APPELLATE COURT

OF THE

STATE OF CONNECTICUT

AC 37821, 37822

CLARENCE MARSALA, ADMINISTRATOR OF THE ESTATE OF HELEN MARSALA, ET AL.

V.

YALE-NEW HAVEN HOSPITAL

APPENDIX OF DEFENDANT-APPELLEE YALE-NEW HAVEN HOSPITAL

PARTS 1 AND 2

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TABLE OF CONTENTS

Part 1

PLEADINGS AND COURT ORDERS

Part 2

DOCKET NO.: AAN-CV-12-6010861-S	:	SUPERIOR COURT
CLARENCE MARSALA, ET AL.	:	J.D. OF MILFORD/ANSONIA
VS.	:	AT MILFORD
YALE-NEW HAVEN HOSPITAL	:	SEPTEMBER 11, 2014

DOCKET NO. AAN-CV-12-6011711-S	:	SUPERIOR COURT
CLARENCE MARSALA, ADMINSTRATOR OF THE ESTATE OF HELEN MARSALA	:	J.D. OF MILFORD/ANSONIA
	:	AT MILFORD
VS.	:	
YALE-NEW HAVEN HOSPITAL	:	SEPTEMBER 11, 2014

AMENDED AFFIDAVIT OF MARGARET PISANI, M.D.

1. I am over the age of 18 and understand the obligation of an oath.

2. I make this affidavit based on personal knowledge and on information contained within the medical records of Yale New Haven Hospital pertaining to Helen Marsala.

3. I am a physician licensed by the state of Connecticut. I am board certified in Internal Medicine, Pulmonology and Critical Care.

4. In 2010, I was employed by the Yale Medical Group and was an attending physician at Yale New Haven Hospital providing care to patients in the Medical Intensive Care Unit.

5. I was one of the attending physicians responsible for the care of Helen Marsala during her admission to Yale New Haven Hospital from June 18, 2010 through July 24, 2010.

6. I have reviewed the Yale New Haven Hospital records of Helen Marsala. Attached hereto as Exhibit 1 are true and accurate copies of excerpts from those records.

7. Mrs. Marsala was admitted to the Medical Intensive Care Unit at Yale-New Haven Hospital on June 18, 2010. According to the history provided at the time of her admission, she had been admitted to the Intensive Care Unit at Griffin Hospital on May 24, 2010 with altered mental status and acute renal failure, and she was intubated on May 26, 2010. She was transferred to Yale-New Haven Hospital on a ventilator after physicians at Griffin Hospital were unsuccessful in their efforts to remedy her depressed neurological functioning, which made intubation necessary. The plan was to conduct further workup with the hope that we could identify the cause of, and reverse, her comatose state.

8. Mrs. Marsala had a dire prognosis upon her admission to Yale-New Haven Hospital, and despite conducting many tests and trying many treatments during the course of her admission to the Hospital in an attempt to resolve her depressed neurological functioning, her condition worsened.

9. Throughout Mrs. Marsala's admission to Yale-New Haven Hospital, members of her medical team had many conversations with her husband about her condition. In one of these conversations Mr. Marsala agreed that aggressive resuscitation efforts should not be provided given Mrs. Marsala's condition, and he consented to an entering of an order making her "Do Not Resuscitate."

10. There are significant medical risks with patients who are intubated and ventilator dependent and it is standard practice to limit the time patients are intubated. Prolonged intubation may further depress one's mental status, and we hoped that Mrs. Marsala's mental status might improve when the ventilator was discontinued. I believed that removing the

ventilator and allowing Mrs. Marsala to try and breathe on her own and see if her mental status would improve was the best course of treatment after a comprehensive medical evaluation.

11. In an effort to determine whether Mrs. Marsala could be removed from the ventilator, we conducted weaning trials, turning off the ventilator for short period of time to see if she was capable of breathing on her own. By July 20, 2010, Mrs. Marsala had passed several of these weaning trials and she was extubated. None of her family members were present when she was extubated.

12. Unfortunately, extubation did not have a significant impact on her mental status. Within a short time after extubation, she started to have difficulty breathing and clearing her secretions. Supplemental oxygen was provided through a BiPAP mask.

13. I advised Mr. Marsala that I had discussed the situation with my colleagues and we felt that further aggressive treatment was futile and not in the best interest of his wife in that it would not promote her goal of returning home. I told him that I did not believe it was appropriate to re-intubate Mrs. Marsala if she became unable to breathe on her own. I advised Mr. Marsala that I intended to present this case to the Yale-New Haven Hospital Ethics Committee for a recommendation about how to proceed, and I invited him to attend the Ethics Committee meeting.

14. On July 23, 2010, the Yale-New Haven Hospital Ethics Committee met to discuss the future care of Helen Marsala. Mr. Marsala did not attend. At the conclusion of the meeting, the Ethics Committee recommended that no escalation of Helen Marsala's care should occur; she should not be re-intubated or given vasopressors or dialysis. Yale-New Haven Hospital's Chief of Staff agreed with this recommendation.

15. At Mr. Marsala's request, another physician who had not been involved in Mrs. Marsala's care was asked to provide a second opinion as to the most appropriate course given her dire prognosis. He concurred with the recommendation of the Ethics Committee at Mrs. Marsala's care should not be escalated, comfort care only should be provided.

16. During the final days of Mrs. Marsala's life it became increasingly difficult to get in touch with Mr. Marsala. He was in the Hospital less frequently, and he did not answer or return phone calls.

17. My decision to extubate Helen Marsala was based on the results of her spontaneous breathing trials, and the decision of the Ethics Committee that she not be re-intubated was made only with concern for the best course of treatment for Helen Marsala. My actions and the actions of the medical team caring for Helen Marsala were not intended to cause any emotional distress to any member of her family.

M. Pisani

Margaret Pisani, M.D.

The foregoing individual appeared before me
and swore to the truth and accuracy of the
foregoing this 11 day of Sep 2014.

Notary Public/Comm. Of the Superior Court

My Commission Expires July 31, 2016

DOCKET NO.: AAN-CV-12-6010861-S

CLARENCE MARSALA, ET AL.	:	SUPERIOR COURT
	:	
VS.	:	J.D. OF MILFORD/ANSONIA
	:	AT MILFORD
	:	
YALE-NEW HAVEN HOSPITAL	:	APRIL 29, 2015

MOTION TO STAY ACTION

Pursuant to Practice Book §§ 61-11 (f) and 61-12, defendant, Yale-New Haven Hospital ("YNHH" or the "Hospital"), respectfully moves to stay the trial in this matter pending resolution of the appeal filed by plaintiffs on April 6, 2015. Plaintiffs have appealed from the decisions on the Hospital's Motions to Strike and for Summary Judgement which disposed of twenty-three of the twenty-seven counts of plaintiffs' first complaint and the sole count of the second complaint filed on behalf of the estate of Helen Marsala.

The grounds for this Motion are that the issues raised by plaintiffs' appeals arise from the same facts that are at issue in the remaining counts awaiting trial. Should plaintiffs succeed in reversing judgment on any of the claims on appeal, the matter might be remanded, and could require a trial to resolve the remanded claims. At any such trial, all of the evidence that will be presented in the forthcoming trial would have to be presented again in a subsequent trial. In the interest of judicial economy, and to avoid the prejudice to the Hospital should two trials be required, YNHH respectfully requests the Court stay the forthcoming trial until the issues on appeal are resolved.

In support of this motion, YNHH relies on the Memorandum of Law in Support of Motion to Stay Action, filed herewith.

Respectfully submitted,

DEFENDANT,
YALE-NEW HAVEN HOSPITAL

By: /s/ Penny Q. Seaman

Penny Q. Seaman
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CERTIFICATION

This is to certify that a copy of the foregoing was served via electronic mail this 29th day of April 2015, on the following counsel of record:

Jeremy C. Virgil, Esq.
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/s/ Penny Q. Seaman
Penny Q. Seaman

ORDER 422677

DOCKET NO: AANCV126010861S

SUPERIOR COURT

MARSALA, CLARENCE Et Al
V.
YALE-NEW HAVEN HOSPITAL, INC.

JUDICIAL DISTRICT OF ANSONIA/ MILFORD
AT MILFORD

4/29/2015

ORDER

ORDER REGARDING:
04/29/2015 175.00 MOTION FOR STAY

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

422677

Judge: THEODORE R TYMA

AC 37821/37822

CLARENCE MARSALA, ET AL.	:	APPELLATE COURT
VS.	:	
YALE-NEW HAVEN HOSPITAL	:	MAY 14, 2015

MOTION TO CONSOLIDATE APPEALS

Pursuant to Practice Book § 61-7(b)(3), defendant-appellee Yale-New Haven Hospital ("the Hospital") moves to consolidate two appeals, AC 37821 and AC 37822, which arise from the same trial court decision entered in two lawsuits consolidated in the trial court. The cases are factually intertwined, and judicial efficiency dictates that the two appeals be briefed and argued together as if they were a single appeal.

A. Brief History

Both lawsuits are personal injury actions arising from the death of Helen Marsala at Yale-New Haven Hospital in July 2010.[1] Plaintiffs in the first lawsuit are Clarence Marsala, as administrator of the Estate of Helen Marsala ("the Estate"), Clarence Marsala in his individual capacity as the spouse of Helen Marsala, and their five adult children, Michael, Kevin, Gary, Randy and Tracey Marsala. Plaintiff in the second lawsuit is Clarence Marsala, as administrator of the Estate. The Hospital is the sole defendant in both cases. Both lawsuits seek damages for the Estate allegedly arising from the treatment of the decedent at the Hospital from the same hospital admission. The first lawsuit also added

[1] The first lawsuit is docket no. AAN-CV12-6010861-S in the trial court and no. AC 37822 in this Court. The second lawsuit is docket no. AAN-CV12-6011711-S in the trial court and no. AC 37821 in this Court.

additional claims by the decedent's family members for their own alleged injuries from their emotional distress.[2]

B. Factual Basis for Motion

The appeals in both cases were filed on April 6, 2015, arising from the same trial court decision dated March 19, 2015 (Tyma, J.). The trial court issued a single, consolidated summary judgment decision filed in both trial court dockets.[3] That decision disposed of the remaining claims asserted in the first lawsuit by the decedent's five adult children and disposed of the only claim in the second lawsuit. All of those claims, which are before this Court, are factually intertwined and relate to the Hospital's alleged actions with respect to the treatment of the decedent during the hospital admission. All of the plaintiffs in both lawsuits are represented jointly by the same counsel.

C. Legal Grounds for Motion

Practice Book § 61-7(b)(3) provides: "The appellate court, on motion of any party or on its own motion, may order that appeals pending in the appellate court be consolidated." For good cause shown, and in the interests of judicial efficiency, the Court should consolidate the two appeals arising from the same set of facts and the same trial court decision.

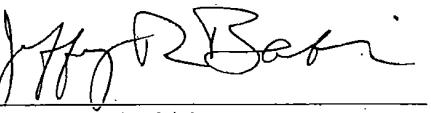
---

[2] The operative complaint in the first lawsuit, the Second Amended Complaint, was filed on October 22, 2012, attached to a motion for leave to amend the complaint, which the trial court granted on December 3, 2012. The operative complaint in the second lawsuit, the initial Complaint, was also dated October 22, 2012, and returned to court on November 9, 2012.

[3] The trial court has also just issued a single judgment file, entered on the dockets of both lawsuits.

WHEREFORE, the Hospital respectfully requests that the Court grant this motion and consolidate the two appeals for purposes of briefing and oral argument, with a single briefing schedule.

DEFENDANT-APPELLEE
YALE-NEW HAVEN HOSPITAL

By: 

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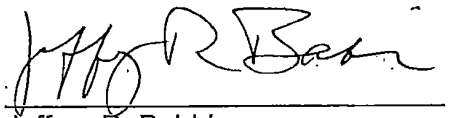
Juris No. 67700

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with all of the provisions of the Connecticut Rules of Appellate Procedure § 66-3.



Jeffrey R. Babbin

CERTIFICATION

I hereby certify that on this 14th day of May, 2015, a copy of the foregoing motion was served by first-class mail, postage prepaid, and by e-mail upon all counsel and pro se parties of record as follows:

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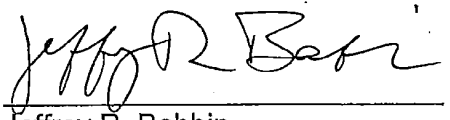


Jeffrey R. Babbin

487/13067/3282450.1

APPELLATE COURT

STATE OF CONNECTICUT

AC 37821 / 37822

CLARENCE MARSALA ET AL.

V.

YALE NEW HAVEN HOSPITAL

JUNE 11, 2015

O R D E R

THE MOTIONS OF THE DEFENDANT-APPELLEE, FILED MAY 14, 2015, TO CONSOLIDATE APPEALS, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **O R D E R E D** GRANTED. PURSUANT TO P.B. §61-7, ALL APPELLANTS SHALL FILE A SINGLE, CONSOLIDATED BRIEF AND APPENDIX. ALL APPELLEES SHALL FILE A SINGLE, CONSOLIDATED BRIEF OR, IF APPLICABLE, A SINGLE, CONSOLIDATED BRIEF AND APPENDIX. ALL FILINGS SHALL INCLUDE DOCKET NUMBERS A.C. 37821 AND A.C. 37822, BUT BRIEFS AND APPENDICES SHALL BE UPLOADED UNDER A.C. 37821 ONLY.

BY THE COURT,

RENE L. ROBERTSON
TEMPORARY ASSISTANT CLERK-APPELLATE

NOTICE SENT: June 11, 2015
WIGGIN & DANALLP
ZELDES, NEEDLE & COOPER

143169 / 143170

SUPERIOR COURT JD OF MILFORD/ANSONIA AT MILFORD

DOCKET NO. AAN-CV-12-6010861-S

----------X

CLARENCE MARSALA, ADMINISTRATOR OF THE ESTATE OF HELEN MARSALA,

Plaintiff

vs.

YALE-NEW HAVEN HOSPITAL,

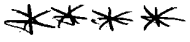
Defendant

----------X

August 20, 2014

11:01 a.m.

DEPOSITION of ANDREW BOYD, M.D., held at the offices of Wiggin and Dana LLP, 450 Lexington Avenue - Suite 3800, New York, New York, pursuant to Notice, before ELIZABETH SANTAMARIA, a Notary Public of the State of New York.



the tracheotomy.

So one of the difficulties logistically or practically, in addition to the ethics of it, is finding a place or a situation or a care team to manage someone who has both a tracheotomy as well as requiring hemodialysis.

Q You said that your recollection is that an EEG showed diffuse slowing of the brain, is that right, of mental function?

A Correct.

Q Is that consistent with a comatose state?

A Again, it's -- I don't have the expertise of, say, a neurologist to be able to comment on the specific definitions of what is considered comatose both from a clinical perspective but also from an EEG perspective.

I would say that in general I -- what my understanding is, that diffuse slowing means the patient has a depressed mental status. But I don't know how slow something has to be to be put into coma or if someone is a coma and then we look at the EEG and

determine how they correlate.

Q This DNR order that you were shown, I think it's page 1 on Exhibit 1, your signature is dated July 4, 2010, correct?

A Yes.

Q And what does your signature connote? Why do you sign this?

A It means that it has been reviewed by an intern or a resident as being valid, that they are aware of the entry, and then it needs to be signed by and therefore connote reviewed by the attending doctor.

Q Would you have signed this even if you had not had a conversation with Mr. Marsala when he told you that she should be made DNR?

A No. I would only have signed this if I had either had the conversation with a patient's family or had direct knowledge of that conversation being had. Only then would I have signed it.

Q The lawyer for the plaintiff is implying that because your note documenting your conversation with Mr. Marsala is dated

July 4th but you refer to a conversation on July 1st, that that note was false. Given your note, is there any question in your mind that you spoke to Mr. Marsala?

A No, there is no question in my mind that I spoke to him.

Q All right. And you would not have written this note dated July 4th where you say, "Last Thursday, July 1st, I was called to Ms. Marsala's bedside by her nurse to meet with Mr. Marsala"; is that a correct statement?

A I'm sorry. I misunderstood the structure of the question.

Q Okay.

Would you have written "Last Thursday on July 1st, 2010 I was called to Ms. Marsala's bedside by her nurse to meet with Mr. Marsala"; would you have written that if it was not true?

A No.

Q Is it accurate that on July 1st you went to meet with Mr. Marsala?

A Yes.

Q You next write, "He told me that he had spoken to Dr. Siegel." Who is Dr. Siegel?

A Dr. Siegel is another one of the attending doctors in the ICU.

Q "And that for now, he" -- referring to Mr. Marsala, I believe -- "would like to go ahead with the trach. However, he said that he would like to make Mrs. Marsala DNR with no compressions or defibrillations."

Did I read that properly?

A Yes.

Q Would you have written that if Mr. Marsala had not told you he wanted Mrs. Marsala to be DNR?

A No, I would not have.

Q Then you said, "I spoke with Dr. Marshall about this." Who is Dr. Marshall?

A Dr. Marshall is the latest or newest attending taking dare of the patient.

Q So he would also be an ICU attending?

A Correct.

Q And Dr. Marshal said that he would

get in touch with Mr. Marsala and talk with Mr. Marsala about that also?

A About -- specifically about the trach.

Q Okay.

A The tracheotomy.

Q Got it.

And is there any part of that note that is not accurate?

A As I recall and, again, in reviewing this note, no.

Q At any time that you were taking care of Mrs. Marsala, did you have any understanding of her financial condition?

A No.

Q Did you know how her bills were being paid?

A No.

Q Did you know if they were being paid?

A No.

Q Were any treatment decisions made based on her financial ability to pay?

A No.

Q Do you recall that Mrs. Marsala had weaning trials during the time that you were taking care of her?

A Yes.

Q Can you explain what a weaning trial is?

A A weaning trial is, as a general principle, done to mock or simulate the conditions under which a patient can breathe on their own.

So though a patient still has a tube in their mouth, we essentially turn off the ventilator machine with a little bit of air pressure to keep the tube open and then the patient can breathe on their own. So we see if they are able to breathe were we to take the tube out.

Now, those weaning trials are done -- can be done via weaning so you can start with a certain amount of high pressure, you can give some support with some extra breaths and then you try to decrease that support or help day by day until you get to the point where the conditions are such that

you can confidently say that essentially they are breathing on their own at a rate and at a volume that would be -- that they would be able to breathe on their own should the tube come out.

And then before you've even taken the tube out, you have a sense of if you were to take the tube out they would be able to breathe on their own.

Q Is it standard practice to do weaning trials on patients who are on a ventilator?

A Yes.

Q And that has a valid therapeutic purpose; is that true?

A It has a valid purpose in the sense that it helps us decide, with some evidence, that is the patient doing it themselves if we can watch that they'll be able to breathe on their own if the tube were to come out.

Q And in this case, do you recall that while you were caring for Mrs. Marsala she was given weaning trials?

A Yes.

Q And there were indicators that she could breathe on her own. Is that right?

A Yes.

Q The records say she passed her weaning trial.

A Yes.

Q Does that mean that there were indicators that she possibly could be safely extubated?

A Yes.

Q And extubated means take the ventilator off so she can breathe on her own, correct?

A Yes. It means completely take the tube out of the patient's trachea so they can breathe on their own.

Q A patient can't remain intubated indefinitely, can she?

A That's correct.

Q Why not?

A Again, this is more the purview of a pulmonologist. They are more of an expert.

But in my understanding, having training in internal medicine, the trials are

usually two weeks, meaning the intubation can stay in for two weeks. The reason is beyond that you can get atrophy or what is called malacia, a breakdown of the trachea itself so the trachea starts to collapse because it's not having to support itself.

And similarly you can also get breakdown of skin and tissue around the mouth and in the throat because of the pressure of the tube against those areas.

Q The records indicated that Mrs. Marsala was extubated on June 20th -- July 20th, 2010. Were you still taking care of her at that time?

A No.

Q While you were taking care of Mrs. Marsala, did you know that she had children?

A I can't recall that precisely. No, I don't -- I don't know.

Q In this complaint the Marsalas claim that Yale-New Haven Hospital and its agents, employees, staff members intended to inflict emotional distress on Mr. Marsala.

****

2010 WL 3786861
Only the Westlaw citation is currently available.

Superior Court of Connecticut,
Judicial District of New Haven.

Julian HERNANDEZ et al.
v.
YALE NEW HAVEN HOSPITAL.

No. CV095028884S. | Aug. 31, 2010.

Synopsis

Background: Mother, who witnessed her son's thumb and finger turn blue in hospital, filed medical malpractice suit against hospital, which included a count for emotional distress to a bystander. Hospital filed motion to strike the bystander count.

Holdings: The Superior Court, Judicial District of New Haven, Wilson, J., held that:

[1] a cause of action for bystander emotional distress is permitted in a medical malpractice case, and

[2] mother's allegations were insufficient to state claim for bystander emotional distress.

Motion granted.

WILSON, J.

Facts and Procedural History

***1** This action arises from injuries allegedly sustained by Julian Hernandez and his mother, Aurora Hernandez, due to the negligence of the defendant, Yale New Haven Hospital. Count one of the complaint alleges that Julian Hernandez was negligently treated by the defendant. Count two alleges that the plaintiff, Aurora Hernandez, suffered economic damages as a result of her son's injuries and count three alleges that the defendant is liable to the plaintiff for bystander emotional distress. On June 23, 2009, the defendant filed a motion to strike counts two and three. The plaintiff filed a memorandum in opposition to the motion on October 21, 2009. The defendant filed its reply on December 3, 2009.

The parties appeared for oral argument at short calendar on August 2, 2010. At oral argument, the defendant withdrew his motion to strike count two. The parties agreed that the plaintiff's recovery under this count is predicated upon and limited to the damages allowed by General Statutes § 52-204, which states: "In any civil action arising out of personal injury or property damage, as a result of which personal injury or property damage the husband or parent of the plaintiff has made or will be compelled to make expenditures or has contracted indebtedness, the amount of such expenditures or indebtedness may be recovered by the plaintiff, provided a recovery by the plaintiff shall be a bar to any claim by such husband or parent, except in an action in which the husband or parent is a defendant." As such, this memorandum of decision will only address the legal sufficiency of count three.

Discussion

"The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint ... to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves,* 262 Conn. 480, 498, 815 A.2d 1188 (2003). "A motion to strike is the proper procedural vehicle ... to test whether Connecticut is ready to recognize some newly emerging ground of liability." (Internal quotation marks omitted.) *Blue v. Renaissance Alliance,* Superior Court, judicial district of New Haven at Meriden, Docket No. CV 05 4001949 (May 12, 2006, Shluger, J .).

The defendant argues that count three should be stricken because a cause of action for bystander emotional distress in the context of a medical malpractice action is not recognized under Connecticut law. Moreover, the defendant argues that even if Connecticut recognized a cause of action for bystander emotional distress in the context of a medical malpractice action, the plaintiff failed to state a claim pursuant to the four-part test enunciated by the Supreme Court in *Clohessy v. Bachelor,* 237 Conn. 31, 675 A.2d 852 (1996). The plaintiff counters that *Clohessy* established a cause of action for bystander emotional distress in Connecticut regardless of whether the underlying negligence has arisen in the medical malpractice context. Resolution of this motion, therefore,

depends on whether a cause of action for bystander emotional distress should be recognized in the medical malpractice context and if so, whether the plaintiff's allegations satisfy the *Clohessy* test.

A

Bystander Emotional Distress under Connecticut Law

***2** The *Clohessy* court discussed the evolution of bystander emotional distress in Connecticut by examining three pivotal cases: *Strazza v. McKittrick,* 146 Conn. 714, 156 A.2d 149 (1959); *Amodio v. Cunningham,* 182 Conn. 80, 438 A.2d 6 (1980); and *Maloney v. Conroy,* 208 Conn. 392, 545 A.2d 1059 (1988). The court finds the *Clohessy* court's analysis of these decisions instructive and thus, repeats it below.

"In *Strazza,* the defendant negligently drove his truck onto the porch of the plaintiff's house. The impact shook the house, causing the plaintiff to drop the dishes [she was holding], lose her balance, and lean against the sink ... The plaintiff screamed with fright and became hysterical, thinking of disaster by earthquake ... Sometime after the impact, her husband inquired about [their seven year old child], and the plaintiff, thinking that the boy had been on the porch, became fearful that he had been injured. This fear aroused a new anxiety ... The plaintiff's only medical treatment was for a nervous condition that resulted from the fear of injury to her child. The court concluded that the plaintiff, because she was within the range of ordinary danger, could recover damages for the emotional distress she experienced as a result of her being put in fear for her own safety, even though she had sustained no consequential physical injury ... In reaching its conclusion, the court relied on *Orlo v. Connecticut Co.,* 128 Conn. 231, 239, 21 A.2d 402 (1941), which held that where it is proven that negligence proximately caused fright or shock [with respect to the person's own safety] in one who is within the range of ordinary physical danger from that negligence, and this in turn produced injuries such as would be elements of damage had a bodily injury been suffered, the injured party is entitled to recover." (Citations omitted; internal quotation marks omitted.) *Clohessy v. Bachelor, supra,* 237 Conn. at 34-35, 675 A.2d 852.

"In *Strazza,* however, the court did not permit the plaintiff to recover for the fright she had suffered from mistakenly believing that her child had been on the porch and had been injured. Relying upon the decisions of the courts of other states prior to 1959, which universally denied recovery for bystander emotional distress the court held that the plaintiff cannot recover for injuries occasioned by fear of threatened harm or injury to the person or property of another ... Such injuries are too remote in the chain of causation to permit recovery ... Even where a plaintiff has suffered physical injury in the accident, there can be no recovery for nervous shock and mental anguish caused by the sight of injury or threatened harm to another." (Internal quotation marks omitted.) *Id.,* at 35, 675 A.2d 852.

"In *Amodio,* the plaintiff mother sought damages for emotional distress sustained as a result of the defendant physician's alleged medical malpractice that she claimed caused the death of her daughter. The plaintiff urged this court to recognize a cause of action for bystander emotional distress as set forth in *Dillon v. Legg,* 68 Cal.2d 728, 441 P.2d 912, 69 Cal.Rptr. 72 (1968). The California Supreme Court in *Dillon,* relying on established principles of negligence, focused on foreseeability, and held that "since the chief element in determining whether [a] defendant owes a duty or an obligation to [a] plaintiff is the foreseeability of the risk, that factor will be of prime concern in every case. Because it is inherently intertwined with foreseeability such duty or obligation must necessarily be adjudicated only upon a case-by-case basis ... The *Dillon* court then set forth three factors to consider in determining whether the emotional injury to the bystander is reasonably foreseeable: (1) Whether [the] plaintiff was located near the scene of the accident as contrasted with one who was a distance away from it. (2) Whether the shock resulted from a direct emotional impact upon [the] plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence. (3) Whether [the] plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship." (Citation omitted; internal quotation marks omitted.) *Id.,* at 35-36, 69 Cal.Rptr. 72, 441 P.2d 912.

***3** "The *Dillon* court went on to state that the evaluation of these factors will indicate the degree of the defendant's foreseeability: obviously [the] defendant is more likely to foresee that a mother who observes an accident affecting her child will suffer harm than to foretell that a stranger witness will do so. Similarly, the degree of foreseeability of the third person's injury is far greater in the case of his contemporaneous observance of the accident than that in which he subsequently learns of it. The defendant is more likely to foresee that shock to the nearby, witnessing mother

will cause physical harm than to anticipate that someone distant from the accident will suffer more than a temporary emotional reaction. All these elements, of course, shade into each other; the fixing of obligation, intimately tied into the facts, depends upon each case." (Internal quotation marks omitted.) *Id.*, at 36, 69 Cal.Rptr. 72, 441 P.2d 912.

"The court in *Amodio* recognized that a growing number of jurisdictions, beginning in 1968 with the California decision in *Dillon* ... have recently recognized a cause of action for emotional distress in favor of a bystander to the negligently caused injury of another party ... The court also observed that under *Dillon* the requirement of sensory and contemporaneous observance does not require a visual perception of the impact although it does require that the plaintiff bystander otherwise apprehend the event ... Without rejecting the foreseeability approach, the *Amodio* court held that the plaintiff mother could not recover under *Dillon* because she did not have a contemporaneous sensory perception of the doctor's acts of negligence. Merely observing the consequences of the defendant's negligence towards another person without perceiving the actual negligent behavior, however, is insufficient to maintain a cause of action for emotional distress to a bystander." (Citations omitted; internal quotation marks omitted .) *Id.*, at 36-37, 69 Cal.Rptr. 72, 441 P.2d 912.

"This court again addressed the question of bystander emotional distress based upon medical malpractice in *Maloney v. Conroy, supra,* 208 Conn. at 392, 545 A.2d 1059, where the tort victim was the plaintiff's mother. After *Amodio,* but before *Maloney* was decided, however, California, in *Ochoa v. Superior Court,* 39 Cal.3d 159, 703 P.2d 1, 216 Cal.Rptr. 661 (1985), relaxed *Dillon* 's contemporaneous sensory perception requirement in the context of a medical malpractice case. In *Ochoa,* as in *Maloney,* the plaintiff observed the effects of the medical malpractice over a period of time. The Supreme Court of California concluded that the sudden occurrence requirement is an unwarranted restriction on the *Dillon* guidelines ... and that the contemporaneous perception of the negligent act requirement for a medical malpractice case was satisfied when there is observation of the defendant's conduct and the child's injury and contemporaneous awareness the defendant's conduct or lack thereof is causing harm to the child." (Citation omitted; internal quotation marks omitted.) *Id.,* at 37, 69 Cal.Rptr. 72, 441 P.2d 912.

***4** "In *Maloney,* this court, again leaving the door open for the foreseeability rule as set forth in *Dillon,* rejected the California Supreme Court's reasoning in *Ochoa.* Whatever may be the situation in other contexts where bystander emotional disturbance claims arise, we are convinced that, with respect to such claims arising from malpractice on another person, we should return to the position we articulated in *Strazza* that there can be no recovery for nervous shock and mental anguish caused by the sight of injury or threatened harm to another." (Internal quotation marks omitted.) *Id.,* at 37-38, 156 A.2d 149.

After analyzing these three decisions, the *Clohessy* court concluded: "We believe the time is ripe to recognize a cause of action for bystander emotional distress. Under certain circumstances ... we conclude that a tortfeasor may owe a legal duty to a bystander. Consequently, a tortfeasor who breaches that duty through negligent conduct may be liable for a bystander's emotional distress proximately caused by that conduct. Accordingly, we now overrule *Strazza* to the extent that it conflicts with our opinion in this case." *Id.,* at 46, 156 A.2d 149. "[A] bystander may recover damages for emotional distress under the rule of reasonable foreseeability if the bystander satisfies the following conditions: (1) he or she is closely related to the injury victim, such as the parent or the sibling of the victim; (2) the emotional injury of the bystander is caused by the contemporaneous sensory perception of the event or conduct that causes the injury, or by arriving on the scene soon thereafter and before substantial change has occurred in the victim's condition or location; (3) the injury of the victim must be substantial, resulting in his or her death or serious physical injury; and (4) the bystander's emotional injury must be serious, beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response." *Id.,* at 56, 156 A.2d 149.

After *Clohessy,* the Supreme Court rendered its opinion in *Murillo v. Seymour Ambulance Assn., Inc.,* 264 Conn. 474, 823 A.2d 1202 (2003). In *Murillo,* the plaintiff claimed to have been injured in a fall after observing a medical procedure performed on her sister. See *id.,* at 476, 823 A.2d 1202. The court affirmed the trial court's finding that the defendants, an ambulance company, a hospital and their respective employees, owed no duty to the plaintiff. See *id.* In reaching this conclusion, the court analyzed "four factors to be considered in determining the extent of a legal duty as a matter of public policy: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing

the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions." *Id.,* at 480, 823 A.2d 1202.

In regard to the first and second factors, the court relied upon *Maloney* in its analysis. See *id.,* at 480-81, 823 A.2d 1202. "The reasonableness of [the expectations of the plaintiff, a bystander; her sister, the defendants' patient; and the defendants] is underscored by a decision in which this court rejected a claim for negligent infliction of emotional distress by a plaintiff who had observed allegedly negligent medical treatment of her mother ... In *Maloney,* the court commented that medical judgments as to the appropriate treatment of a patient ought not to be influenced by the concern that a visitor may become upset from observing such treatment ... The focus of the concern of medical care practitioners should be upon the patient and any diversion of attention or resources to accommodate the sensitivities of others is bound to detract from that devoted to patients." *Id.* Furthermore, "[a]s a matter of public policy, and as we previously stated in *Maloney,* the law should encourage medical care providers, such as the defendants, to devote their efforts to their patients, and not be obligated to divert their attention to the possible consequences to bystanders of medical treatment of the patient." (Citations omitted.) *Id.,* at 481, 823 A.2d 1202.

***5** In light of *Maloney, Clohessy* and *Murillo,* there exists "a split of authority among the judges of the Superior Court as to whether a claim for bystander emotional distress may be brought in the context of a medical malpractice action. One line of cases follows the Supreme Court's decision in *Maloney,* holding that bystander emotional distress claims are not permitted in medical malpractice actions ... Other judges of the Superior Court have held that *Clohessy* permits claims for bystander emotional distress to apply to all situations, including medical malpractice, provided that the rule of reasonable foreseeability, as limited by four factual criteria, has been met." (Internal quotation marks omitted.) *Burnette v. Boland,* Superior Court, judicial district of New London, Docket No. CV 08 5009111 (April 23, 2010, Martin, J.).

An overwhelming majority of decisions of the Superior Court conclude that *Maloney* is still good law, and that Connecticut does not recognize a cause of action for bystander emotional distress in a medical malpractice case. See *Wales v. Yale New Haven Hospital,* Superior Court, judicial district of New Haven, Docket No. CV 08 5025413 (June 22, 2009, Keegan, J.); *Viagrande v. Rocco,* Superior Court, judicial district of New Britain, Docket No. CV 08 5006536 (August 11, 2008, Gilligan, J.); *Meister v. Windham Community Memorial Hospital,* Superior Court, complex litigation docket at Tolland, Docket No. X07 CV 03 0082430 (April 27, 2004, Sferrazza, J.) (36 Conn. L. Rptr. 876).

Judges of the Superior Court are also persuaded that because *Maloney* was cited favorably in *Murillo,* it lends credence to the view that *Maloney* was not overruled by *Clohessy.* See *Calabrese v. Connecticut Hospice, Inc.,* Superior Court, judicial district of Waterbury, Docket No. CV 09 5012012 (June 30, 2009, Sheedy, J.) (48 Conn. L. Rptr. 119); *Wales v. Yale New Haven Hospital, supra,* Superior Court, Docket No. CV 08 5025413; *Seda v. Maxim Healthcare Services,* Superior Court, judicial district of Hartford, Docket No. CV 07 5010811 (April 8, 2008, Elgo, J.); *Estaba v. Yale New Haven Hospital,* Superior Court, judicial district of Fairfield, Docket No. CV 06 5005503 (January 10, 2008, Blawie, J.) (44 Conn. L. Rptr. 774).

[1] Despite this majority, the court, after a careful review of *Maloney, Murillo* and *Clohessy,* is persuaded that *Clohessy* established a cause of action for bystander emotional distress in *any* context, so long as the plaintiff's allegations sufficiently satisfy the rule of reasonable foreseeability. This position has some support amongst decisions of the Superior Court. See *Johnson v. Edelstein,* Superior Court, judicial district of Hartford, Docket No. CV 04 0834151 (August 31, 2005, Hale, J.T.R.) (39 Conn. L. Rptr. 881); *Desjardins v. William Backus Hospital,* Superior Court, judicial district of New London, Docket No. 562748 (April 25, 2003, Hurley, J.T.R.) (34 Conn. L. Rptr. 515); *Pollard v. Norwalk Hospital,* Superior Court, judicial district of Fairfield, Docket No. CV 98 0355354 (February 18, 1999, Skolnick, J.); *Blanchette v. Desper,* Superior Court, judicial district of Waterbury, Docket No. 144050 (October 19, 1998, Shortall, J.) (23 Conn. L. Rptr. 321); *Rios v. Kozlowski,* Superior Court, judicial district of Hartford, Docket No. 576510 (August 24, 1998, Teller, J.) (22 Conn. L. Rptr. 564); *Bond v. Kalla,* Superior Court, judicial district of New London, Docket No. 543295 (April 13, 1998, Koletsky, J.) (21 Conn. L. Rptr. 682).

***6** "*Clohessy* has firmly established a cause of action for bystander emotional distress in Connecticut regardless of whether the action arises from medical malpractice ... Connecticut now offers a remedy to any bystander in any context who can satisfy the four *Clohessy* factors. Much is made of the fact that while *Clohessy v. Bachelor* overruled the case of *Strazza v. McKittrick* ... the *Clohessy* court declined to overrule *Maloney,* although the *Clohessy* opinion discusses

Strazza and *Maloney* in the same context ... However, it was simply not necessary to overrule *Maloney* because *Maloney*'s holding is not inconsistent with *Clohessy* ... [T]he trial court found, and the Supreme Court upheld in *Maloney,* the plaintiff did not allege that she suffered an injury contemporaneous with her perception of the alleged medical malpractice of the defendants ... It is clear that even under the *Clohessy* test, the plaintiff in *Maloney* would have failed to state a valid claim for bystander emotional distress." (Citations omitted; internal quotation marks omitted.) *Drew v. William Backus Hospital,* Superior Court, judicial district of New London, Docket No. 550724 (September 30, 1999, Hurley, J.) (25 Conn. L. Rptr. 534, 536), aff'd, 77 Conn.App. 645, 825 A.2d 810, cert. granted, 265 Conn. 909, 831 A.2d 249 (2003). [1]

1 The Appellate Court in *Drew* noted: "Having resolved that claim as we did, we, like the trial court, have no occasion on which to opine as to whether a claim for bystander emotional distress based on medical malpractice is legally cognizable." 77 Conn.App. 670, n. 9. Furthermore, the appeal to the Supreme Court was withdrawn on December 22, 2003.

The trial court in *Drew* continued: "This court recognizes how difficult it is for a plaintiff to successfully allege and prove a cause of action for bystander emotional distress in the medical malpractice context. As the *Clohessy* Court states, 'there generally is no significant observable traumatic event for a plaintiff to contemporaneously observe and thereby suffer emotional distress.' ... However, it is not hard to envision particular instances where a plaintiff, who is closely related to a medical patient, actually observes an act of medical malpractice and contemporaneously suffers emotional distress as a result. As an extreme example, suppose a woman accompanies her husband in an emergency room and watches as the doctors attempt to apply a heart defibrillator in order to prevent the patient from dying of a heart attack. Negligently, however, the doctors misapply the defibrillator and, consequently, electrocute and kill the patient. If the plaintiff has observed this entire tragic episode, and contemporaneously suffers serious emotional distress, what good reason is there for denying the plaintiff recovery for her emotional distress?" *Id.,* at 537, 675 A.2d 852.

"During the pre-*Clohessy* era, it is accepted that the plaintiff in the above situation would have no remedy for her emotional distress. Some trial courts still believe, however, that even after *Clohessy* there would not be a valid claim for bystander emotional distress in the above situation simply because the context entails medical malpractice. This court chooses not to read *Maloney* as a blanket prohibition on all bystander claims involving medical malpractice ... In light of *Clohessy,* this court recognizes *Maloney* for disclosing and analyzing the weaknesses of a bystander claim for emotional distress under the precise circumstances of that case. However, if there are circumstances in the medical malpractice context where a plaintiff can allege and prove all four *Clohessy* criteria, then recovery should not be denied." (Citation omitted.) *Id.* The court agrees with this analysis and additionally, finds that *Murillo* is inapposite to the present case. In *Murillo,* the plaintiff did not allege medical negligence on the part of the defendants, rather she alleged that her observation of a medical procedure performed on her sister caused her to faint and sustain injuries.

*7 Given the court's view that *Clohessy* established a cause of action for bystander emotional distress in *any* context, the court must next determine whether the facts alleged in the present case satisfy the four-part test enunciated in *Clohessy.*

B

Plaintiff's Allegations Under the Clohessy Test

The defendant contends that the plaintiff fails to satisfy the second element of the *Clohessy* test, that the emotional injury be caused by the contemporaneous sensory perception of the event or conduct that causes the injury. The Supreme Court has stated that "[m]erely observing the consequences of the defendant's negligence towards another person without perceiving the actual negligent behavior, however, is insufficient to maintain a cause of action for emotional distress to a bystander." *Amodio v. Cunningham, supra,* 182 Conn. at 90, 438 A.2d 6. In *Amodio,* the plaintiff mother contacted the defendant doctors when her daughter began having breathing difficulty. See *id.,* at 83, 438 A.2d 6. The defendants prescribed medication, and when the child's condition worsened, they examined, but negligently released her without further treatment. Thereafter, the daughter's heart stopped during an episode at home during which mother had to administer mouth-to-mouth resuscitation. The child was rushed to the hospital where, two days later, she died after the plaintiff decided to discontinue extraordinary life-support methods. See *id.*

The mother brought a medical malpractice complaint against the defendants, in which she alleged that she suffered emotional distress as a result of witnessing her daughter's

deterioration and death. See *id.,* at 84, 438 A.2d 6. The trial court granted the defendants' motion to strike this count and the Supreme Court affirmed. The Supreme Court reasoned that the allegations of the complaint indicated that the injuries suffered by the child became manifest a considerable period of time after the alleged negligence of the doctors occurred. See *id.,* at 91-93, 438 A.2d 6.

In *Maloney v. Conroy, supra,* 208 Conn. at 402, 545 A.2d 1059, the Supreme Court maintained this position given that the facts presented were strikingly similar to those before the court in *Amodio.* In *Maloney,* the plaintiff, who lived with her mother until her mother's death, was present at her bedside as her mother was being treated by the defendants. See *id.,* at 394, 545 A.2d 1059. Following an operation, the plaintiff observed her mother's health deteriorate under the treatment of the defendants and culminate in death. The plaintiff alleged that the suffering and death of the mother were caused by the negligence of the defendants in failing to care for her in a reasonably competent manner, including their failure to heed several requests of the plaintiff that they investigate various symptoms she had observed relating to her mother's deteriorating condition. See *id.*

In rejecting the plaintiff's emotional distress claim, the court articulated several public policy concerns. "To allow recovery by one, like the plaintiff, who has been more or less constantly at the bedside of the malpractice victim during the period of treatment is likely to cause hospitals and other medical treatment facilities to curtail substantially the extent of visitation of patients that is presently permitted. Such a response by providers of medical care to the risk of liability to visitors whose sensitivity and relationship to the patient may result in emotional disturbances from observing treatment of loved ones that they view as improper would seem inevitable if such claims were to become more frequent. The restriction of current liberal practices with respect to patient visitation in order to reduce the incidence of bystander emotional disturbance claims would be a regrettable social consequence of enlarging the right to recover for emotional disturbances based upon the impact of medical malpractice upon bystanders." (Internal quotation marks omitted.) *Id.,* at 402-03, 545 A.2d 1059.

***8** The court continued: "Another undesirable sequel that is likely to follow upon our creation of a duty to a patient's visitors or relatives is that medical personnel may feel obligated to respond to the usually uninformed complaints of visitors concerning the treatment of patients more for fear of stimulating emotional disturbances upon the part of the visitors than because of the merits of the complaint. Medical judgments as to the appropriate treatment of a patient ought not to be influenced by the concern that a visitor may become upset from observing such treatment or from the failure to follow some notion of the visitor as to care of the patient. The focus of the concern of medical care practitioners should be upon the patient and any diversion of attention or resources to accommodate the sensitivities of others is bound to detract from that devoted to patients ... Obviously, if the attention of medical practitioners is properly called to some deficiency in the treatment of a patient by anyone, that circumstance may be significant in deciding whether there has been malpractice. It is, however, the consequences to the patient, and not to other persons, of deviations from the appropriate standard of medical care that should be the central concern of medical practitioners. In the case before us, if the defendants should have responded to the various requests the plaintiff alleges she made about her mother's condition, they should be held liable for the consequences of their neglect to the patient or her estate rather than to the plaintiff. It is a fundamental assumption of jurisprudence that rules of law have an impact on the manner in which society conducts its affairs. We are persuaded that the recognition of a cause of action *under the circumstances pleaded in the complaint* would have consequences detrimental to the community as a whole that outweigh the benefit a few hypersensitive individuals would be likely to derive from permitting such an action to proceed." *Id.,* at 403, 545 A.2d 1059. (Emphasis added.)

Subsequently, the Superior Court in *Desjardins v. William Backus Hospital, supra,* 34 Conn. L. Rptr. at 518, closely examined the contemporaneous sensory perception element of the *Clohessy* test. "[T]his court interprets *Clohessy* to require a plaintiff to make two allegations in order to show contemporaneous sensory perception of the event or conduct which causes the injury to the third party ... First, the bystander must allege actual perception of the distinct event or conduct that caused the immediate severe or life threatening harm to the third party. Second, the bystander must allege that this observation immediately caused them to suffer severe emotional distress." *Id.;* see also *Vanase v. State,* Superior Court, judicial district of New London, Docket No. CV 00 0554764 (February 1, 2001, Hurley, J.T.R.) (28 Conn. L. Rptr. 665).

The *Desjardins* court continued: "[T]his test is sufficient to meet the concerns of the *Clohessy* court with respect to the etiology of emotional injuries because it allows a bystander

to recover for emotional distress, in a medical malpractice action, only where there is a sudden event or act of medical malpractice which injures a third party. This limitation also allows a trier of fact to determine whether there is an emotional injury inflicted on a bystander that is severe enough to cause continuing damage to them and, yet, is unrelated to the overall grief, loss, or pain that the bystander may feel solely because they are related to the victim and watching the victim suffer in a medical environment." (Citations omitted; internal quotation marks omitted.) *Id.*, at 518, 675 A.2d 852.

***9** In *Desjardins,* the plaintiff, the decedent's wife, alleged that her husband died a week after falling down a flight of stairs due to the medical malpractice of the defendants. See *id.*, at 515. After falling down the stairs, the decedent was transported via ambulance to the hospital where he was treated in the emergency room and admitted with a diagnosis of bifrontal subdural hematoma, right temporal hematoma and subarachnoid hemorrhage. During the course of his week long stay at the hospital, the plaintiff alleged that the defendants were negligent and careless by failing to perform adequate diagnostic testing, including intracranial pressure monitoring, to properly assess and treat the decedent's condition. *Id.*

Based upon these allegations, the court granted the defendants' motion to strike the plaintiff's emotional distress claim. "[T]he plaintiff has failed to allege a significant event or conduct leading to the plaintiff's immediate emotional distress, and, thus, the plaintiff has failed to state a cause of action for negligent infliction of emotional distress. The plaintiff has not sufficiently alleged that her emotional injury was caused by the contemporaneous sensory perception of the event or conduct that caused the injury as required by the second prong of *Clohessy.* Nor has she sufficiently alleged that she suffered immediate emotional distress as a result of witnessing a distinct, insular act of negligence by the defendant." *Id.*, at 518, 675 A.2d 852.

[2] In the present case, the plaintiff's revised complaint, filed August 3, 2009, alleges that she arrived at the hospital with her son on May 14, 2007. From May 14 until May 20, Julian received medicine and nutrition intravenously. On May 18, the plaintiff alleges that an intravenous line was negligently put into Julian's left hand. On the evening of May 19 through the morning of May 20, the plaintiff was physically present at her son's bedside. On the morning of May 20, the plaintiff observed that her son's left thumb and index finger had turned blue and called the attention to the defendant's nursing staff. The plaintiff observed the defendant's agents and employees as they unwrapped Julian's hand and discovered that the hand was cold, mottled purple, swollen and pulseless. As a result, Julian required emergency surgery, which the plaintiff consented to and consequently, watched as he was taken into the operating room. Subsequent surgeries during Julian's in-patient stay at the hospital resulted in the partial amputation of his hand.

These allegations demonstrate that the plaintiff did not witness the alleged act of medical negligence, the improper placement of the intravenous line into her son's left arm. Rather, she witnessed only the effects of this alleged negligence, including the discoloration of Julian's hand, which were discovered days after the intravenous line was put in. There is simply no precedent for the court to conclude that the plaintiff's allegations are legally sufficient to support her claim for bystander emotional distress. Connecticut courts have refused to expand this cause of action to situations where the plaintiff witnesses the deterioration of the patient over a period of time or observes the effects of the alleged medical negligence some time after the negligent act has occurred. The court is of the opinion that recovery for bystander emotional distress in the medical malpractice context is limited to circumstances such as those described by the trial court in *Drew,* where a close relative actually witnesses a significant event or act of medical negligence and its effect upon the patient, and as a result, contemporaneously experiences severe emotional distress. Additionally, the court's decision is supported by strong public policy concerns, including society's interest in liberal patient visitation and in sound, undistracted medical judgment of healthcare professionals.

***10** In sum, the court finds that the *Clohessy* test applies to the plaintiff's claim of bystander emotional distress, which arises in the context of a medical malpractice action. The court finds, however, that the plaintiff's allegations fail to satisfy the *Clohessy* test because she did not observe the actual act of medical negligence. In other words, as set forth in *Clohessy,* "the plaintiff has failed to allege that her emotional injury was caused by the contemporaneous sensory perception of the event or conduct that cause[d] the injury." *Clohessy, supra,* 237 Conn. at 56, 675 A.2d 852. The plaintiff in this case "[m]erely observe[d] the consequences of the defendant's [alleged] negligence towards [Julian] without perceiving the actual negligent behavior, [which] is insufficient to maintain a cause of action for emotional distress to a bystander." *Id.*, at 36-37, 675 A.2d 852. (quoting *Amodio v. Cunningham, supra.*)

Conclusion

For all of the foregoing reasons, the defendant's motion to strike count three is hereby granted.

All Citations

Not Reported in A.2d, 2010 WL 3786861

End of Document

2015 WL 3973881
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut.
Judicial District of Danbury.

Sarah E. HUBER, Conservator of the Estate of Lawrence Smith et al.
v.
Cheryl BAKEWELL et al.

No. DBDCV146015023S. | June 3, 2015.

Attorneys and Law Firms

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Murolo & Murolo, LLC, Cheshire, Deakin Edwards & Clark, LLP, Woodbridge, for Cheryl Bakewell et al.

ANTHONY D. TRUGLIA, JR., J.

FACTS

***1** The plaintiff, Sarah Huber, as executor of the estate of her deceased father, brings this action to recover compensatory and punitive damages from the defendants, Cheryl Bakewell, the former conservator of the decedent's estate and person, and Merton and Dawn Larmore (the Larmores). By amended complaint dated September 5, 2014 (# 108.00), the plaintiff alleges numerous causes of action against the defendants sounding in negligence, breach of contract, breach of fiduciary duty, conversion, fraud, statutory theft, negligent infliction of emotional distress, and violations of the Connecticut Unfair Trade Practices Act (CUTPA). The plaintiff also seeks by way of a separate count a complete inventory and accounting of all personal property formerly owned by the decedent and entrusted to the defendants in their fiduciary capacities.

In her amended complaint, the plaintiff makes the following allegations. Prior to his death on April 23, 2014, the decedent, Lawrence Smith, filed a voluntary petition for appointment of a conservator of his estate and person with the Probate Court for the District of Housatonic (Probate Court). On February 1, 2012, the Probate Court, per Landgrebe, J., granted the petition and appointed Bakewell, who was then serving as the decedent's accountant and financial advisor, as conservator. In its decree of appointment, the Probate conferred upon Bakewell the authority to "[m]anage all of the conserved person's estate" and to "[c]ollect all of the conserved person's income and assets, pay the conserved person's bills, expenses and debts, and collect debts due." (Defendant's Ex. A.) The plaintiff alleges that during Bakewell's service as conservator of her father's estate, the defendants, acting together or in concert, committed numerous acts of malfeasance which led to the loss of a considerable number of items of personal property belonging to the decedent. Certain of these items, including a collection of rare coins and a collection of Native American artifacts, had great historic and intrinsic value; other items which were lost had equally great sentimental value to her father and other family members, including a jewelry box containing the remains of the decedent's wife. The plaintiff specifically alleges that, in the summer of 2012, Bakewell retained the services of the Larmores to hold an estate sale at the decedent's former residence. The plaintiff alleges that the Larmores, among other things: (1) failed to conduct the estate sale in a professional manner so as to realize the highest and best possible result from the sale; (2) sold certain items off-site after the sale without keeping accurate records of the sale of these items; (3) donated certain of the decedent's items to charity, but failed to keep an accurate record of the donations; (4) sold certain items to themselves for less than fair market value; (5) failed to separate items of personal property that the decedent and his children, through a mutual distribution agreement approved by the Probate Court, had agreed would remain with the family members; (6) converted some of the decedent's personal items to themselves without paying for them at all; and (7) wrongfully retained proceeds from the sale of the decedent's items for themselves. In her claims for relief, the plaintiff requests an order from the court compelling the Larmores to provide "[f]ull accountings ... concerning the Sale and a judgment for the amounts found due on such accountings." The plaintiff also claims that the Larmores are liable to her father's estate for compensatory damages for breach of their fiduciary duties, negligence, negligent infliction of emotional distress and CUTPA violations.

***2** The Larmores now move to strike the eleventh count of the amended complaint which alleges a claim for negligent infliction of emotional distress on the ground that Connecticut jurisprudence does not recognize this cause of action in

circumstances arising from damage to or loss of personal property.

DISCUSSION

The law on motions to strike made pursuant to Practice Book §§ 10–39 is well-settled. "The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint ... to state a claim upon which relief can be granted ... A motion to strike challenges the legal sufficiency of a pleading, and, consequently, requires no factual findings by the trial court ... We take the facts to be those alleged in the complaint ... and we construe the complaint in the manner most favorable to sustaining its legal sufficiency ... Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves,* 262 Conn. 480, 498, 815 A.2d 1188 (2003). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." *Novametrix Medical Systems, Inc. v. BOC Group, Inc.,* 224 Conn. 210, 215, 618 A.2d 25 (1992).

"It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those necessarily implied from the allegations are taken as admitted." (Internal quotation marks omitted.) *Doe v. Board of Education,* 76 Conn.App. 296, 299–300, 819 A.2d 289 (2003). "The role of the trial court [on ruling on a motion to strike is] to examine the [complaint], construed in favor of the plaintiffs, to determine whether the [pleading party has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) *Dodd v. Middlesex Mutual Assurance Co.,* 242 Conn. 375, 378, 698 A.2d 859 (1997).

"[T]he elements [of a claim] for negligent infliction of emotional distress are: (1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress." (Internal quotation marks omitted.) *Morneau v. State,* 150 Conn.App. 237, 251, 90 A.3d 1003, cert. denied, 312 Conn. 926, 95 A.3d 522 (2014). "[I]n order to state such a claim, the plaintiff has the burden of pleading that the defendant should have realized that its conduct involved an unreasonable risk of causing emotional distress and that distress, if it were caused, might result in illness or bodily harm." (Internal quotation marks omitted.) *Parsons v. United Technologies Corp.,* 243 Conn. 66, 88, 700 A.2d 655 (1997); see also Restatement (Third) of Torts: Phys. & Emot. Harm § 47 (2012) ("An actor whose negligent conduct causes serious emotional harm to another is subject to liability to the other if the conduct: (a) places the other in danger of immediate bodily harm and the emotional harm results from the danger; or (b) occurs in the course of specified categories of activities, undertakings, or relationships in which negligent conduct is especially likely to cause serious emotional harm").

***3** "In negligent infliction of emotional distress claims, unlike general negligence claims, the foreseeability of the precise nature of the harm to be anticipated [is] a prerequisite to recovery even where a breach of duty might otherwise be found ..." (Internal quotation marks omitted.) *Perodeau v. Hartford,* 259 Conn. 729, 754, 792 (2002). Therefore, "[i]n order to state a claim for negligent infliction of emotional distress, the plaintiff must plead that the actor should have foreseen that her behavior would likely cause harm of a specific nature, i.e., of emotional distress likely to lead to illness or bodily harm." *Olson v. Bristol–Burlington Health District,* 87 Conn.App. 1, 5, 863 A.2d 748, cert. granted, 273 Conn. 914, 870 A.2d 1083 (2005).

The Larmores rely on the recent case of *Goldstein v. Rapp,* Superior Court, judicial district of New London, Docket No. CV–10–4010224–S (October 15, 2010, Martin, J.) (50 Conn. L. Rptr. 779), in support of their motion. In *Goldstein,* the plaintiffs were lessees of an apartment that became the subject of a foreclosure action. The plaintiffs alleged that while the foreclosure action was pending, and thus while they still had the right to possession of the apartment, the defendant mortgagee and its agents locked them out of the apartment and removed or caused to be removed the plaintiffs' personal property. Among the items removed were family photographs, mementos, and a jar containing the cremated remains of the plaintiffs' father. The plaintiffs asserted a number of causes of action against the defendants, including a count for negligent infliction of emotional distress. The defendants moved to strike this count on the ground that Connecticut does not recognize a cause of action for negligent infliction of emotional distress arising from the damage or destruction of personal property. The court in *Goldstein* noted that "every Superior Court case that has addressed negligent infliction of emotional distress claims where the only damage was to property ... has held that Connecticut

courts do not recognize a cause of action for negligent infliction of emotional distress based solely on damage to property ... These courts have reasoned that where the injury alleged is solely to property, it is not foreseeable to the defendant that its conduct could have caused emotional distress, and that distress, if it were caused, might result in illness or bodily harm." *Id.,* at 781; see also *Duffy v. Wallingford,* 49 Conn.Sup. 109, 121–23, 862 A.2d 890 (2004) (denying a motion to strike claim of negligent infliction of emotional distress where plaintiff alleged misrepresentations as to condition of real property).

In response, the plaintiff cites *Ginsberg v. Manchester Memorial Hospital,* Superior Court, judicial district of Hartford, Docket No. CV–09–5030482–S (February 2, 2010, Peck, J.) (49 Conn. L. Rptr. 341), and *Reich v. Spencer,* Superior Court, judicial district of Hartford, Docket No. CV–07–5012682–S (December 10, 2010, Peck, J.). The plaintiffs in *Ginsberg* were the surviving spouse and heirs of the decedent whose remains were placed in the custody and control of the defendants, a hospital and a funeral home. The plaintiffs alleged that the decedent's corpse was " 'damaged' by a gash on the forehead, bruised eyes and a broken nose." The plaintiffs brought a number of causes of action against the defendants, including claims of intentional and negligent infliction of emotional distress. The defendants moved to strike all counts of the complaint, arguing that Connecticut law did not recognize causes of action for damage to or "interference with" a corpse. The court granted the motion as to the claim for intentional infliction of emotional distress, but denied the motion as to negligent infliction of emotional distress. The court analyzed the claim for negligent infliction of emotional distress as follows: "Here, [the plaintiffs] have sufficiently pleaded a cause of action for negligent infliction of emotional distress. First, as discussed above, considerations of public health require family members to entrust the hospital with the custody of their loved one's corpse, until proper arrangements can be made. It is logical to conclude that parties charged with the custody and control of the remains of a deceased know or reasonably should know that the surviving relatives are emotionally vulnerable. As such, it is foreseeable that the family members would be harmed if they were subjected to the sight of the mutilated corpse of the deceased, and such mutilation was caused by the hospital. Further, on the basis of public policy, responsibility for negligent conduct on the part of the hospital in failing to safeguard the bodily integrity of the decedent's corpse should be extended to the immediate family. Having established that a funeral home owes a duty to them as immediate family members of the deceased, [the plaintiffs] have also pleaded that the corpse was damaged while in the care and custody of the defendant by conduct of the defendant; that this conduct created an unreasonable and foreseeable risk of causing them emotional distress severe enough to result in illness or physical harm; and, as a result, they, in fact, suffered emotional distress." *Ginsberg v. Manchester Memorial Hospital, supra,* 49 Conn. L. Rptr. at 344–45.

***4** In *Reich,* the plaintiff brought a claim for negligent infliction of emotional distress against a funeral home and its employee for their improper handling of a portion of her deceased husband's cremated remains, including failing to return the remains to her until more than four years after her husband's death. The remains had been kept in a closet at the funeral home where the remains of other deceased persons had been stored. When the remains were discovered, the defendant sent the plaintiff a letter informing her that she had one month to make arrangements to retrieve them. The notification letter also advised the plaintiff that if she failed to retrieve the rest of her husband's remains by the date set forth in the letter, the remains would be relocated to a crypt where they could be retrieved for an additional fee. The defendants filed a motion for summary judgment, arguing that there was no evidence that the funeral home's employee knew or should have known that there was a second container of remains until four years after the plaintiff's husband's death. The plaintiff responded that the defendants "either knew or should have known that losing a portion of the remains and returning them four years later, possibly mixed with the remains of another person, and informing her by way of an insensitive letter involved an unreasonable risk of emotional distress." The court denied the motion, finding that the defendants owed a duty of care to the plaintiff to properly care for her husband's remains and that there were unresolved issues of fact as to the defendant's liability. *Reich v. Spencer, supra,* Superior Court, Docket No. CV–07–5012682–S. Connecticut courts have, under *Ginsberg* and *Reich,* therefore, recognized that a special relationship exists between persons charged with custody and control of a deceased person's remains thereby creating a duty of care to family members with respect to the handling of those remains whose breach may form the basis for a cause of action for negligent infliction of emotional distress where the remains have been mishandled.

The plaintiff further argues that the facts of this case allege a fiduciary relationship between the plaintiff's decedent and the Larmores. According to the plaintiff, by accepting the responsibility of handling the decedent's valuable and

irreplaceable personal property under the circumstances, the Larmores owed the decedent a fiduciary duty of loyalty and a duty to supervise properly the safekeeping and sale of the personal property entrusted to their care. "[A] fiduciary or confidential relationship is characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of another ... The superior position of the fiduciary or dominant party affords him great opportunity for abuse of the confidence reposed in him." (Internal quotation marks omitted.) *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP,* 281 Conn. 84, 108, 912 A.2d 1019 (2007). Connecticut courts have, in some cases, recognized a cause of action for negligent infliction of emotional distress arising from the breach of a fiduciary duty. See, e.g., *Tumosa v. Curtis,* Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X07–CV–08–5023851–S (August 25, 2009, Berger, J.) (denying motion to strike negligent infliction of emotional distress count based on allegations of lack of due diligence by broker in advising plaintiffs in purchase of business venture). Thus, the plaintiff distinguishes *Goldstein* on the ground that the lender and property manager in that case who disposed of the plaintiff's irreplaceable personal items had no fiduciary relationship with the plaintiffs and, therefore, did not owe the plaintiff the duty of care owed by a fiduciary. Here, in contrast, the defendants' relationship and employment responsibilities imposed a heightened duty of care to the plaintiff's decedent.

***5** The plaintiff alleges that the Larmores owed the decedent the obligation to use due care in their safekeeping of the decedent's personal property. That personal property included not only the remains of the decedent's deceased wife, but also items of great historic and sentimental value to him and to other family members. The Larmores were charged with segregating items to be set aside for family members in accordance with the mutual distribution agreement and with conducting the sale of the decedent's personal property with a view toward maximizing the benefit of the sale for the decedent. The Larmores' failure to discharge their obligations properly, the plaintiff alleges, caused the plaintiff's decedent to suffer illness or bodily harm that the Larmores knew or should have known would result from failing to discharge those obligations properly. Where, as in the present case, a defendant is charged with fiduciary responsibilities for the safekeeping and proper disposition of personal property of great intrinsic or sentimental value, and where it is reasonably foreseeable that negligent handling of that personal property will cause emotional distress severe enough to cause illness or bodily injury, a plaintiff has alleged a legally sufficient cause of action for negligent infliction of emotional distress.

CONCLUSION

For the reasons set forth above, the Larmores' motion to strike count eleven of the plaintiff's amended complaint, # 119.00, is denied.

All Citations

Not Reported in A.3d, 2015 WL 3973881, 60 Conn. L. Rptr. 441

End of Document

Connecticut General Statutes Annotated
Title 19a. Public Health and Well-Being (Refs & Annos)
Chapter 368W. Removal of Life Support Systems (Refs & Annos)

C.G.S.A. § 19a-570

§ 19a-570. Definitions

Effective: October 1, 2007
Currentness

For purposes of this section and sections 19a-571 to 19a-580c, inclusive:

(1) "Advance health care directive" or "advance directive" means a writing executed in accordance with the provisions of this chapter, including, but not limited to, a living will, or an appointment of health care representative, or both;

(2) "Appointment of health care representative" means a document executed in accordance with section 19a-575a or 19a-577 that appoints a health care representative to make health care decisions for the declarant in the event the declarant becomes incapacitated;

(3) "Attending physician" means the physician selected by, or assigned to, the patient, who has primary responsibility for the treatment and care of the patient;

(4) "Beneficial medical treatment" includes the use of medically appropriate treatment, including surgery, treatment, medication and the utilization of artificial technology to sustain life;

(5) "Health care representative" means the individual appointed by a declarant pursuant to an appointment of health care representative for the purpose of making health care decisions on behalf of the declarant;

(6) "Incapacitated" means being unable to understand and appreciate the nature and consequences of health care decisions, including the benefits and disadvantages of such treatment, and to reach and communicate an informed decision regarding the treatment;

(7) "Life support system" means any medical procedure or intervention which, when applied to an individual, would serve only to postpone the moment of death or maintain the individual in a state of permanent unconsciousness, including, but not limited to, mechanical or electronic devices, including artificial means of providing nutrition or hydration;

(8) "Living will" means a written statement in compliance with section 19a-575a, containing a declarant's wishes concerning any aspect of his or her health care, including the withholding or withdrawal of life support systems;

(9) "Next of kin" means any member of the following classes of persons, in the order of priority listed: (A) The spouse of the patient; (B) an adult son or daughter of the patient; (C) either parent of the patient; (D) an adult brother or sister of the patient; and (E) a grandparent of the patient;

(10) "Permanently unconscious" means an irreversible condition in which the individual is at no time aware of himself or herself or the environment and shows no behavioral response to the environment and includes permanent coma and persistent vegetative state;

(11) "Terminal condition" means the final stage of an incurable or irreversible medical condition which, without the administration of a life support system, will result in death within a relatively short time period, in the opinion of the attending physician.

Credits

(1985, P.A. 85-606, § 1; 1991, P.A. 91-283, § 1; 1993, P.A. 93-407, § 3; 2006, P.A. 06-195, § 63; 2007, P.A. 07-252, § 18.)

Notes of Decisions (1)

C. G. S. A. § 19a-570, CT ST § 19a-570

The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

Connecticut General Statutes Annotated
Title 19a. Public Health and Well-Being (Refs & Annos)
Chapter 368W. Removal of Life Support Systems (Refs & Annos)

C.G.S.A. § 19a-571

§ 19a-571. Liability re removal of life support system of incapacitated patient. Consideration of wishes of patient

Currentness

(a) Subject to the provisions of subsection (c) of this section, any physician licensed under chapter 370 [1] or any licensed medical facility who or which withholds, removes or causes the removal of a life support system of an incapacitated patient shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for such withholding or removal, provided (1) the decision to withhold or remove such life support system is based on the best medical judgment of the attending physician in accordance with the usual and customary standards of medical practice; (2) the attending physician deems the patient to be in a terminal condition or, in consultation with a physician qualified to make a neurological diagnosis who has examined the patient, deems the patient to be permanently unconscious; and (3) the attending physician has considered the patient's wishes concerning the withholding or withdrawal of life support systems. In the determination of the wishes of the patient, the attending physician shall consider the wishes as expressed by a document executed in accordance with sections 19a-575 and 19a-575a, if any such document is presented to, or in the possession of, the attending physician at the time the decision to withhold or terminate a life support system is made. If the wishes of the patient have not been expressed in a living will the attending physician shall determine the wishes of the patient by consulting any statement made by the patient directly to the attending physician and, if available, the patient's health care representative, the patient's next of kin, the patient's legal guardian or conservator, if any, any person designated by the patient in accordance with section 1-56r and any other person to whom the patient has communicated his wishes, if the attending physician has knowledge of such person. All persons acting on behalf of the patient shall act in good faith. If the attending physician does not deem the incapacitated patient to be in a terminal condition or permanently unconscious, beneficial medical treatment including nutrition and hydration must be provided.

(b) A physician qualified to make a neurological diagnosis who is consulted by the attending physician pursuant to subdivision (2) of subsection (a) of this section shall not be liable for damages or subject to criminal prosecution for any determination made in accordance with the usual and customary standards of medical practice.

(c) In the case of an infant, as defined in 45 CFR 1340.15 (b), the physician or licensed medical facility shall comply with the provisions of 45 CFR 1340.15 (b)(2) in addition to the provisions of subsection (a) of this section.

Credits

(1985, P.A. 85-606, § 2; 1991, P.A. 91-283, § 2; 1991, June Sp.Sess., P.A. 91-11, § 19, eff. Oct. 1, 1991; 1993, P.A. 93-407, § 5; 2001, P.A. 01-195, § 162, eff. July 11, 2001; 2002, P.A. 02-105, § 7; 2006, P.A. 06-195, § 64.)

Notes of Decisions (4)

Footnotes

1 C.G.S.A. § 20-8 et seq.

C. G. S. A. § 19a-571, CT ST § 19a-571

The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

Connecticut General Statutes Annotated
Title 19a. Public Health and Well-Being (Refs & Annos)
Chapter 368W. Removal of Life Support Systems (Refs & Annos)

C.G.S.A. § 19a-580

§ 19a-580. Physician to notify certain persons prior to removal of life support system

Currentness

Within a reasonable time prior to withholding or causing the removal of any life support system pursuant to sections 19a-570, 19a-571, 19a-573 and 19a-575 to 19a-580c, inclusive, the attending physician shall make reasonable efforts to notify the individual's health care representative, next-of-kin, legal guardian, conservator or person designated in accordance with section 1-56r, if available.

Credits

(1991, P.A. 91-283, § 8; 1993, P.A. 93-407, § 10; 2002, P.A. 02-105, § 9; 2006, P.A. 06-195, § 73.)

C. G. S. A. § 19a-580, CT ST § 19a-580

The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

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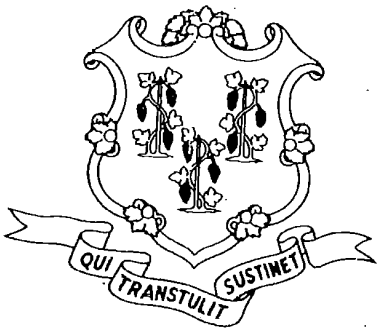
STATE OF CONNECTICUT

PUBLIC and SPECIAL ACTS

Passed by the General Assembly

JANUARY, 1985, REGULAR SESSION
JULY, 1985, SPECIAL SESSION



COMPILED, INDEXED AND
PUBLISHED IN ACCORDANCE WITH
SECTION 2-58 OF THE GENERAL STATUTES
BY THE
LEGISLATIVE COMMISSIONERS' OFFICE

HARTFORD, CONNECTICUT

1985

(i) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON THE REQUEST TO A CRIMINAL JUSTICE AGENCY BY THE DEPARTMENT OF HEALTH SERVICES, SUCH CRIMINAL JUSTICE AGENCY SHALL PROVIDE INFORMATION TO THE DEPARTMENT CONCERNING THE CRIMINAL CONVICTION RECORD OF AN APPLICANT AND ANY STAFF OF SUCH APPLICANT FOR A LICENSE TO OPERATE A DAY CARE CENTER OR GROUP DAY CARE HOME. ALL INFORMATION, INCLUDING ANY CRIMINAL CONVICTION RECORD, SHALL BE PROCURED BY THE DEPARTMENT OF HEALTH SERVICES FOR LICENSING PURPOSES, SHALL BE CONFIDENTIAL AND SHALL NOT BE FURTHER DISCLOSED BY SUCH AGENCY OR THEIR REPRESENTATIVES. ANY VIOLATION OF THE PROVISIONS OF THIS SUBSECTION RELATIVE TO THE CONFIDENTIALITY OF INFORMATION RECEIVED BY THE DEPARTMENT OF HEALTH SERVICES SHALL BE PUNISHABLE BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS.

Substitute House Bill No. 6701

PUBLIC ACT NO. 85-605

AN ACT CONCERNING TESTIMONY OF EXPERT WITNESSES IN CRIMINAL CASES.

(NEW) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto, except that such expert witness may state his diagnosis of the mental state or condition of the defendant. The ultimate issue as to whether the defendant was criminally responsible for the crime charged is a matter for the trier of fact alone.

Substitute Senate Bill No. 67

PUBLIC ACT NO. 85-606

AN ACT CONCERNING DEATH WITH DIGNITY.

Section 1. (NEW) For purposes of this act:

(1) "Life support system" means any mechanical or electronic device, excluding the provision of nutrition and hydration, utilized by any physician or licensed medical facility in order to replace, assist or supplement the function of any human vital organ or combination of organs and which prolongs the dying process;

(2) "Beneficial medical treatment" includes the use of surgery, treatment, medication and the utilization of artificial technology to sustain life.

(3) "Terminal condition" means the final stage of an incurable or irreversible medical condition which, in the opinion of the attending physician, will result in death.

Sec. 2. (NEW) Any physician licensed under chapter 370 of the general statutes or any licensed medical facility which removes or causes the removal of a life support system of an incompetent patient shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for such removal, provided (1) the decision to remove such life support system is based on the best medical judgment of the attending physician; (2) the attending physician deems the patient to be in a terminal condition; (3) the attending physician has obtained the informed consent of the next of kin, if known, or legal guardian, if any, of the patient prior to removal; and (4) the attending physician has considered the patient's wishes as expressed by the patient directly, through his next of kin or legal guardian, or in the form of a document executed in accordance with section 6 of this act, if any such document is presented to, or in the possession of, the attending physician at the time the decision to terminate a life support system is made. If the attending physician does not deem the patient to be in a terminal condition, beneficial medical treatment and nutrition and hydration must be provided.

Sec. 3. (NEW) This act creates no presumption concerning the wishes of a patient who has not executed a document as described in section 6 of this act.

Sec. 4. (NEW) Notwithstanding the provisions of this act, comfort care and pain alleviation shall be provided in all cases.

Sec. 5. (NEW) The provisions of this act shall not apply to a pregnant patient.

Sec. 6. (NEW) Any adult person may execute a document in substantially the following form:

If the time comes when I am incapacitated to the point when I can no longer actively take part in decisions for my own life, and am unable to direct my physician as to my own medical care, I wish this statement to stand as a testament of my wishes. I .... (NAME) request that I be allowed to die and not be kept alive through life support systems if my condition is deemed terminal. I do not intend any direct taking of my life, but only that my dying not be unreasonably prolonged. This request is made, after careful reflection, while I am of sound mind.

_____ (Signature)
_____ (Date)

_____ (Witness)
_____ (Witness)

Substitute Senate Bill No. 606

PUBLIC ACT NO. 85-607

AN ACT ESTABLISHING A PRIVATE OCCUPATIONAL SCHOOL STUDENT BENEFIT FUND.

Section 1. (NEW) After each annual determination of the balance of the private occupational student protection fund required by section 10-14k of the general statutes, if the balance of the fund is one million

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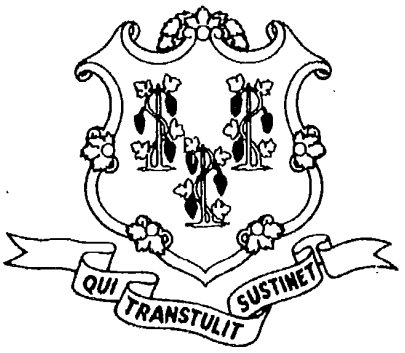
STATE OF CONNECTICUT

PUBLIC and SPECIAL ACTS

Passed by the General Assembly

JANUARY, 1991, REGULAR SESSION

JUNE, 1991, SPECIAL SESSIONS



COMPILED, INDEXED AND
PUBLISHED IN ACCORDANCE WITH
SECTION 2-58 OF THE GENERAL STATUTES
BY THE
LEGISLATIVE COMMISSIONERS' OFFICE

HARTFORD, CONNECTICUT

1991

marshal on each floor. Not later than October 1, 1993, each residential building having more than four stories and occupied primarily by elderly persons shall have an automatic fire extinguishing system approved by the state fire marshal on each floor. FOR THE PURPOSES OF THIS SUBSECTION, THE PHRASE "OCCUPIED PRIMARILY BY ELDERLY PERSONS" MEANS THAT ON OCTOBER 1, 1993, OR ON THE DATE OF ANY INSPECTION, IF LATER, A MINIMUM OF EIGHTY PER CENT OF THE DWELLING UNITS AVAILABLE FOR HUMAN OCCUPANCY IN A RESIDENTIAL BUILDING HAVE AT LEAST ONE RESIDENT WHO HAS ATTAINED THE AGE OF SIXTY-FIVE YEARS.

Sec. 2. There is established a task force which shall determine the number of residential buildings occupied primarily by elderly persons and subject to compliance with the provisions of section 1 of this act which are effective October 1, 1993, the cost of such compliance, and the feasibility of compliance within the time limit established. The task force shall consist of the commissioners of the departments of public safety and housing, or their designees, a member of the joint standing committee of the general assembly having cognizance of matters relating to public safety, appointed by the president pro tempore of the senate, a member of the joint standing committee of the general assembly having cognizance of human services, appointed by the majority leader of the senate, an automatic fire extinguishing system contractor, appointed by the minority leader of the senate, a representative of the Connecticut Fire Marshal's Association, appointed by the speaker of the house of representatives, a member of the state building codes and standards committee, appointed by the majority leader of the house of representatives and a person having expertise in elderly housing appointed by the minority leader of the house of representatives. The members of the task force shall serve without compensation or reimbursement of any kind and the task force shall report its findings to the general assembly not later than February 15, 1992.

Sec. 3. This act shall take effect from its passage, except section 1 shall take effect October 1, 1991.

Approved June 24, 1991

Substitute House Bill No. 7184

PUBLIC ACT NO. 91-283

AN ACT CONCERNING LIVING WILLS.

Section 1. Section 19a-570 of the general statutes is repealed and the following is substituted in lieu thereof:

For purposes of this section and sections 19a-571 to 19a-575, inclusive:

(1) "Life support system" means any [mechanical or electronic device, excluding the provision of nutrition and hydration, utilized by any physician or licensed medical facility in order to replace, assist or supplement the function of any human vital organ or combination of organs and which prolongs the dying process] MEDICAL PROCEDURE OR INTERVENTION WHICH, WHEN APPLIED TO AN INDIVIDUAL, WOULD SERVE ONLY TO POSTPONE THE MOMENT OF DEATH OR MAINTAIN THE INDIVIDUAL IN A STATE OF PERMANENT UNCONSCIOUSNESS. IN THESE CIRCUMSTANCES, SUCH PROCEDURES SHALL INCLUDE, BUT ARE NOT LIMITED TO, MECHANICAL OR ELECTRONIC DEVICES INCLUDING ARTIFICIAL MEANS OF PROVIDING NUTRITION OR HYDRATION;

(2) "Beneficial medical treatment" includes the use of surgery, treatment, medication and the utilization of artificial technology to sustain life;

(3) "Terminal condition" means the final stage of an incurable or irreversible medical condition which, [in the opinion of the attending physician] WITHOUT THE ADMINISTRATION OF A LIFE SUPPORT SYSTEM, will result in death WITHIN A RELATIVELY SHORT TIME, IN THE OPINION OF THE ATTENDING PHYSICIAN;

(4) "PERMANENTLY UNCONSCIOUS" INCLUDES PERMANENT COMA AND PERSISTENT VEGETATIVE STATE AND MEANS AN IRREVERSIBLE CONDITION IN WHICH THE INDIVIDUAL IS AT NO TIME AWARE OF HIMSELF OR THE ENVIRONMENT AND SHOWS NO BEHAVIORAL RESPONSE TO THE ENVIRONMENT;

(5) "HEALTH CARE AGENT" MEANS AN ADULT PERSON TO WHOM AUTHORITY TO CONVEY HEALTH CARE DECISIONS IS DELEGATED IN A WRITTEN DOCUMENT BY ANOTHER ADULT PERSON, KNOWN AS THE PRINCIPAL;

(6) "INCAPACITATED" MEANS BEING UNABLE TO UNDERSTAND AND APPRECIATE THE NATURE AND CONSEQUENCES OF HEALTH CARE DECISIONS, INCLUDING THE BENEFITS AND DISADVANTAGES OF SUCH TREATMENT, AND TO REACH AND COMMUNICATE AN INFORMED DECISION REGARDING THE TREATMENT;

(7) "LIVING WILL" MEANS A WRITTEN STATEMENT IN COMPLIANCE WITH SECTION 19a-575, AS AMENDED BY SECTION 5 OF THIS ACT, CONTAINING A DECLARANT'S WISHES CONCERNING ANY ASPECT OF HIS HEALTH CARE, INCLUDING THE WITHHOLDING OR WITHDRAWAL OF LIFE SUPPORT SYSTEMS;

(8) "NEXT OF KIN" MEANS ANY MEMBER OF THE FOLLOWING CLASSES OF PERSONS, IN THE ORDER OF PRIORITY LISTED: (A) THE SPOUSE OF THE PATIENT; (B) AN ADULT SON OR DAUGHTER OF THE PATIENT; (C) EITHER PARENT OF THE PATIENT; (D) AN ADULT BROTHER OR SISTER OF THE PATIENT; AND (E) A GRANDPARENT OF THE PATIENT;

(9) "ATTENDING PHYSICIAN" MEANS THE PHYSICIAN SELECTED BY, OR ASSIGNED TO, THE PATIENT AND WHO HAS PRIMARY RESPONSIBILITY FOR THE TREATMENT AND CARE OF THE PATIENT.

Sec. 2. Section 19a-571 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any physician licensed under chapter 370 or any licensed medical facility WHO OR which WITHHOLDS, removes or causes the removal of a life support system of an [incompetent] INCAPACITATED patient shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for such WITHHOLDING OR removal, provided (1) the decision to WITHHOLD OR remove such life support system is based on the best medical judgment of the attending physician IN ACCORDANCE WITH THE USUAL AND CUSTOMARY STANDARDS OF MEDICAL PRACTICE; (2) the attending physician deems the patient to be in a terminal condition [; (3) the attending physician has obtained the informed consent of the next of kin, if known, or legal guardian, if any, of the patient prior to removal; and (4)] OR, IN CONSULTATION WITH A PHYSICIAN QUALIFIED TO MAKE A NEUROLOGICAL DIAGNOSIS WHO HAS EXAMINED THE PATIENT, DEEMS THE PATIENT TO BE PERMANENTLY UNCONSCIOUS; AND *(3)* the attending physician has considered the patient's wishes CONCERNING THE WITHHOLDING OR WITHDRAWAL OF LIFE SUPPORT SYSTEMS. IN THE DETERMINA-

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TION OF THE WISHES OF THE PATIENT, THE ATTENDING PHYSICIAN SHALL CONSIDER THE WISHES as expressed by [the patient directly, through his next of kin or legal guardian, or in the form of] a document executed in accordance with section 19a-575, AS AMENDED BY SECTION 5 OF THIS ACT, if any such document is presented to, or in the possession of, the attending physician at the time the decision to WITHHOLD OR terminate a life support system is made. IF THE WISHES OF THE PATIENT HAVE NOT BEEN EXPRESSED IN A LIVING WILL THE ATTENDING PHYSICIAN SHALL DETERMINE THE WISHES OF THE PATIENT BY CONSULTING ANY STATEMENT MADE BY THE PATIENT DIRECTLY TO THE ATTENDING PHYSICIAN AND, IF AVAILABLE, THE PATIENT'S HEALTH CARE AGENT, THE PATIENT'S NEXT OF KIN, THE PATIENT'S LEGAL GUARDIAN OR CONSERVATOR, IF ANY, AND ANY OTHER PERSON TO WHOM THE PATIENT HAS COMMUNICATED HIS WISHES, IF THE ATTENDING PHYSICIAN HAS KNOWLEDGE OF SUCH PERSON. ALL PERSONS ACTING ON BEHALF OF THE PATIENT SHALL ACT IN GOOD FAITH. If the attending physician does not deem the INCAPACITATED patient to be in a terminal condition OR PERMANENTLY UNCONSCIOUS, beneficial medical treatment [and] INCLUDING nutrition and hydration must be provided.

(b) A PHYSICIAN QUALIFIED TO MAKE A NEUROLOGICAL DIAGNOSIS WHO IS CONSULTED BY THE ATTENDING PHYSICIAN PURSUANT TO SUBDIVISION (2) OF SUBSECTION (a) OF THIS SECTION SHALL NOT BE LIABLE FOR DAMAGES OR SUBJECT TO CRIMINAL PROSECUTION FOR ANY DETERMINATION MADE IN ACCORDANCE WITH THE USUAL AND CUSTOMARY STANDARDS OF MEDICAL PRACTICE.

Sec. 3. (NEW) (a) Any person eighteen years of age or older may appoint a health care agent by executing a document in accordance with section 6 of this act, signed and dated by such person in the presence of two adult witnesses who shall also sign the document. The person appointed as agent shall not act as witness to the execution of such document or sign such document.

(b) For persons who reside in facilities operated or licensed by the department of mental health, at least one witness shall be an individual who is not affiliated with the facility and at least one witness shall be a physician or clinical psychologist with specialized training in treating mental illness.

(c) For persons who reside in facilities operated or licensed by the department of mental retardation, at least one witness shall be an individual who is not affiliated with the facility and at least one witness shall be a physician or clinical psychologist with specialized training in developmental disabilities.

(d) An operator, administrator, or employee of a hospital, home for the aged, rest home with nursing supervision, or chronic and convalescent nursing home may not be appointed as a health care agent by any person who, at the time of the appointment, is a patient or a resident of, or has applied for admission to, one of the foregoing facilities. An administrator or employee of a government agency which is financially responsible for a person's medical care may not be appointed as a health care agent for such person. This restriction shall not apply if such operator, administrator or employee is related to the principal by blood, marriage or adoption.

(e) A physician shall not act as both agent for a principal and attending physician for the principal.

Sec. 4. Section 19a-573 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Notwithstanding the provisions of sections 19a-571, 19a-572, 19a-574,

[and] 19a-575, AS AMENDED BY SECTIONS 2 AND 5 OF THIS ACT, AND THE PROVISIONS OF SECTIONS 6, 11 AND 13 OF THIS ACT, comfort care and pain alleviation shall be provided in all cases.

(b) ANY DOCUMENT EXECUTED PRIOR TO THE EFFECTIVE DATE OF THIS ACT IN ACCORDANCE WITH SECTION 19a-575, REVISION OF 1958, REVISED TO JANUARY 1, 1991, SHALL NOT BE INVALIDATED BY ANY PROVISION OF THIS ACT. ANY DOCUMENT EXECUTED PRIOR TO THE EFFECTIVE DATE OF THIS ACT SHALL NOT BE PRESUMED TO PROHIBIT WITHHOLDING OR WITHDRAWAL OF LIFE SUPPORT SYSTEMS AS DEFINED IN SECTION 19a-570, REVISION OF 1958, REVISED TO JANUARY 1, 1991, UNLESS SUCH PRIOR DOCUMENT SPECIFICALLY ADDRESSES SUCH WITHHOLDING OR WITHDRAWAL.

Sec. 5. Section 19a-575 of the general statutes is repealed and the following is substituted in lieu thereof:

Any [adult] person EIGHTEEN YEARS OF AGE OR OLDER may execute a document WHICH SHALL CONTAIN DIRECTIONS AS TO SPECIFIC LIFE SUPPORT SYSTEMS WHICH SUCH PERSON CHOOSES TO HAVE ADMINISTERED. SUCH DOCUMENT SHALL BE SIGNED AND DATED BY THE MAKER WITH AT LEAST TWO WITNESSES AND MAY BE in substantially the following form:

DOCUMENT CONCERNING WITHHOLDING OR WITHDRAWAL OF LIFE SUPPORT SYSTEMS.

If the time comes when I am incapacitated to the point when I can no longer actively take part in decisions for my own life, and am unable to direct my physician as to my own medical care, I wish this statement to stand as a testament of my wishes. [I .... (NAME) request that I be allowed to die and not be kept alive through life support systems if my condition is deemed terminal. I do not intend any direct taking of my life, but only that my dying not be unreasonably prolonged. This request is made, after careful reflection, while I am of sound mind.

.... (Signature)
.... (Date)

.... (Witness)
.... (Witness)]

"I, ... (NAME), REQUEST THAT, IF MY CONDITION IS DEEMED TERMINAL OR IF I AM DETERMINED TO BE PERMANENTLY UNCONSCIOUS, I BE ALLOWED TO DIE AND NOT BE KEPT ALIVE THROUGH LIFE SUPPORT SYSTEMS. BY TERMINAL CONDITION, I MEAN THAT I HAVE AN INCURABLE OR IRREVERSIBLE MEDICAL CONDITION WHICH, WITHOUT THE ADMINISTRATION OF LIFE SUPPORT SYSTEMS, WILL, IN THE OPINION OF MY ATTENDING PHYSICIAN, RESULT IN DEATH WITHIN A RELATIVELY SHORT TIME. BY PERMANENTLY UNCONSCIOUS I MEAN THAT I AM IN A PERMANENT COMA OR PERSISTENT VEGETATIVE STATE WHICH IS AN IRREVERSIBLE CONDITION IN WHICH I AM AT NO TIME AWARE OF MYSELF OR THE ENVIRONMENT AND SHOW NO BEHAVIORAL RESPONSE TO THE ENVIRONMENT. THE LIFE SUPPORT SYSTEMS WHICH I DO NOT WANT INCLUDE, BUT ARE NOT LIMITED TO:

ARTIFICIAL RESPIRATION
CARDIOPULMONARY RESUSCITATION
ARTIFICIAL MEANS OF PROVIDING NUTRITION AND HYDRATION

(CROSS OUT AND INITIAL LIFE SUPPORT SYSTEMS YOU WANT ADMINISTERED)

I DO NOT INTEND ANY DIRECT TAKING OF MY LIFE, BUT ONLY THAT MY DYING NOT BE UNREASONABLY PROLONGED."

OTHER SPECIFIC REQUESTS:

"THIS REQUEST IS MADE, AFTER CAREFUL REFLECTION, WHILE I AM OF SOUND MIND."

.... (SIGNATURE)
.... (DATE)

THIS DOCUMENT WAS SIGNED IN OUR PRESENCE, BY THE ABOVE-NAMED .... (NAME) WHO APPEARED TO BE EIGHTEEN YEARS OF AGE OR OLDER, OF SOUND MIND AND ABLE TO UNDERSTAND THE NATURE AND CONSEQUENCES OF HEALTH CARE DECISIONS AT THE TIME THE DOCUMENT WAS SIGNED.

.... (WITNESS)
.... (ADDRESS)
.... (WITNESS)
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Sec. 6. (NEW) (a) Any person eighteen years of age or older may execute a document that may, but need not be in substantially the following form:

DOCUMENT CONCERNING THE APPOINTMENT
OF HEALTH CARE AGENT

"I APPOINT .....(name) TO BE MY HEALTH CARE AGENT. IF MY ATTENDING PHYSICIAN DETERMINES THAT I AM UNABLE TO UNDERSTAND AND APPRECIATE THE NATURE AND CONSEQUENCES OF HEALTH CARE DECISIONS AND TO REACH AND COMMUNICATE AN INFORMED DECISION REGARDING TREATMENT, MY HEALTH CARE AGENT IS AUTHORIZED TO:

(1) CONVEY TO MY PHYSICIAN MY WISHES CONCERNING THE WITHHOLDING OR REMOVAL OF LIFE SUPPORT SYSTEMS.

(2) TAKE WHATEVER ACTIONS ARE NECESSARY TO ENSURE THAT MY WISHES ARE GIVEN EFFECT.

IF THIS PERSON IS UNWILLING OR UNABLE TO SERVE AS MY HEALTH CARE AGENT, I APPOINT .....(name) TO BE MY ALTERNATIVE HEALTH CARE AGENT."

"THIS REQUEST IS MADE, AFTER CAREFUL REFLECTION, WHILE I AM OF SOUND MIND."

.... (Signature)
.... (Date)

THIS DOCUMENT WAS SIGNED IN OUR PRESENCE, BY THE ABOVE-NAMED.....(name) WHO APPEARED TO BE EIGHTEEN YEARS OF AGE OR OLDER, OF SOUND MIND AND ABLE TO UNDERSTAND THE

NATURE AND CONSEQUENCES OF HEALTH CARE DECISIONS AT THE TIME THE DOCUMENT WAS SIGNED.

.... (Witness)
.... (Address)
.... (Witness)
.... (Address)

Sec. 7. (NEW) (a) Any or all of the attesting witnesses to any living will document or any document appointing a health care agent may, at the request of the declarant, make and sign an affidavit before any officer authorized to administer oaths in or out of this state, stating such facts as they would be required to testify to in court to prove such living will. The affidavit shall be written on the living will document, or if that is impracticable, on some paper attached thereto. The sworn statement of any such witness so taken shall be accepted by the court of probate as if it had been taken before such court.

(b) A physician or other health care provider who is furnished with a copy of a written living will or appointment of health care agent shall make it a part of the declarant's medical record. A physician or other health care provider shall also record in the patient's medical record any oral communication concerning any aspect of his health care, including the withholding or withdrawal of life support systems, made by the patient directly to the physician or other health care provider or to the patient's health care agent, legal guardian, conservator or next-of-kin.

Sec. 8. (NEW) Within a reasonable time prior to withholding or causing the removal of any life support system pursuant to this act, the attending physician shall make reasonable efforts to notify the individual's health care agent, next-of-kin and legal guardian or conservator, if available.

Sec. 9. (NEW) (a) A living will or appointment of health care agent may be revoked at any time and in any manner by the declarant, without regard to the declarant's mental or physical condition.

(b) The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

(c) In the absence of knowledge of the revocation either of a living will or an appointment of health care agent, a person is not subject to civil or criminal liability or discipline for unprofessional conduct for carrying out the living will pursuant to the requirements of this act.

Sec. 10. (NEW) A living will or appointment of health care agent becomes operative when (1) the document is furnished to the attending physician and (2) the declarant is determined by the attending physician to be incapacitated.

Sec. 11. (NEW) An attending physician or health care provider who is unwilling to comply with the wishes of the patient or this act shall, as promptly as practicable, take all reasonable steps to transfer care of the patient to a physician or health care provider who is willing to comply with the wishes of the patient and this act.

Sec. 12. (NEW) The probate court for the district in which the person is domiciled or is located at the time of the dispute shall have jurisdiction over any dispute concerning the meaning or application of any provision of this act. With respect to any communication of a patient's wishes other than by means of a document executed in accordance with section 19a-575 of the general statutes, as amended by section 5 of this act, the court shall consider whether there is clear and convincing evidence of such communication.

Sec. 13. (NEW) No physician, health care provider or health care insurer shall require a person to execute a living will or appoint a health care agent as a condition of treatment or receiving health care benefits.

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Sec. 14. (NEW) The appointment of the principal's spouse as health care agent shall be revoked upon the divorce or legal separation of the principal and spouse or upon the annulment or dissolution of their marriage, unless the principal specifies otherwise.

Substitute Senate Bill No. 917

PUBLIC ACT NO. 91-284

AN ACT CONCERNING ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR STATE CONSTRUCTION CLAIMS.

Section 1. Section 4-61 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any person, firm or corporation which has entered into a contract with the state, acting through any of its departments, commissions or other agencies, for the design, construction, construction management, repair or alteration of any highway, bridge, building or other public works of the state or any political subdivision of the state may, in the event of any disputed claims under such contract OR CLAIMS ARISING OUT OF THE AWARDING OF A CONTRACT BY THE COMMISSIONER OF PUBLIC WORKS, bring an action against the state to the superior court for the judicial district of Hartford-New Britain* for the purpose of having such claims determined, provided notice of [the general nature of] EACH such [claims] CLAIM UNDER SUCH CONTRACT AND THE FACTUAL BASES FOR EACH SUCH CLAIM shall have been given in writing to the AGENCY HEAD OF THE department administering the contract not later than two years after the acceptance of the work by the agency head evidenced by a certificate of acceptance issued to the contractor. No action ON A CLAIM UNDER SUCH CONTRACT shall be brought under this subsection later than three years from the date of such acceptance of the work by the agency head as so evidenced. Acceptance of an amount offered as final payment shall not preclude any person, firm or corporation from bringing a claim under this section. Such action shall be tried to the court without a jury. All legal defenses except governmental immunity shall be reserved to the state. IN NO EVENT SHALL INTEREST BE AWARDED UNDER SECTION 13a-96 AND SECTION 37-3a BY A COURT OR AN ARBITRATOR TO THE CLAIMANT FOR THE SAME DEBT FOR THE SAME PERIOD OF TIME. INTEREST UNDER SECTION 37-3a SHALL NOT BEGIN TO ACCRUE TO A CLAIMANT UNDER THIS SECTION UNTIL AT LEAST THIRTY DAYS AFTER THE CLAIMANT SUBMITS A BILL OR CLAIM TO THE AGENCY FOR THE UNPAID DEBT UPON WHICH SUCH INTEREST IS TO BE BASED, ALONG WITH APPROPRIATE DOCUMENTATION OF THE DEBT WHEN APPLICABLE. Any action brought under this [section] SUBSECTION shall be privileged in respect to assignment for trial upon motion of either party.

(b) As an alternative to the [remedy] PROCEDURE provided in subsection (a) of this section, [and section 13b-57a,] any SUCH person, firm or corporation [which has entered into a contract with the state, acting through any of its departments, commissions or other agencies, for the design, construction, construction management, repair or alteration of any highway, building or bridge of the state or any political subdivision of the state, may, in the event of any disputed claims under such contract,] HAVING A CLAIM UNDER SAID SUBSECTION (a) MAY submit A