damages for wrongful death.

Soon after they filed the lawsuit the husband's lawyers made a formal discovery request in court for the nursing home to turn over the patient's nurse's disciplinary write-up for the incident which presumably would reveal her supervisor's fault-finding and any relevant facts the nurse herself might have admitted.

The nursing home objected to that request based on the quality review or quality assurance privilege.

### Court Rules Nurse's Disciplinary Write-Up Must Be Turned Over

The US District Court for the District of Colorado ruled the husband's attorneys were entitled to a copy of the nurse's disciplinary write-up for the incident.

The Court ruled the quality review or quality assurance privilege only applies to the records, deliberations, reports and recommendations of a quality review committee created under the auspices of state law.

There was nothing given to the Court by the nursing home's lawyers to show that the nursing home even had such a committee or that the report in question had anything to do with such a committee. The judge looked at the report privately and noted it was clearly marked as a personnel disciplinary record, not anything to do with a quality review committee.

As to personnel records the employee is entitled to a modicum of privacy. However, according to the Court, there was nothing in this disciplinary report that was sensitive or personal about the nurse apart from her involvement, albeit her possibly negligent involvement, in the incident.

Further, the husband's lawyers convinced the Court they had made every reasonable effort to locate the nurse, with whom legal ethics would now allow them to communicate directly, as she was no longer an employee of the nursing home.

If the lawyers were able to locate and speak with the nurse they would have no need or any legal basis to ask for the disciplinary record. **Bennett v. SSC Palisade**, 2014 WL 3809768 (D. Colo., August 1, 2014).

***The document in question is titled "Disciplinary Action Record" which strongly suggests the information in the document was obtained for employee disciplinary purposes and not for quality assurance purposes.***

***The document reflects the patient's nurse's recollections of the event as well as her supervisor's opinion as to whether the nurse's actions were improper.***

***There is no reference in the document to any quality management program.***

***The nursing home's argument about the quality assurance privilege as to this document is frivolous.***

***There is no evidence before the Court that the nursing home even has a quality management program approved by the state department of health or that the document is a record, report or recommendation that is part of a quality management program.***

***The document in question is a confidential personnel record, yet the estate of the deceased has a compelling need for the information.***

***The husband's attorneys have been unable to locate and interview the nurse.***

UNITED STATES DISTRICT COURT  
COLORADO  
August 1, 2014

## School Nursing: School Ordered To Train Nurses As To Students' Rights.

The city and county governments were sued by the parents of a minor female student who was subjected to a genital exam in a school bathroom by a school nurse in the presence of a school official. The nurse apparently wanted to check the student for a rash.

The suit resulted in a verdict in favor of the city and county.

Nevertheless, the US District Court for the Middle District of Tennessee issued a court order requiring the city and county to take steps to insure that students' rights would not be violated in the future.

***A local or state government can violate its citizens' Constitutional rights by failing to train government employees as to the steps required to protect citizens' rights.***

UNITED STATES DISTRICT COURT  
TENNESSEE  
August 11, 2014

The city and county had already adopted guidelines from the National Association of School Nurses and the National Council of State Boards of Nursing.

The problem was that the city and county never set up a program to train the school nurses about those guidelines, specifically the portions of the guidelines pertaining to protection of students' rights.

The guidelines require written parental consent and consent from the student's healthcare provider for any medical procedure done at school. The nurse was unaware that she should have relayed her concerns to the parents and had them take the child to the child's healthcare provider.

The guidelines also state that the procedure in question could only be done by a physician or physician's assistant and not by a registered nurse, but the nurse apparently was never told that. **Hearing v. Metro Govt.**, 2014 WL 3924520 (M.D. Tenn., August 11, 2014).