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SUMMARY OF BENNETT V. NEW MILFORD HOSPITAL, INC.

By: Amanda Gordon, Research Fellow

You asked for a summary of the Connecticut Supreme Court's decision in *Bennett v. New Milford Hospital, Inc.*, No. 18502 (Conn. January 5, 2011).

SUMMARY

Bennett v. New Milford Hospital, Inc. involved a physician (hereinafter "defendant") charged with medical malpractice. The estate of a deceased patient (hereinafter "plaintiff") brought suit against the defendant who treated the patient in the emergency department of New Milford Hospital after he suffered myocardial ischemia resulting from significant pain due to untreated spine and leg fractures. The defendant filed a motion to dismiss the action because the author of the plaintiff's prelitigation opinion letter was not a "similar health care provider" as required by statute.

The justices considered whether (1) the author of an opinion letter must be a similar health care provider and (2) a case must be dismissed when a plaintiff fails to file an opinion letter written by a similar health care provider.

Justice Norcott wrote the unanimous opinion of the court. First, the justices concluded that the author of an opinion letter must be a similar health care provider as defined by [CGS § 52-184c](#)(b) or (c), regardless of his or her potential qualifications to testify at trial under (d). In this case, the defendant specialized in the field of emergency medicine so the

opinion letter had to be written by a physician who met the requirements of [CGS § 52-184c\(c\)](#). The letter could not be written by a general surgeon, albeit one with extensive emergency care experience, who would instead meet the definition in [CGS § 52-184c\(b\)](#).

Second, the justices concluded that a case must be dismissed when a plaintiff fails to file an opinion letter written by a similar health care provider. Because the opinion letter in this case was not written by a similar health care provider, the law required that it be dismissed.

The justices did not address the plaintiff's claim that [CGS § 52-190a](#) violates the separation of powers provision of the Connecticut Constitution because the claim was raised improperly to the court.

FACTS AND PROCEDURAL HISTORY

The patient suffered a diabetic seizure while operating his motor vehicle and his vehicle left the road and hit a concrete wall. He was treated in New Milford Hospital's emergency department by the defendant and was released. At some later date, the patient's primary care physician directed him to return to the hospital where it was discovered that the patient had sustained fractures to his spine and leg. As a consequence of the significant pain he suffered due to the untreated fractures, the patient suffered myocardial ischemia and died. The plaintiff brought suit against the defendant and, in filing the complaint, attached a written opinion from a physician as required by [CGS § 52-190a\(a\)](#).

The defendant filed a motion to dismiss the action because the author of the plaintiff's opinion letter was not a "similar health care provider," as required by statute. The defendant specialized in emergency medicine, according to the plaintiff's complaint, but the opinion letter's author described himself as "a practicing and board certified general surgeon with added qualifications in surgical critical care, and engaged in the practice of trauma surgery." Although the opinion letter's author also stated that he regularly evaluated and treated injured patients in the emergency department and that an overwhelming majority of his time at work was spent providing clinical care in the hospital's emergency department, general ward, intensive care unit, and operating room, the trial court granted the defendant's motion to dismiss.

The plaintiff appealed from the judgment to the Appellate Court. On October 13, 2009, in a unanimous opinion, a three judge panel of the Appellate Court affirmed the judgment of the trial court, dismissing the claims against the defendant. The plaintiff appealed to the Supreme Court.

RULING OF THE COURT

Justice Norcott wrote the unanimous opinion of the court. The justices concluded that (1) the author of an opinion letter must be a similar health care provider and (2) a case must be dismissed when a plaintiff fails to file an opinion letter written by a similar health care provider.

The Author of an Opinion Letter Must be a Similar Health Care Provider

First, the justices considered the text of related statutes and legislative history and concluded that the author of an opinion letter must be a similar health care provider as defined by [CGS § 52-184c](#)(b) or (c), regardless of his or her potential qualifications to testify at trial under (d).

Text of Statute. The justices considered the text of [CGS § 52-190a](#)(a) in concluding that the author of an opinion letter must be a similar health care provider as defined by [CGS § 52-184c](#)(b) or (c).

[CGS § 52-190a](#)(a) reads in relevant part: “To show the existence of . . . good faith, the [patient] . . . shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c”

The justices decided that [CGS § 52-190a](#)(a) is ambiguous when read in isolation because it references [CGS § 52-184c](#) in its entirety, and does not specify whether the author must be a similar health care provider as defined by [CGS § 52-184c](#)(b) and (c) or a provider otherwise qualified to testify as an expert as defined by (d). But they found that when you read [CGS § 52-190a](#)(a) and [CGS § 52-184c](#) together, the text is no longer ambiguous. The phrase “similar health care provider” in [CGS § 52-190a](#)(a) is found in [CGS § 52-184c](#)(b) and (c), but not (d). The justices also noted that if the legislature wanted to broaden the pool of physicians permitted to provide an opinion letter, it could have used the phrase “qualified health care provider” in [CGS § 52-190a](#)(a) rather than a “similar health care provider.”

Legislative History. The justices also considered the legislative history of [CGS § 52-190a\(a\)](#). When [CGS § 52-190a\(a\)](#) was originally enacted, its purpose was to decrease medical malpractice actions. Thus, while the justices acknowledged that the definition of similar health care provider as defined by [CGS § 52-184c\(b\)](#) and (c) is limiting, the statute’s plain meaning did not produce “absurd” or unworkable results so as to warrant a different outcome.

In coming to this conclusion, the justices also focused on [PA 05-275](#), which amended [CGS 52-190a\(a\)](#) by requiring an opinion letter from a similar health care provider. The justices noted that the goal of [PA 05-275](#) was to address the belief that some attorneys were misrepresenting the information they had obtained from experts. The justices specifically focused on the testimony of Attorney Michael D. Neubert, representing the Connecticut State Medical Society, who reiterated the need for an opinion from a similar health care provider to “eliminate some of the more questionable or meritless cases filed under the present statutory scheme.”

The Author in this Case was Not a Similar Health Care Provider

After determining that the author of an opinion letter must be a similar health care provider, the justices concluded that the opinion letter in this case was not written by one.

When the defendant is not board certified as a specialist, is not trained and experienced in a medical specialty, or “does not hold himself out as a specialist,” similar health care provider is defined by [CGS § 54-184c\(b\)](#). When the defendant is board certified as a specialist, is trained and experienced in a medical specialty, or “holds himself out as a specialist,” similar health care provider is defined by [CGS § 54-184c\(c\)](#).

The justices acknowledged that the word “or” between parts of a statute typically means that the legislature intended the parts to be read separately. However, adopting that construction in this case would make the “holds himself out as a specialist” provision of [CGS § 52-184c\(c\)](#) “meaningless.” Since the legislature does not enact meaningless statutes, the justices concluded, (1) [CGS § 52-184c\(b\)](#) defines similar health care provider when the defendant is neither board certified nor in some way a specialist and (2) [CGS § 52-184c\(c\)](#) defines similar health care provider when the defendant is board certified, trained and experienced in a medical specialty, or holds himself out as a specialist.

Since the plaintiff's complaint described the defendant as specializing in the field of emergency medicine, the opinion letter's author had to meet the requirements of [CGS § 52-184c\(c\)](#). The letter could not be written by a general surgeon, albeit one with extensive emergency care experience, who would instead meet the definition of § [CGS 52-184c\(b\)](#).

A Case Must be Dismissed when a Plaintiff Fails to File an Opinion Letter Written by a Similar Health Care Provider

Second, the justices had to decide whether a case must be dismissed when a plaintiff files an opinion letter that was not written by a similar health care provider. To help them decide, they considered the text of the statute and legislative history.

Text of Statute. The justices considered the text of [CGS § 52-190a\(c\)](#) in concluding that a case must be dismissed when a plaintiff fails to file an opinion letter written by a similar health care provider.

[CGS § 52-190a\(c\)](#) reads in relevant part: "The failure to obtain and file the written opinion . . . shall be grounds for the dismissal of the action."

The justices concluded that the language is ambiguous. They first reviewed the dictionary definition of the word "ground," and concluded that the term did not indicate that dismissal of a case is mandatory. But because the statute used the word "shall," this indicated a mandatory remedy, since the legislature would have used the word "may" if it wanted to make dismissal one of several remedies available to the court.

Legislative History. For further guidance, the justices reviewed the legislative history of [CGS § 52-190a\(c\)](#) and prior court opinions. They found that the statute was adopted to clarify that dismissal is mandatory when a plaintiff fails to file an opinion letter that complies with [CGS § 52-190a\(a\)](#). The justices focused on *LeConche v. Elliger*, 215 Conn. 701 (1990) and the remarks of Senator McDonald, who stated that the changes would "make substantial improvements over the current system" and that "the failure to attach such an opinion would require the court to dismiss the case." The court acknowledged the severity of this remedy, but emphasized that plaintiffs could re-file their case in the future.

This Case Must be Dismissed because the Plaintiff Failed to File an Opinion Letter Written by a Similar Health Care Provider

Accordingly, the justices decided that the case had to be dismissed because the opinion letter was not written by a similar health care provider.

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