

EXHIBIT 10

House Session Transcript for 05/26/2011
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THE CONNECTICUT GENERAL ASSEMBLY

HOUSE OF REPRESENTATIVES

THURSDAY, MAY 26, 2011

The House of Representatives was called to order at 12: 22
o'clock p. m. , Speaker Christopher G. Donovan in the
Chair.

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If there's a problem, if plaintiffs' attorneys are having problems with the certificate of merit, go get better certificates. Go get a better expert. They knew what the law was on January 6th. Now it may change again.

So with that, Madam Speaker, I can't support the Amendment, nor would I have supported the underlying Bill or will I, because just in a snapshot, today we've raised taxes on hospitals, pharmacies and potentially the doctors in them.

Within the last couple of weeks we've shifted and changed, once again, the landscape of insurance coverage by increasing mandates and making uncertain how and whether and who is covered. And now we're going to add more lawsuits. Now we're going to add more lawsuits to the mix.

What are we doing? I mean, do we want our doctors to stay in this state? Do we want our hospitals to stay in business?

Madam Speaker, I can't support the Amendment. I can't support the Bill and I think the concept itself is flawed. Thank you, Madam.

DEPUTY SPEAKER GODFREY:

Mr. Speaker. Surprise. The gentleman from the 39th, Representative Hewett.

REP. HEWETT (39th):

Oh, Mr. Speaker. Thank you, Mr. Speaker. I stand in strong support of House Amendment "A". A friend of mine, I'm going to give you a perfect example of what something like this would do.

A friend of mine in New London named Mr. Sylvester Traylor had a wife that had major depression, real major depression. She was given medication in which she had an adverse reaction.

After numerous phone calls to her doctor with no return calls, she decided to write a letter to her doctor and still no answer.

Three months later she backed her car into her garage, cranked the car up and committed suicide by carbon monoxide poisoning.

He filed a malpractice suit and it was accepted, but four months later it was dismissed because he did not physically attach the certificate of merit to the complaint. The certificate was issued by Yale University School of Medicine Professor by the name of Mr. Doctor Zuna, and the question is.

Can a judge dismiss such a good faith certificate from such a prominent doctor, which they did, because they didn't feel like he was a similar healthcare provider.

So for those reasons, well you know, to go out and get a certificate of merit or an expert opinion, it would have cost him \$ 20,000, which he did not have, and for those reasons and for my good friend, Mr. Sylvester Traylor, I will be supporting this Amendment.

Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, sir. The gentleman from the 15th, Representative Baram.

REP. BARAM (15th):

Thank you, Mr. Speaker. I rise to endorse this Amendment. I view this as a way of improving the existing Bill and eliminating inconsistencies that occur from jurisdiction to jurisdiction.

It is my understanding many judges have had difficulty interpreting exactly what we meant by this statute and many of the judges I've talked to have said that if a doctor is qualified to be an expert in a malpractice case, they should be qualified to issue a certificate of merit.

And I think it's important to recognize that a certificate of merit doesn't prove the case. It doesn't make it more likely that you're going to win or lose a case. It just gives a Court an indication that it's not frivolous, that it has some basis of merit. There's been a breach of

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standard of care so that we can weed out the frivolous cases, the cases that have no merit whatsoever.

Many of them, well, most of the attorneys and the doctors who issue these certificates and the attorneys who take these cases are specialists who take this practice very seriously, and I don't think that they would ever try and circumvent the intelligence of the Court by providing a certificate that had no credibility to it.

So I see this as improving the Bill, eliminating a lot of excessive pleadings that argue how to interpret the statute and I still think it will prevent the bump in the road, if you will, to prevent any abuse of malpractice cases.

It just recognizes that an expert is an expert, and if you're expert enough to testify, you should be expert enough to issue a certificate of merit.

DEPUTY SPEAKER GODFREY:

Thank you, sir. The gentlewoman from Bridgeport, Representative Grogins.

REP. GROGINS (129th):

Thank you, Mr. Speaker. I rise also in strong support of this Amendment and of this Bill.

As stated by several of my colleagues, including my Republican colleague, Representative Themis Klarides, it makes perfect sense that if you are qualified to testify as an expert at trial, that you should be qualified to issue a certificate of merit.

I have been a practicing attorney for more than 21 years and am very familiar and have practiced in the area of personal injury, and the suggestions here that this would somehow make it easier to file frivolous lawsuits, the whole point of a certificate of merit is it makes it much more difficult to file frivolous lawsuits, in fact, near impossible with the certificate of merit.

I practiced before there was a requirement of a certificate of merit, and this was put in place, the certificate of merit, to fend off the filing of frivolous lawsuits.

Anyone in the field of personal injury and medical malpractice will tell you that it is very difficult to sustain a claim of medical malpractice, and this particular Amendment clarifies and clears up inconsistencies of the law, in the law.

In fact, the Appellate Court in the Bennett decision pointed out that we should clear up this inconsistency because it's very important. Inconsistencies in the law do not protect the public and inconsistencies in the law do not protect the medical profession.

This would protect both and it's very important to have that kind of consistency and to avoid the unintended consequences that happened here where legitimate claims get dismissed based on technicalities.

So I would urge you all to support and vote for this Bill. Thank you.

DEPUTY SPEAKER GODFREY:

Thank you, madam. The gentlewoman from Yalesville, Representative Fritz.

REP. FRITZ (90th):

Thank you, Mr. Speaker. Mr. Speaker, I, too, would like to speak on this Amendment, which will become the Bill.

As some of you may know, I was one of the original authors of both of the malpractice bills, the one that was passed in 2004 that was vetoed by then Governor Rowland with his white coat on parading on the Capitol grounds, and then the one that was finally signed by Governor Rell.

And I would like to associate myself with the remarks of Representative Grogins because that truly was the purpose of the certificate of merit. It was to prevent the frivolous lawsuits, and it was always the intention of the working group, which was made up of Republicans and Democrats that worked for two years. All of the Chairman and Ranking Members of the Public Health Committee, the Judiciary Committee, I'm trying to remember, there were four committees, anyway. But we worked together. It was a large group and we worked very, very hard. Program Review and Investigations was also part of it.

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And clearly, we felt there was a need to address the victims, and we felt the need for them to have their day in court. But we also did not want it to become, the Court to become a tool or a way to address frivolous lawsuits and take up the time of the judges and all the lawyers, and certainly the doctors of the state.

So I believe this Amendment, which will become the Bill is a step in the right direction. It clears up something that was an unintended consequence in the Bill that was finally signed by Governor Rell, and I urge my colleagues to support it, please.

DEPUTY SPEAKER GODFREY:

Thank you, madam. Will you remark further on House Amendment Schedule "A"? Will you remark further on House Amendment Schedule "A"?

If not, staff and guests please come to the Well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber.

The House is voting House Amendment Schedule "A" by Roll Call. Members to the Chamber.

DEPUTY SPEAKER GODFREY:

Have all the Members voted? Have all the Members voted? If so, the machine will be locked. The Clerk will take the tally.

And, Mr. Clerk, if you would kindly announce the tally.

THE CLERK:

On House Amendment Schedule "A".

Total Number Voting 141

Necessary for Adoption 71

Those voting Yea 88

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Those voting Nay 53

Those absent and not voting 10

DEPUTY SPEAKER GODFREY:

House "A" is adopted. The gentleman from the 50th, Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. We've had a lengthy discussion about the merits of the Amendment, which has now been passed before us.

I would suggest that there is a different approach that we may want to take to cap medical malpractice costs, and for that reason, Mr. Speaker, the Clerk has an Amendment. It is LCO 7470. I ask that the Clerk please call it and I be allowed to summarize.

DEPUTY SPEAKER GODFREY:

The Clerk is in possession of LCO Number 47, excuse me, 7470, which will be designated House Amendment Schedule "B". Will the Clerk please call.

THE CLERK:

LCO Number 7470, House "B", offered by Representatives Alberts and Carter.

DEPUTY SPEAKER GODFREY:

The gentleman has asked leave of the Chamber to summarize. Is there any objection? Hearing none, please proceed, Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Essentially, the Amendment that is before us would allow claimants to have, to recover up to \$ 500,000 with respect to defendant healthcare providers in terms of recoverable noneconomic damages, and with regard to recoverable noneconomic damages involving defendant healthcare institutions, those would be capped at \$ 1 million per claimant.

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EXHIBIT 11

Senate Session Transcript for 06/08/2011
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THE CONNECTICUT GENERAL ASSEMBLY

SENATE

June 8, 2011

The Senate was called to order at 1: 00 p. m. , the President in the Chair.

THE CHAIR:

Members and guests, please rise direct your attention to Reverend Baird, who will lead us in -- in prayer.

SENATOR LOONEY:

Thank you, Madam President.

Mr. President, if the Clerk might call as the first item as the order of the day, the item on calendar page 14 Calendar 576, Substitute for House Bill ~~6487~~.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calling from Senate Calendar for Wednesday June 8, 2011, calendar page 14. Calendar Number 576, Files 552 and 865, Substitute for House Bill Number ~~6487~~, AN ACT CONCERNING CERTIFICATES OF MERIT, as amended by House Amendment Schedule "A," favorable report on Committee of Judiciary. The Clerk is possession of amendments.

THE CHAIR:

Good morning -- good afternoon, Senator Coleman.

SENATOR COLEMAN:

Good afternoon, Madam President.

I rise to move acceptance of the joint committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

Acting on approval of the bill.

Will you remark further, sir?

SENATOR COLEMAN:

Madam President.

The bill before us represents the efforts of the many interested parties concerning the issue of certificates of merit. And it is a bill that the Judiciary Committee feels represents the best resolution for some issues that have been raised with respect to the tort reform initiative that we passed in 2005. And primarily there are three features of the bill.

First, there is a language change. The current statute makes reference to a similar healthcare provider. And this bill revises that language to make reference to a qualified healthcare provider. The significance of that change is that the language significant -- sorry -- similar healthcare provider has given rise to litigation that was probably not anticipated when we first debated the whole issue of tort reform and certificates of merit as they relate to that overall subject.

The end result has been that the Appellate Court has virtually begged the Legislature to address the significance and the unintended consequences of the language similar healthcare provider. Certainly, plaintiffs' attorneys and even some defense attorneys have acknowledged that that particular part of the statute has to be addressed and revised in order to make clear the purpose. That the purpose of tort reform in the first place and certificates of merit in the first place was to weed out frivolous law suits.

And the Appellate Court in the case of Bennett versus New Milford has indicated that it is incongruous that the bar for bringing a lawsuit has been set higher than the bar for prevailing at trial and that certainly needs to be

corrected. That case was pretty much decided on the basis of statutory construction. And the court commented that the plain language similar healthcare provider was something that the court could not get around but that the Legislature was the entity that could correct that.

A second feature of the bill is to delete a reference to a detailed basis for the opinion. In connection with the submission for filing of certificates of merit, the statute requires that a written opinion of the, in this case, the current language similar healthcare provider should be attached to the certificate. And it goes on -- the current statute goes on to provide that the experts' opinion or the similar healthcare provider's expert opinion should be such that it details the basis for the opinion.

Again, the purpose of that was to make certain that frivolous lawsuits would not be filed and that the expenses that served to drive up the cost of medical malpractice premiums would not result. This was another area that the Appellate Court had indicated needs to be addressed by the lawyers -- not by the lawyers but by the Legislature. In order to make certain that litigation would not continue to result around the sufficiency of the detailed opinion in the -- written detailed basis in the written opinion of the similar healthcare provider, which is attached to the certificate of merit.

And the final provision of the bill would allow for a period of 60 days in order for plaintiffs to address any inadequacies in the certificate before dismissal of a case. The motions to dismiss, I believe, have been in unintended consequence of the tort reform initiative that we passed in 2005. And instead of resulting in less litigation, in many respects, it has resulted in more litigation. And even though the cost of medical malpractice insurance has declined, it is my opinion and opinion of others is that it could decline even further were it not for the myriad of motions to dismiss attacking certificates of merit, either on the basis of the healthcare provider that's providing the written opinion, or the detailed basis that is supposed to be included in the written opinion of the similar healthcare provider.

The committee overwhelmingly, the Judiciary Committee, that is, overwhelmingly approved of this bill, which has gone through a number of changes since it was filed with the

committee. But the members of the committee overwhelmingly believe that this is a significant effort in approving the overall objective of making certain that medical malpractice cases, which are filed have sufficient merit, are not frivolous and will not serve to drive up the cost of medical malpractice insurance premiums.

I would urge passage of the bill, Madam president.

Thank you.

THE CHAIR:

Thank you.

Will you remark further?

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

It is fabulous to see you on our last day of session this afternoon.

THE CHAIR:

Is it seeing me or being the last day, sir? And you don't have to answer that question, sir.

SENATOR KISSEL:

Madam President, there's no way to top just seeing you.

I stand in support of the bill, and I would like to be associated with the remarks of Senator Coleman.

I remember distinctly six years ago, working with many of colleagues right here in the Senate and the House to try to craft reforms such that we would be able to reign in medical malpractice costs but, at the same time, at the same time, balance the rights of victims of medical malpractice.

And to my mind, it has always been important in these debates, in these discussions, in these negotiations to

remember that party that isn't in the building. There are folks here, and I commend them, strenuously representing the interests of physicians, strenuously representing the interest of attorneys but out there, right now, somewhere in the State of Connecticut, there are individuals that are waiting for medical attention. There are individuals, that as of this morning, do not know that maybe this afternoon, maybe tomorrow, maybe later this week, they may be in an emergency and they need the best medical attention that's out there.

Whenever you are confronted with one of these issues, it is not a time for a myriad of questions. You rush your loved one to try to get the medical attention they need. We are blessed in this state to have great medical schools. We are blessed in this state to have great medical providers. There are a lot of places in this world you would not want to have an accident, you would not want to be sick. There are many places in this country, you would not want to have an accident, you would not want to be sick, but upon occasion because we are mortals and imperfect and human, on occasion, even the very best medical provider may make a mistake.

It is difficult to bring a medical malpractice action in the State of Connecticut. When we had those escalating malpractice premiums, six, seven, eight years ago, I tell my colleagues, I remember those days on the Judiciary Committee when Room 2C was filled with physicians, that has not happened, that did not happen this year.

As Senator Coleman indicated, medical malpractice rates have come down, but one thing has occurred as we had crafted a medical malpractice reform and tort reform laws here in Connecticut, trying to create a certificate of merit that would basically tell attorneys and their clients, you need to put at least a statement up front that this matter has been reviewed by a qualified medical practitioner before you can even get into the courthouse.

To my mind, we don't do that with any other case. Attorneys are honor bound by the code of ethics to have a good faith belief in the merits of their case.

Attorneys should not, ethically, bring any lawsuit that they do not believe has some merit. But with medical malpractice and the certificate of merit, those law firms

that want to pursue this kind of litigation need to go out and need to get medical experts to sign these certificates of merit before these cases will even be entertained.

So if you have a constituent that believes that they have been wronged by medical malpractice, they need to seek out attorneys with this expertise. Those attorneys have to seek out medical providers that have expertise in the area in question, and somebody's got to sign that they've reviewed all the records and the documentation that's available and put their reputation on the line that this case has merit. And if you can't even get someone to do that, the courthouse doors are blocked. It's not easy.

What has happened in the years since medical malpractice reform was passed in 2005, is that -- and I don't blame them, I understand but the practice of defense counsel is to question certificates of merit in almost every case. And as the courts have moved along in reviewing the certificates, an interesting dilemma has occurred. Certain cases have come down with decisions, such as Senator Coleman indicated the Bennett case. Where because of the medical community, there's certain areas of expertise. The courts have looked at this and said, we need exactly, apples to apples. And if there's even the slightest variation, there is a risk and it has come to pass that the courts have said, the expert that signed the certificate of merit is not exactly in the exact same field, by title, as the individual or the area of medicine being sued; and, therefore, A, the certificate of merit is invalid and under our laws the courts have determined that they are constrained to throw the case out.

So even if these individuals have suffered because of medical malpractice because not the precise expert was listed in the certificate of merit, they're out and they can't come back. And in my mind that's not justice. They -- they even had their day in court, knocked right out before they even get through those first doors into the courtroom. And that's what happened in Bennett. And how close can it be?

I believe court cases have come down such that if there was a problem in the emergency room, okay, with the emergency room physician and the expert maybe was not a practicing doctor in emergency rooms but was a professor of emergency medicine at a university? Even someone like that is knocked

out. Let's say -- let's say, you're in a -- something happens to your neck and you've got a terrible spasm in your neck. You can go to an orthopedic surgeon and, perhaps, they can look at that and perform surgery, or perhaps you might go to a neurologists because it involves your spine, but who's to say if one physician or one medical provider has expertise in a field but has one title that he or she cannot at least sign off on a certificate of merit regarding what another physician did regarding that area of an individual's body. If it's too tenuous, the case will fall apart before it ever gets before a jury or a judge.

What this bill is about is not tort reform. What this bill is about is not having people arbitrarily, in my view, kept outside the courthouse because of a mere technicality. I don't believe when we set the laws in motion in 2005, we ever intended this to be the consequence. At the same time, I absolutely do not blame defense counsel for saying, aha, let's just challenge every one of these. And you know what, if we win on some of them, good for us, good for our clients. That's why I hire lawyers to fight zealously on your behalf.

Unfortunately, as the case law has evolved, we are now at a point where I believe justice demands, justice compels, justice invites us to address this issue. And this bill before us is a fair approach to this conundrum. I would be the first to admit that in talking to physicians and medical providers, they still feel that, to some extent, that they have to practice defensive medicine so as to not expose themselves to frivolous litigation. I understand that.

At the same time, the party's that should not be punished in that ongoing national debate are victims of true medical malpractice who only seek their day in court to either make or not make their case. And it is not, it is not a just way to attempt to drive down costs. If indeed that is the net result, which appears not to be the case, but it is not a just way and we -- we focused on this like laser beams in 2005. We approached this issue saying we are going to take out this issue on the victims. The paramount concern are the legitimate victims of medical error, medical misadventure is what is put in many of the reports, there was a misadventure.

And I am hearkened. There was a bill that we passed a couple of days ago regarding a simple process of being allowed to make an apology if someone was killed in a DUI, an apology to the victim's family. And how far that would go to at least getting some semblance of closure or justice. And Senator Roraback, actually, had the notion that in many of these cases at that time, physicians were told even if you acknowledge wrongdoing, you can't even apologize anywhere along the way. And he put forward the notion that we should have a carve out. And I commended him in the Judiciary Committee this year for coming up with that idea six years ago because in these cases there's so much involved.

You know there's an old Sicilian saying and I'm not Italian, not lucky enough to be Italian but I married into a good Italian family and the saying is, any problem that money can solve is not that big of a problem. Well, if you lose part of your body, your life, your ability to enjoy your health, there may be some large financial verdict down the road, but it really isn't a problem that money can solve. Staying healthy and able to the greatest extent God has allowed us to be, that's the ultimate goal.

We are blessed in this state to have so many dedicated healthcare providers, so many physicians, so many men and women, we just -- granted differing opinions but my friends and the majority party along with many other Republicans in this Chamber pushed forward the UConn Health Center proposal. We want to get into research and development, we want to encourage greater numbers of physicians to graduate from our flagship university, we want to work in cooperation with surrounding hospitals in the Greater Hartford area. We've got Yale down there in the Greater New Haven area. We've got so much promise but people go into medicine and people go into healthcare because they want to help people but we all know in this circle that accidents can happen.

We owe it to those innocent victims in those unfortunate cases where an accident has happened where there has been a medical misadventure where medical malpractice has occurred. We owe those people the right to be able to open the courthouse doors, walk into the courtroom, be pushed into the courtroom to have the evidence presented in the courtroom. If the malpractice resulted in death so that case can be made to a neutral arbiter, to a judge or a jury

to assess the facts. Just like the statue of justice, blindly holding the balance, weighing the pro's and con's and coming up with an appropriate verdict, an appropriate determination, an appropriate judgment. And if indeed, some form of malpractice has been proven then the concomitant determination as to what the appropriate amount of the verdict should be.

That's why I think, on balance, this is a good bill, it is a timely bill, it's a bill worthy of our support in this circle. It has nothing to do with Republicans or Democrats, but it has everything to do with allowing individuals into our courthouses to make their cases, to seek redress for wrongs or to have it determine that no wrong was ever committed.

And for those reasons, Madam President, I strongly support the bill.

Thank you.

THE CHAIR:

Thank you.

Will you remark?

Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President.

I rise to support the legislation and associate myself with remarks of Senator Coleman.

Mr. President and members of the circle, when we speak of the original task force, I gave the impetus to reform for malpractice to the Judiciary Committee. I had the honor of serving as co chair along with Representative Mary Fritz and the very objective that Senator Coleman was trying to achieve was our intent.

And so very briefly, Madam President because every minute that we waste today may impact some legislation, which may hurt some individual.

Thank you, Madam President.

THE CHAIR:

Thank you.

Senator Prague.

SENATOR PRAGUE:

Thank you, Madam President.

I rise to support this bill and to associate myself with the remarks of Senator Kissel.

I just want to get a clear in my own mind exactly what the certificate of merit does?

And, Senator Kissel, would you explain that to me?

THE CHAIR:

It would have to be through --

SENATOR PRAGUE:

Through you, Madam President --

THE CHAIR:

It would be to the chair of the bill.

SENATOR PRAGUE:

Through you, Madam President.

To the Chair, okay.

THE CHAIR:

And that would be, Senator Coleman.

SENATOR PRAGUE:

Thank you.

SENATOR COLEMAN:

The question was to explain the purpose of the certificate of merit?

Through you, Madam President.

THE CHAIR:

Senator Prague.

Is that the purpose of the question?

SENATOR PRAGUE:

Yes, it is, Madam President.

Thank you.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President to Senator Prague.

In 2005, we, as a legislature, enacted so-called tort reform. And part of that requires that before any injured party could bring a suit alleging that they were a victim of medical malpractice. That the language that we used was similar healthcare provider, a similar healthcare provider had to write an opinion indicating that there was some breach of the standard of care by the defendant, the healthcare provider who was being sued.

And that was attached to what was called a certificate of merit. The certificate of merit basically, indicates that there is some basis for the lawsuit and that the lawsuit is not frivolous.

Through you, Madam President to Senator Prague.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Madam President.

I'm particularly interested in this case and this legislation because my son in law in July of 2008, went into the hospital, and I won't mention the name of the hospital, for throat surgery and came out a vegetable --

THE CHAIR:

Excuse me. There's a phone ringing. Could somebody please stop the phone ringing.

SENATOR PRAGUE:

And he has continued to live as a vegetable with a caretaker, 24 hours a day, 7 days a week. And he lives on a feeding bag and wears diapers. He -- he's all of 54 years old. He will never again have a life.

And I am listening very carefully to what you're saying, and I think I hear that you're saying that the healthcare experts that ought to be called in, have to sign some sort of paper and this is a certificate of merit?

Is that, through you, Madam President, to Senator Coleman, is -- am I getting the right jest of this?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President.

Without a certificate of merit attached to a medical malpractice lawsuit, the lawsuit will be dismissed.

In many cases, since we passed the legislation, certificates of merit, even when attached to a lawsuit have been attacked by defense attorneys on the basis that the healthcare provider who's provided the written opinion attached to the certificate of merit was not a similar healthcare provider. And that has resulted not only in a lot of motions to dismiss but in some -- incongruous results.

In one case, the person or the physician that provided the certificate of merit was qualified as an expert to testify at trial but was, for whatever reason, deemed not to be qualified to author the written opinion that was attached to the certificate of merit in this particular case.

In the Wilkins case, a board certified OB/GYN was the author of the opinion attached to the certificate of merit and that certificate of merit was determined to be invalid because the defendant in the case was a midwife. And so the -- the result, I guess, it's hard for many of us to accept is that a board certified OB/GYN is not qualified to determine whether a midwife complied with the recognized standard of care in the performance of his or her duties.

In another case, a physician who was trained in among other things, general surgery authored a written opinion attached to a certificate of merit in the case, and, in that case, the defendant was a general surgeon. The physician who authored the written certificate -- written opinion that was attached to the certificate of merit had listed himself as an emergency care physician as his specialty. Emergency care physician was listed as his specialty because he was not exactly, even though he was trained in general surgery, testified many times in trials as an expert regarding general surgery issues. He was determined in that case -- the certificate of merit in that case was determined to be invalid because he was not exactly the same specialty as the defendant in that case.

These kind of results, I think many of us did not envision to be the purpose of the tort reform that we voted for back in 2005. And the purpose of the bill before us is to correct those kinds of inconsistent results and unintended consequences of the tort reform that we supported in 2005.

Through you, Madam President.

THE CHAIR:

Thank you.

Senator Prague.

SENATOR PRAGUE:

Through you, Madam President.

EXHIBIT 12

NO. 5001159

SYLVESTER TRAYLOR AND
SYLVESTER TRAYLOR,
ADMINISTRATOR OF THE ESTATE
OF ROBERTA M. TRAYLOR

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW LONDON
AT NEW LONDON

V.

BASSAM AWWA, M.D. AND
CONNECTICUT BEHAVIORAL
HEALTH ASSOCIATES

DECEMBER 14, 2006

MEMORANDUM OF DECISION

FACTS

This action was commenced by the plaintiff Sylvester Traylor, in his own capacity and as administrator of Roberta Traylor's ("the decedent") estate, by service of a summons and complaint on the defendants, Bassam Awwa, a psychiatrist, and Connecticut Behavioral Health Associates P.C. (CBHA), on June 2, 2006. The plaintiff alleges in his complaint that the defendants were negligent in prescribing medications to the decedent without giving adequate warnings about the medications or referring the decedent to appropriate psychiatric treatment services. The plaintiff alleges that these negligent acts by the defendants led to the death of the decedent on March 1, 2004.

On July 27, 2006, the defendants filed a motion to dismiss the plaintiff's complaint on the grounds of insufficiency of process, insufficiency of service of process and lack of personal jurisdiction over CBHA. As required by Practice Book § 10-30, the defendants filed their motion to dismiss within thirty days of the filing of their general appearances on July 7,

FILED

DEC 14 2006

SUPERIOR COURT
New London Judicial District

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2006. The motion to dismiss was accompanied by a supporting memorandum of law. On August 2, 2006, the plaintiff filed an amended summons, amended complaint and amended marshal's return. On August 7, 2006, the plaintiff filed a memorandum of law in opposition to the defendants' motion to dismiss. On August 4, 2006, the defendants filed a supplement to their motion to dismiss, addressing the filing of the amended pleadings by the plaintiff.

DISCUSSION

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *Cox v. Aiken*, 278 Conn. 204, 210-11, 897 A.2d 71 (2006). "The grounds which may be asserted in [a motion to dismiss] are: (1) lack of jurisdiction over the subject matter; (2) *lack of jurisdiction over the person*; (3) improper venue; (4) *insufficiency of process*; and (5) *insufficiency of service of process*." (Emphasis added.) *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985), citing Practice Book § 10-31.

"[A] writ of summons is a statutory prerequisite to the commencement of a civil action. . . . [I]t is an essential element to the validity of the jurisdiction of the court. . . . [T]he writ of summons need not be technically perfect . . . and need not conform exactly to the form set out in the Practice Book" (Internal quotation marks omitted.) *Feldmann v. Sebastian*, 261 Conn. 721, 729, 805 A.2d 713 (2002). "[A]ny claim of lack of jurisdiction over the *person* as a result of an insufficiency of service of process *is waived* unless it is raised

by a motion to dismiss filed within thirty days in the sequence required by Practice Book § 10-6" (Emphasis in original.) *Pitchell v. Hartford*, 247 Conn. 422, 433, 722 A.2d 797 (1999).

In their memorandum of law, the defendants argue that the court lacks personal jurisdiction over them because of insufficiency of process and insufficiency of service of process. The defendants argue that the plaintiff's writ of summons is defective for failing to have a permissible return date, pointing out that the return date on the summons is a Monday. Additionally, the defendants argue that CBHA is not properly identified as a corporate defendant and no agent for service is listed for CBHA on the summons. Further, the defendants argue that the summons lacks a signed recognizance. For these reasons, the defendants argue that the court lacks personal jurisdiction over them for insufficiency of process. Further, the defendants argue that the marshal's return does not indicate that CBHA was served in accordance with General Statutes § 52-57, because there is no indication whom was served at CBHA. For this reason, the defendants argue that the court lacks personal jurisdiction over CBHA for insufficiency of service of process.

The plaintiff counters, in his memorandum in opposition to the motion to dismiss, by arguing that the return date on the amended summons was corrected to fall on a Tuesday, albeit a holiday. Further, the plaintiff argues that the amended complaint and summons correctly identify CBHA as a professional corporation with Awwa as its agent for service. Additionally, the plaintiff argues that any deficiencies in service of process were corrected by serving the defendants, according to statute, with an amended summons and complaint on

August 1, 2006. Finally, the plaintiff argues that the amended summons corrects the lack of signed recognizance that was found on the original summons.

“[T]he marshal's return is prima facie evidence that service was made and that there is a presumption of truth afforded to the statements in the return.” *CAVC of Colorado, LLC v. Corda*, Superior Court, judicial district of New Haven, Docket No. CV 05 4016053 (December 16, 2005, *Pittman, J.*) (40 Conn. L. Rptr. 141) The marshal's amended return, filed on August 2, 2006, sets forth the following facts. On June 2, 2006, the marshal left a copy of the original writ, summons and complaint in the hands of a secretary at the offices of Awwa and CBHA. Subsequently, on August 1, 2006, the marshal left an amended writ, summons and complaint in the hands of Awwa in his personal capacity as a physician practicing psychiatric medicine. Further, on that same day, the marshal left an amended writ, summons and complaint in the hands of Awwa in his capacity as president and an agent for service for CBHA.

After the service of the amended complaint, the defendants filed a supplement to their motion to dismiss in which they argue that the amended return, filed by the plaintiff, clearly indicates that the service effectuated in June was ineffective under General Statutes §§ 52-54 and 52-57. There is no acknowledgment by the defendants, in the supplement, of the subsequent August service of the amended summons and complaint.

Practice Book § 10-59 allows a plaintiff to amend any mistake, defect or informality in the writ or complaint by right within the first thirty days after the return date. General Statutes § 52-72 allows a plaintiff to amend a summons which “has been made returnable to the wrong return day or is for any other reason defective, upon payment of costs taxable upon sustaining

a plea in abatement.” General Statutes § 52-128 provides, in relevant part: “The plaintiff may amend any defect, mistake or informality in the writ, complaint, declaration or petition, and insert new counts in the complaint or declaration . . . without costs, within the first thirty days after the return day . . . but, after any such amendment, the defendant shall have a reasonable time to answer the same.”

The file indicates that the original summons in this action has July 3, 2006 listed as the return date and lacks a signed recognizance. Additionally, CBHA, named as a “professional corporation” in the plaintiff’s original complaint, is listed as a defendant on the summons, but no agent for service is listed for this defendant.

The plaintiff listed July 3, 2006, as the return date on the original summons. This court takes judicial notice of the fact that this date is a Monday. General Statutes § 52-48 states, in part: “Process in civil actions . . . brought to the superior court may be made returnable on any Tuesday in any month.” According to the statute, the plaintiff’s original summons fails to comply with the Tuesday requirement of § 52-48. However, § 52-72 allows the plaintiff to correct this defect. “[I]t appears that [§ 52-72] was enacted in response to decisions of this court holding that an improper return date was a jurisdictional defect that could not be corrected. . . . Indeed, this court has stated that the purpose of § 52-72 is to provide for amendment of otherwise incurable defects that go to the court’s jurisdiction. . . . The apparent intent of the legislature in enacting § 52-72 was to prevent the loss of jurisdiction merely because of a defective return date.” (Internal quotation marks omitted.) *Olympia Mortgage Corp. v. Klein*, 61 Conn App. 305, 308, 763 A.2d 1055 (2001).

The plaintiff's amended summons lists a return date of July 4, 2006. The court takes judicial notice of the fact that this date does fall on a Tuesday. The amended summons was filed on August 2, 2006, within thirty days of the original return date of July 3, 2006.¹ With the filing of an amended summons with an appropriate return date within the thirty days allowed by § 52-72, the plaintiff has corrected this defect in the summons. Thus, the lack of a proper return date is no longer good cause to grant the defendants' motion to dismiss.

Similarly, the plaintiff has corrected the error concerning the corporate status of CBHA and the lack of agent for service for CBHA. As stated above, the amended summons was filed within the thirty days allowed by statute. The amended summons clearly lists CBHA as a "professional service corporation" and adds that Awwa is "president and agent of a private corporation known as [CBHA]." Thus, the plaintiff, in filing the amended summons, has stated the corporate status of CBHA and indicated that Awwa is its agent for service of process. Therefore, the defendants no longer have grounds to move to dismiss the complaint against CBHA for failure to properly identify CBHA as a corporate defendant requiring an agent for service.

Further, the defendants argue that the plaintiff's original summons lacks the proper recognizance. Practice Book § 8-4 provides, in relevant part: "[N]o mesne process shall be issued until the recognizance of a third party for costs has been taken, unless the authority

The plaintiff did file a motion to amend his complaint on August 2, 2006. This was the same day on which he had filed his amended summons, complaint and marshal's return. This motion has not been acted upon, nor need it be. The plaintiff is entitled, by §§ 52-72 and 52-128, to make any changes to the complaint within the first thirty days of the return date without seeking leave of the court to file such an amendment.

signing the writ shall certify thereon that he or she has personal knowledge as to the financial responsibility of the plaintiff and deems it sufficient." The file indicates that the plaintiff's original summons lacks a signed recognizance in any form. The file also indicates, however, that the amended summons does include a paid recognizance by the plaintiff in the amount of \$250. As before, this defect is able to be corrected by the filing of an amended summons within the first thirty days after the return date, per § 52-72. Since the plaintiff filed the amended summons on August 2, 2006, he has filed his amended summons within the allotted thirty days after the return date of July 3, 2006, and the operative summons does contain a proper recognizance. The defendants, thus, have no grounds to dismiss the operative complaint for insufficiency of process for lack of a properly signed recognizance.

Section 52-57 states, in relevant part: "In actions against a private corporation, service of process shall be made either upon the president, the vice president, an assistant vice president . . . or upon any person in charge of the business of the corporation or upon any person who is at the time of service in charge of the office of the corporation in the town in which its principal office or place of business is located." The file indicates that the original complaint and summons were served upon Meredith Rothholz, a secretary for CBHA. No agent for service of process was indicated on the original summons. The file also indicates that the amended summons and complaint were served on Awwa, indicating that he was the president and agent for service of process for CBHA. According to § 52-57, this is an acceptable form of service of process for CBHA. The operative summons and complaint that were served upon Awwa were the amended summons and complaint filed by the plaintiff on August 2, 2006.

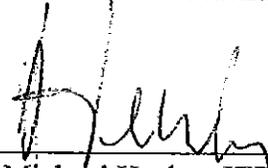
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Ex 124

Section 52-72 states, in relevant part: "Such amended process shall be served in the same manner as other civil process and shall have the same effect, from the date of the service, as if originally proper in form." The plaintiff was entitled to correct the deficiencies (improper return date, lack of recognizance and improperly identified corporate defendant) in his original summons within the thirty days provided by §§ 52-72 and 52-128. The plaintiff has made those corrections and has served the required documents according to § 52-57 as stated in the amended marshal's return. Thus, the defendants have no grounds for the complaint to be dismissed for insufficiency of service of process.

CONCLUSION

The plaintiff has rectified the errors in the original process and service of process by properly serving an amended summons and complaint on the defendants within thirty days of the return date specified on the original summons. Therefore, that the defendants' motion to dismiss is denied because the court has personal jurisdiction over the defendants in this action.



D. Michael Hurley, JTR

EXHIBIT 13

DOCKET NO. CV-06-5001159S : SUPERIOR COURT
SYLVESTER TRAYLOR : NEW LONDON JUDICIAL DISTRICT
VS. : AT NEW LONDON
BASSAM AWWA, et al : ON FEBRUARY 20, 2007

MOTIONS

BEFORE THE HONORABLE D. MICHAEL HURLEY, JUDGE

A P P E A R A N C E S:

Representing the Plaintiff:

CHINIGO, LEONE, MARUZO, LLP
141 Broadway
Norwich, CT 06360
BY: DONALD E. LEONE, ESQ.

Representing the Defendant:

GRADY & RILEY, LLP
86 Buckingham Street
Waterbury, CT 06710
BY: ANDREW J. PIANKA, ESQ.

Reported and Transcribed by:
Patricia C. MacDonald, CSR, RPR
Superior Court
70 Huntington Street
New London, Connecticut

EX 13

1 THE COURT: Go to five-minute matters. Would be --
2 first one is Traylor versus Awwa. Is that ready?

3 ATTY. LEONE: Yes, it is your Honor. Don Leone for
4 the defendant.

5 ATTY. PIANKA: Attorney Andrew Pianka for the
6 plaintiffs.

7 THE COURT: You've got two motions. One is -- the
8 first one is for stay of the proceedings until a motion
9 to dismiss is decided, and the other one, 147, is a
10 motion to dismiss. You've got a motion dated
11 January 8th and motion to dismiss, January 4th. Are you
12 ready to proceed on the motion to dismiss today?

13 ATTY. LEONE: Yes, your Honor.

14 THE COURT: All right. Then we should proceed for
15 that. Let me see what the ground is. Failure to obtain
16 a good faith certificate and written opinion. All
17 right. And what is your objection to that motion to
18 dismiss?

19 ATTY. PIANKA: We have filed an objection to it.
20 The objection is that this case was originally brought
21 by a pro se plaintiff. In filing the original
22 complaint, the pro se plaintiff did append documents
23 that he felt amounted to a good faith disclosure to the
24 Court that the matter was a medical malpractice action.

25 Once I became involved in the case, your Honor, I
26 did file a request for leave to amend with a proper
27 certificate. After that request for leave to amend was

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EX-13

1 filed, this motion to dismiss has been filed. Your
2 Honor, 52-190a, the requirement for good faith
3 certificate, does not create a subject matter
4 jurisdiction.

5 THE COURT: I'm sorry, what?

6 ATTY. PIANKA: Does not deprive this Court's power
7 to hear a medical malpractice case. Of course you have
8 the power to hear that. What the statute does create is
9 a remedy that it may enforce if it finds that a medical
10 malpractice suit is being pursued without certificate or
11 without good faith. A proper certificate has been
12 filed. We are proceeding with good faith.

13 THE COURT: Don't you get a 90-day extension? Has
14 that period gone by?

15 ATTY. PIANKA: Yes, your Honor.

16 THE COURT: So it's beyond the 90 days?

17 ATTY. PIANKA: Correct.

18 THE COURT: What is the basis -- you're asking the
19 Court to omit the late filing certificate?

20 ATTY. PIANKA: We have the right under the Practice
21 Book to request leave to amend any defect within a
22 complaint. That's not limited to the 90-day period.
23 But at any time we feel there's a defect, we can ask the
24 Court for leave to amend. And we have done so.

25 ATTY. LEONE: If your Honor please, that motion was
26 denied by your Honor once it was filed. They filed a
27 request to leave to amend the complaint to include a

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EX 1311

1 good faith certificate and a medical opinion as required
2 by the State. Your Honor denied that motion, so the
3 operative complaint in this case is an August 2nd
4 amended complaint, which does not contain either a good
5 faith certificate or a medical opinion. And that's the
6 basis for the motion to dismiss.

7 What Counsel is arguing is that he filed a request
8 to amend and that his amendment contains the necessary
9 documents. That motion was decided by your Honor. It
10 was denied, and therefore we're operating on a complaint
11 that has no good faith certificate and no medical
12 opinion. Even assuming innuendo, your Honor, that the
13 amended complaint was allowed, in my motion to dismiss I
14 addressed the adequacy of the good faith certificate and
15 medical opinion and come to the conclusion that even if
16 your Honor were to allow the amendment, the opinion that
17 is attached is dated more than four months after the
18 filing of the complaint. And therefore, the requisite
19 investigation presuit that is required by the State is
20 not taken in this case, and therefore, again, is grounds
21 for dismissal.

22 With -- your Honor, with respect to issue of
23 subject matter jurisdiction, I will not reiterate what
24 is in my brief. I cite all the cases by the superior
25 court, which have addressed this issue. There are split
26 decisions. The ones that decided that failure to have a
27 good faith certificate and/or medical opinion is a

1 subject matter jurisdictional issue are cited in the
2 brief. And those cases deal with complaints that do not
3 have either a good faith certificate or a medical
4 opinion.

5 There are two cases ruled on by Judge Matasavage in
6 Waterbury which ruled that it is not to invoke subject
7 matter jurisdiction, but those cases are distinguishable
8 in the sense that those were dealing with the adequacy
9 of the medical opinion that was, in fact, attached to
10 cases, and then defense sought to dismiss then.

11 So I believe those two cases are distinguishable,
12 and your Honor has those cases in the briefs. And I
13 rely upon his Honor's reading of the briefs in making a
14 decision in this matter. I want to stress that in this
15 case you have already ruled that the amendment that they
16 sought should not be done, so therefore we're operating
17 without a good faith certificate and/or medical opinion,
18 your Honor.

19 THE COURT: Anything to rely --

20 ATTY. PIANKA: Your Honor, I will also rely on the
21 strength of my brief. I have appended many cases which
22 indicate we are allowed to amend and include a good
23 faith certificate. This case was originally originated
24 by pro se.

25 THE COURT: Do you have any appellate decisions or
26 are they all superior court?

27 ATTY. PIANKA: There are appellate cases in my

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EX 134

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brief that says the Court can direct and has subject matter jurisdiction.

THE COURT: All right. I'll take the papers.

ATTY. PIANKA: Thank you, your Honor.

ATTY. LEONE: Thank you, your Honor.

(The short calendar docket was continued.)

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Ex 13

DOCKET NO. CV-06-5001159S : SUPERIOR COURT.
 SYLVESTER TRAYLOR : NEW LONDON JUDICIAL DISTRICT
 VS. : AT NEW LONDON
 BASSAM AWWA, et al : ON FEBRUARY 20, 2007

C E R T I F I C A T I O N

I, Patricia C. MacDonald, a Certified Court Reporter, do hereby certify that the within and foregoing is a true and correct transcription of the stenographic notes taken in the above matter, heard before the Honorable D. Michael Hurley, a Judge of the Superior Court, in the Judicial District of New London, at New London, on the 20th day of February, 2007.

Dated this 3th day of September, 2010.

Patricia C. MacDonald
 Patricia C. MacDonald, CSR, RPR

EXHIBIT 14

NO. 5001159

SYLVESTER TRAYLOR

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW LONDON
AT NEW LONDON

V.

BASSAM AWWA, M.D., ET AL

MAY, 31, 2007

MEMORANDUM OF DECISION

This medical malpractice action was brought by the plaintiff, Sylvester Traylor, in his own capacity and as administrator of the estate of Roberta Traylor ("the decedent"). Presently before the court is a motion to dismiss filed by the defendants, Bassam Awwa and Connecticut Behavioral Health Associates, on the ground that the plaintiff failed to comply with General Statutes § 52-190a.¹

FILED

JUN 1 2007

SUPERIOR COURT-NEW LONDON
JUDICIAL DISTRICT AT NEW LONDON

Section 52-190a provides in relevant part: "(a) No civil action . . . shall be filed to recover damages resulting from personal injury or wrongful death . . . whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action . . . has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint, initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant To show the existence of such good faith, the claimant or the claimant's attorney . . . shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. . . . (c) The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action."

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Copies sent
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EX 144

The defendants contend that the court is without subject matter jurisdiction because the original complaint did not contain a good faith certificate and written opinion of a similar health care provider. The defendants further argue that since this court has previously denied a request to amend the complaint, which sought to attach the documents, the amended complaint may not now be considered. The plaintiff counters that noncompliance with § 52-190a does not implicate the court's subject matter jurisdiction. The plaintiff maintains that the court may consider the good faith certificate and written opinion of a similar health care professional in evaluating the motion to dismiss.

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *Filippi v. Sullivan*, 273 Conn. 1, 8, 866 A.2d 599 (2005). "The grounds which may be asserted in a [motion to dismiss] are: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; and (5) insufficiency of service of process." *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985), citing Practice Book § 10-31.

The facts and procedural history relevant to the pending motion are as follows. The plaintiff, proceeding pro se, commenced this action on June 2, 2006. In a complaint filed on the same date, the plaintiff alleges that the defendants were negligent in prescribing certain medications to the decedent; failing to provide adequate warnings regarding those medications; and failing to refer the decedent to appropriate psychiatric treatment. The

plaintiff further alleges that he contacted the defendants and informed them that the decedent was suicidal and a danger to herself. The plaintiff alleges that he "received no return calls, and he was unable to convince the defendants of the imminent danger." Subsequently, the decedent committed suicide.

The plaintiff did not attach to the complaint either a good faith certificate or a written opinion of a similar health care provider as required by § 52-190a. On October 19, 2006, the plaintiff, still proceeding pro se, filed a certificate of reasonable inquiry and good faith along with a signed written statement by a health care provider. The defendants did not file any pleading in response to the plaintiff's October 19, 2006 filing.

On December 26, 2006, the plaintiff, now represented by counsel,² filed a request to amend the complaint pursuant to Practice Book § 10-60. On December 29, 2006, the defendants filed an objection to the request to amend the complaint. Said objection was sustained by this court on January 16, 2007. On January 8, 2007, the defendants filed the present motion to dismiss.

DISCUSSION

This court need not take a position on the split of authority that currently exists in the Superior Court on the issue of whether failure to comply with § 52-190a implicates the court's subject matter jurisdiction. Compare *Donovan v. Sowell*, Superior Court, judicial district of Waterbury, Docket No. CV 06 5000596 (June 21, 2006, *Matasavage, J.*) (41 Conn. L. Rptr. 609), with *Fyffe-Redman v. Rossi*, Superior Court, judicial district of Hartford, Docket No.

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The law firm of Grady & Riley, LLP, entered an appearance on behalf of the plaintiff on October 20, 2006.

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Ex 14

CV 05 6000010 (June 7, 2006, *Miller, J.*) (41 Conn. L. Rptr. 504). Based on the October 19, 2006 filing of the good faith certificate and written opinion;³ which was filed well before the issue was raised by the defendant; this court concludes that the plaintiff has satisfied the requirements of § 52-190a.

It is certainly true that a party proceeding pro se does not have a license to disregard procedural and substantive laws. *Solomon v. Connecticut Medical Examining Board*, 85 Conn. App. 854, 861, 859 A.2d 932 (2004), cert. denied, 273 Conn. 906, 868 A.2d 748 (2005). However, “[i]t is the established policy of the Connecticut courts to be solicitous of pro se litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the pro se party.” *Id.* “The courts adhere to this rule to ensure that pro se litigants receive a full and fair opportunity to be heard, regardless of their lack of legal education and experience. . . .” (Citation omitted.) *DuBois v. William W. Backus Hospital*, 92 Conn. App. 743, 752, 887 A.2d 407 (2005).

While the certificate and accompanying written opinion were not presented in the form of a request to amend the complaint pursuant to Practice Book § 10-60, this court finds the plaintiff’s pleading to be clear in its substance and intention. It was not objected to or challenged in any way by the defendants. Given the plaintiff’s pro se status at the time, this court finds it to be in the interests of justice to overlook the plaintiff’s noncompliance as to the form of his pleading.⁴ The court may take into account the good faith certificate and written

³ It is emphasized that this filing is separate and distinct from the December 26, 2006 request to amend the complaint, which the defendants correctly note that the court may not consider.

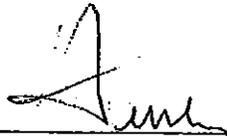
⁴ This is particularly true where the defendants, while emphasizing the plaintiff’s delay in filing

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Ex 14"

opinion since they were filed over two months prior to the defendants raising the issue of noncompliance with § 52-190a. Given this, the court finds that the plaintiff has satisfied the requirements of § 52-190a.

Accordingly, the motion to dismiss is denied.



D. Michael Hurley, JTR

the necessary documents, have themselves been less than diligent in raising the issue of noncompliance with § 52-190a.

EXHIBIT 15

EXHIBIT B

Yale University

School of Medicine
Department of Psychiatry
Connecticut Mental Health Center
Law & Psychiatry Division
34 Park Street
New Haven, Connecticut 06519-1187

Howard Zonana, M.D., Director

Telephone: 203 974-7158
Fax: 203 974-7177

October 18, 2006

Mr. Sylvester Traylor
881 Vauxhall St. Ext.
Quaker Hill, CT 06375

Re: Roberta Traylor

Dear Mr. Traylor,

Pursuant to your request I have reviewed copies of:

1. Treatment records of your wife Roberta by Connecticut Behavioral Health Associates, PC and Dr. Bassam Awwa M.D. Medical Director and treatment provider.
2. A document of the dates that you provided detailing the phone calls that you placed to Dr. Awwa.
3. A letter to Dr. Awwa from Roberta Traylor that was faxed from CBHA (Dr. Awwa's office to Mr. Traylor on 12/28/2005) and was originally dated and faxed on December 23, 2003 to Dr. Awwa.
4. Report from the office of the Chief Medical Examiner, State of Connecticut dated 26 April 2004 stating the cause of death to be carbon monoxide poisoning and the manner of death to be suicide- signed by Edward McDonough III MD
5. Letter from State of Connecticut DMHAS Southeaster Mental Health Authority dated May 16, 2005 to Mr. Traylor summarizing phone contacts regarding his wife Roberta on 11/28/03 by Jeffrey Watson LCSW
6. Complaint June 1, 2006 and Amended Complaint dated July 31, 2006

Mrs Traylor committed suicide on March 1, 2004. She had been seen by Dr. Awwa on 4 occasions: 4/18/02, 1/20/04/2/3/04, and 2/17/04. Between December 23 and February 22, 2004, Mr. Traylor called Dr. Awwa's office approximately 9 times and none of those phone calls were returned. The only call by Dr. Awwa occurred on March 2, 2004 one day after the suicide to inquire, "What happened?"

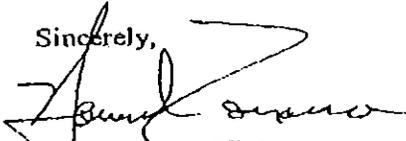
Based on my review of the above documents it appears that Roberta Traylor was being treated for a Major Depressive Disorder, Recurrent, Severe. It is my opinion that the standard of care for psychiatrists treating such patients would require some return of phone calls to at least hear what family members were concerned about so that their experience could be factored into the treatment plan. I saw nothing in the treatment record that indicated that the patient did not want the physician to speak with her husband. I feel that, absent other information, failure to make those calls played a

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Exhibit 15

proximate role in the ultimate death of the patient as it would have added to concerns re suicidality and prompted more active intervention by the physician.

Sincerely,

A handwritten signature in cursive script, appearing to read "Howard Zonana".

Howard Zonana MD
Professor of Psychiatry

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Ex 15

EXHIBIT 16

*A Cause
For Action*

Connecticut Families
Search for Justice

Project of
Connecticut Center for Patient Safety and
Connecticut Patients' Rights Group

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Exhibit "16"

A Cause For Action

Connecticut Patients' Rights and the Connecticut Center for Patient Safety deeply appreciate the courageous individuals and families who have shared their stories and relived the painful experiences that changed their world forever.

This book is dedicated to them and to those whose stories remain untold.

Our hope is that it gives voice to the suffering these people have sustained.

Our wish is that we have done justice to their sorrow.

Our purpose is to break the silence that confronted these victims of medical malpractice, and to expose the manner in which they were treated by the healthcare industry.

"I want to see responsible parties held accountable"



Kate Govoni

My wife Kate died suddenly at age 41 after a routine allergy shot in a doctors office. Our then four-year old son was sitting next to her and screamed when she collapsed from anaphylactic shock. Our one-and-one half year old daughter was downstairs in the lobby with her nanny. No one in the 14-doctor medical practice could revive Kate, in part because there was no intravenous epinephrine available. It took three calls to 911 to get an ambulance and amazingly enough, it was only when paramedics arrived that an emergency tracheotomy was performed. By then though, it was too late.

A couple of hours later, the allergist walked me to my care and was so remorseful and emotionally drained that he offered to check with his malpractice insurer to see what he could do for me and my kids. If that wasn't a

tact admission of liability and responsibility I don't know what is. But nothing ever became of that gesture. The result is four-plus years of litigation with no end in sight.

It seems to me that if a physician is willing to accept responsibility for a patient's death by settling a case early but can't invoke the protection of his insurance policy, the insurer can be found in breach of his contractual obligation, not to mention laws designed to protect patients and insurance customers.

What compounded the absurdity of this case was the fact that two poorly trained investigators for the state department of Public Health did little to probe the root cause of this tragedy and eventually whitewashed the matter.

I want to see the responsible parties held accountable.

Steve Govoni

GPR-Connecticut Patients' Rights Group,
a Chapter of the New England Patients' Rights Group,
PO Box 231335, Hartford, CT 06123-1335
1-800-251-7444 www.neprg-ct.com

Quality Healthcare is a Right

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EX 16

*We need
to know when
error happens.*

Four years ago my three-year-old daughter, Andie Mel died during a procedure to insert tubes in her ear to help with chronic ear infections. The doctors' errors were compounded by the fact that the alarm on the monitor was not being operated in a reasonable and customary manner.

This has been an enormous tragedy for our family. We have a small Christmas tree in our living room to remind us of the bright light she brought to our lives.

Andie Mel's death is neither an exception nor an aberration. Complacency, arrogance and simple negligence claim the lives of patients every day. It is critical for health-care customers to know and understand for their own safety. The public must begin to act to protect their own interests.

Rosemary Gibson wrote a book about medical malpractice called the Wall of Silence about medical malpractice. Silence is exactly what confronted us when this disaster happened. My daughter entered surgery in the morning and was declared dead that night. No one apologized; no one admitted a mistake had happened. It took years for the Department of Public Health and the Medical Examining Board to address the problem.

When they did act, it was inadequate. We lost a child. But the physician who practiced such bad medicine was fined just \$5,000 and placed on probation. It is little wonder that CT ranks 40th in the country in getting rid of bad doctors. Only 5% of the doctors commit 50% of the errors. Yet the system is set up to protect its own. It puts the public at enormous risk.

I do not know if the anesthesiologist has committed other errors. I also do not know the history of the surgeon who did the



Andie Mel Meder

operation. He has left the state and no action has been taken against him. When serious malpractice happens, the physicians often do leave the state and set up practice elsewhere. Because these doctors are no longer a threat to a state's residents, Departments of Public Health don't act because their responsibility for the public health stops at the state line. The National Practitioners Data Bank, which can only be accessed by hospitals and Departments of Health, has a 61% error rate.

We need to know when error happens, how it is handled and in what hospitals or

surgical centers. We need to be able to choose doctors based on their malpractice history. As a society we can do this. Because the public needed to have confidence in the US airline system, the industry conceived a strict quality control method. When a plane crashes, or there is even a near miss, there is a national organization that analyzes the crash. We need to have the same system to address medical error. More people are dying unnecessarily in the hands of our healthcare system than on our roads. That is the tragedy.

— George Meder

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Quality Healthcare is a Right

"I knew something was wrong . . . I kept asking for a doctor"



Laura Seckley with her little sister, Rebecca

On September 5, 1997 our daughter Laura was born. Due to negligence our beautiful child will have a lifetime of kidney transplants and disability.

I knew something was wrong during the delivery. I kept asking for a doctor. But the midwife, believing she had more experience than the physician who had only had his license for three months, did not call him. The nurse knew something was wrong, too. But instead of saying something or getting me and my baby some help, she just changed the medical records to show that she notified the midwife of my daughter's tachycardia (rapid heart beat.)

A series of medical errors and judgments led to Laura's damaged kidneys, significant scarring and her projected lifelong need for kidney transplants. This has had a profound effect on my husband and me. I am very afraid to leave her; afraid that something else might happen. My husband is clinically depressed and has had a difficult time with my fear and his beautiful daughter's disability.

Our hope for Laura's future now rests on our ability to hold these people accountable in court. We resent recent moves by doctors and hospitals to limit our rights and blame us for their problems.

I have read a lot since this all happened to us. And what I don't understand is why hospitals don't try to do a better job. If you hurt someone, you need to ask yourself, what went wrong? But the hospitals and the nurses and the doctors just want to pretend that it didn't happen. It is always someone else's fault. I read the Leapfrog Group's recommendations for hospital change. I also read that nothing has been done. Why?

I want our legislature to take some kind of action; mandate that hospitals change procedures. No one there seems to be in charge.

Christie Seckley

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"They just want to pretend that it didn't happen"

Quality Healthcare is a Right

"I don't know why he did nothing while Mia was suffering her injuries"

Mia & Baby Kayleb



Mia House was my baby, the youngest of my eight children. She went into Norwalk Hospital to have a Caesarean section. This was Mia's first child. While she was under anesthesia, Mia was not getting enough oxygen and the doctor who should have been watching did not notice. Mia suffered severe brain damage.

Mia's baby's name is Kayleb. Thankfully, Kayleb was not hurt like Mia. As little Kayleb's grandmother, I will raise her. When I bring Kayleb to the hospital to visit Mia, she cannot hold Kayleb, she cannot speak, and she cannot respond in any way.

Kayleb is still too young to know that, unless we are blessed with a miracle, her mother will not be a part of her life. Someday, though, Kayleb will wonder why her mother is confined to a hospital bed and unable to speak. The answer is why I am here.

The doctor who should have been making sure she got enough oxygen, her anesthesiologist, is named Jay D. Angeluzzi.

I don't know why he did nothing while Mia was suffering her injuries.

But, I do know that he injured another woman in the same way before. Her name is Sadie Kinder Cole. Her husband Herman and Sadie's children suffer as we do. They also have had the heart torn from their family.

After Mia was injured, we learned that Dr. Angeluzzi has been in and out of

psychiatric facilities over the years because of substance abuse. His medical license was on probation in Massachusetts. He even had to leave work because he was unable to function. Despite this, his medical license here in Connecticut was never restricted in any way. The hospital never did anything to protect his patients. That is why Dr. Angeluzzi was able to neglect Mrs. Cole and cause her severe brain damage. We know all of this because Sadie's husband Herman Cole fought the hospital in court to find out the truth.

After injuring Mrs. Cole, you would think that someone from the State would stop Dr. Angeluzzi. You would think that the hospital would protect its patients from this man. You would be wrong. Mia was hurt because the people who should have protected my daughter from this doctor didn't respond to the Cole

family's complaints. Despite his psychiatric problems and the way he devastated Mrs. Cole, Dr. Angeluzzi's medical license and hospital privileges were never restricted.

I am here today because I don't want another family to suffer as we have. Without Mr. Cole's persistence, we still might not know why Mia was hurt. If Norwalk Hospital or the State responded to Mr. Cole, Mia would be at home right now caring for little Kayleb -- holding her daughter in her arms as I once did with Mia. Instead, I will raise Kayleb and she will never know my lovely daughter Mia as she once was.

I ask you, please, protect patient's families. Do not let Mrs. Cole's and my daughter Mia's suffering be in vain.

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EX 14

I agreed to undergo "minimally invasive" surgery. It was supposed to be "routine"...



Gus Velez

I was dealt a terrible blow that will change my entire life.

I write to you today because last year I was a young man with a promising future as a Financial Analyst and upcoming marriage. Then, I was dealt a terrible blow that will change my entire life.

I had an inflamed colon and agreed to undergo "minimally invasive" surgery to correct it. It was supposed to be "routine." I would be in and out in a few days. But the doctor made a horrible blunder. During the surgery the doctor sewed up my aorta, the main artery in my body, stopping blood flow to both of my legs. As a result of that catastrophic error, both legs had to be amputated above the knee.

In medical terms it was an aortic transection with resultant bilateral trans femoral amputation. Translated, that means I have lost two legs and am confined to a wheelchair. What happened to me can be said in one sentence, but the implications of that event fill pages.

My fiancé has become the main breadwinner. I want to work again but I doubt if I will be able to do more than part time for quite awhile. This physical therapy is a lot harder than anything I did on the rugby field. The pain is ongoing and at times excruciating.

This didn't just impact me and my fiancé, my entire family has been affected. My brother and sister had a restaurant that my father had financially committed to. When the focus of the family became my disability and needs, they closed the restaurant and they all suffered financially. But they also got pretty depressed because they wanted to help me, to change the outcome of what had happened to me, and of course, they could not.

I need to tell people what happened to me because I want the public to know that we have healthcare professionals who are incompetent and a system that fails to do anything about it.

Gus Velez

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Quality Healthcare is a Right

*The proposed cap
hurts only the victims...
upon whom physicians
have inflicted
irreparable harm.*

Gindy and Justin Wendo



My son, Justin, now 13, became a quadriplegic at the age of 6. Justin now requires care 24 hours a day. Through no fault of his own, Justin needs someone to feed him, dress him and take care of all his personal needs. In addition to his not being able to use his arms or his legs, his bowels and bladder no longer function. He does not have enough strength in his diaphragm to cough. A tracheotomy tube has to be suctioned several times a day and monitored constantly for blockages.

Justin had a slow growing tumor inside of his spinal cord. After a week of mild symptoms, he was admitted to the hospital when the symptoms became more severe. The tumor was diagnosed the next day and surgery was scheduled for a later date. Justin's condition became slowly worse. Although he was not moving any part of his body, was not eating, and had not gone to the bathroom for over 20 hours, no action was taken to determine if there had been a change in the spinal tumor until Justin stopped breathing and slipped into a coma. At this point, he was put into intensive care, where it was determined the tumor had swelled, compressing his spinal cord. Justin was paralyzed from the neck down.

Justin was in intensive care for 50 days. Imagine the fear he had when he awoke from a coma; unable to move his body. Imagine my pain and helplessness when I looked into his scared eyes, unable to tell him everything would be okay.

Totally dependent upon those around him, Justin must have complete trust in his caregivers. He is at the mercy of anyone who comes in contact with him. Justin now watches from the sidelines at the soccer fields on which he used to play, no longer a participant.

Justin has, and will continue, to face many obstacles in his lifetime. He has already undergone (6) surgeries (two of which were in excess of 8 hours). He will watch as his friends get their drivers' licenses and begin to date. Although a jury decided in July of 2003 that Justin deserved economic and non economic damages to provide financial resources for his future, he will wonder, just as I do, who will take care of him when his father and I are no longer able to do so.

Those in support of capping non economic damages argue that it is needed to save the healthcare industry. Caps on damages are not going to solve the numerous problems within our healthcare system. This "reform" will benefit the insurance companies and protect offending physicians at the expense of the victim. It is incomprehensible to me that a physician would want the pain they inflicted on others to cause further injustice.

Some physicians are threatening to stop practicing in Connecticut and move to another state to avoid paying higher premiums. I currently pay \$9,984.60 per year for health insurance for my family of four. This equates to 22.18% of my salary... there is no cap to the increases that I will have to pay to protect my family.

If the goal truly is to reform the healthcare industry, we need to seek reform in all areas and not target only the weakest - the victims of malpractice. Perhaps legislation should be proposed to place a cap on the amount of insurance premiums and not on the victims of malpractice, who are left to pick up the pieces...

The proposed cap hurts only the victims... upon whom physicians have inflicted irreparable harm.

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Quality Healthcare is a Right

I was diagnosed incorrectly, medicated incorrectly, and lapsed into a coma.



Fred and Bonnie Frank

I was 37 years old and at the top of my career when this happened to me. I was probably 8th in the nation in my field; national and International recruiting. Twenty years ago I contracted a virus and was hospitalized. I was diagnosed incorrectly, medicated incorrectly and lapsed into a coma for two and one half months. That one sentence seems an inadequate way to describe an event that was so profound for my entire family and myself. My wife will go to heaven, no questions asked. My oldest son, at the age of twelve, had to become the "man" of the house. My income had disappeared.

Two and one half months in a coma means that everything atrophied. When I came out of it I had to learn to do everything again: even breathing and talking. I was in rehabilitation therapy for countless months in the hopes of getting back into society. And as soon as I could, I began to volunteer for whatever was in front of me, including coordinating the building of dugouts for my sons' baseball team. I am a doer, an activist.

Eleven years later (and bill collectors never stop asking for their money) I was able to get a job with

Connecticut Independent Living Center of Fairfield County. Today I am President of the Bridgeport Kiwanis, Treasurer of the CT Association of Centers for Independent Living and a member for a litany of other civic organizations:

I know I serve as a role model for people with disabilities because I haven't let mine stop me. I believe in giving back. Personal integrity has been an important asset but eighty percent of my come back had to do with malpractice outcomes. When my malpractice case was litigated there was no damage cap. A legislated cap would have made my emergence as a contributor to our society impossible. When it comes to integrity, the medical profession must do a better job policing itself and acknowledge mistakes when they happen. Otherwise the victim pays twice.

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Quality Healthcare is a Right

Because of poor judgement she was born with cerebral palsy

Five years ago Sydney was born. Because of poor judgment she was born with cerebral palsy.

Sydney has been deprived of many of the activities that are experienced by other children. Sydney has yet to enjoy and probably will not ever enjoy any individual activity and pleasures that we all take for granted. She cannot dress herself; she cannot walk by herself, she cannot feed or communicate very well; she cannot brush her own teeth or bathe herself and she cannot even go to the potty by herself.

On the other hand, she gets to participate in many activities that children with normal physical development don't experience. Sydney gets to have two hours every week of speech therapy, two hours each week of physical therapy; two hours each week of occupational therapy and 45 minutes of aqua therapy and another hour of hippotherapy.

If Sydney were to be compensated for her loss of play time, family time and school time at a modest \$10.00 an hour, her total lifetime compensation would be more than the proposed cap and that's only a very small part of her pain and suffering.

I do not believe that there is a limit on the amount that is due to an individual that has been put into a prison within their own body or has suffered other permanent injury due to the negligence of a medical professional. I do believe that the insurance companies have done a great job in playing the doctors against the injured patient. They get to enjoy their profits and generous salaries at the expense of the physician or the injured.

Recently, many doctors have said that they have been forced into early retirement due to rising insurance premiums. In my industry, trucking, I have seen many trucking companies close operations due to exorbitant insurance increases. Just four years ago the average yearly premium per truck was about \$4500 and today that premium is about \$10,000 - a 220% increase. Yet 15 of the top 25 paid executives in the Hartford area are in the insurance industry with 2002 compensations of up to \$9.58 million with an average increase of 149% in only one year.

The insurance industry is the ultimate beneficiary while both permanently injured patients and good doctors are being financially penalized.

Brian Reich

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Quality Healthcare is a Right

*"My chance for a cure
was thwarted..."*



My name is Mary Dietmann.

My name is Mary Dietmann. I am a 42-year old full-time mother and a part-time nursing instructor I am a victim of medical malpractice.

Today I am battling metastatic breast cancer because the medical system failed me more than four years ago in a series of repeated errors.

In April of 1998, at the age of 36, I found a small mass in my right breast during a self examination. I reported it to my gynecologist. My gynecologist referred me to a radiologist for a mammogram, but he failed to properly refer me to a surgeon for further examination and biopsy, nor did he properly advise me of the need for a follow-up examination.

Compounding my gynecologist's mistakes, my radiologist wrongly reported this diagnostic mammogram as showing no abnormalities when, in fact, the mammogram showed a suspicious lesion in my right breast that should have immediately triggered additional diagnostic tests and treatment.

Only a year later, when I returned to the gynecologist in April of 1999, did the gynecologist refer me to a surgeon when he noticed the small nodule in my breast. Upon examination, the surgeon failed to recommend a biopsy or a follow-up exam. Instead he sent me to a radiologist for an ultrasound of the breast. The radiologist from the same group that misread the prior year's mammogram again missed the clear abnormality on the ultrasound.

Again, my chance for a cure was thwarted by the doctors' negligence.

Not until February of 2000, when I went to the surgeon with dimpling in my breast, was the cancer diagnosed.

By March of 2000, when I finally had a mastectomy at the age of 38, it was already too late; the cancer had spread to 9 out of my 14 lymph nodes.

Because my doctors repeatedly failed to diagnose an obvious cancer at an early and treatable stage, I have endured a limitless amount of pain, suffering, humiliation, physical debilitation, hair loss, and most of all, loss of my life expectancy. Today, I hang on to every day of my life, not knowing when I might have to say goodbye forever to my husband, children, family and friends.

Despite being a nurse myself, and having many friends in the medical community, I ardently oppose efforts by politicians to severely restrict damages in catastrophic cases like mine. If there is any good that can come from my suffering, I hope that my case can convince officials that the answer to rising malpractice costs is to tackle the huge problem of medical error and malpractice instead of blaming the victims.

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QUALITY HEALTHCARE IS A RIGHT

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Ex 16

Was there prescription error and bad medicine practiced? Absolutely!

From May 8th until our mother died on June 23rd 2004, we had someone with her 24 hours a day. We had to. We could make sure medication arrived on time and that it was the right medication. We were the continuity of care that patients so desperately need yet are not getting in today's hospitals.

Confusion over prescription's, differences in what physicians said they were prescribing and what was given, lack of communication on how the drugs were to be delivered, specialists prescribing drugs without a comprehensive understanding of medical history, weekend "blackouts", of care, confusion over who had the ultimate medical responsibility - all were the order of the day.

In today's medical delivery system our family had to understand and coordinate her care in the hands of a pulmonologist, cardiologist, vascular surgeon, primary care physician, colorectal surgeon, and an infectious disease specialist. Add to that the ever-changing nursing staff, and hospital residents and doctors covering for other doctors. With our mother, we lived in a bureaucratic healthcare maze that challenged and frustrated us and put her at great risk. Among all those health "care givers" there was little understanding of the whole person that was my mother. Many times it seemed to be "diagnoses's-by specialty.

Our mother has died. Was there prescription error and bad medicine practiced? Absolutely. Does this rise to a medical malpractice lawsuit? It may not. But one way our family can go forward and honor our mother is to let the public know that they are at risk. Even with 24 hour advocates it is often not enough. We must demand coordinated care, computerized prescription entry and for the elderly, computerized patient care. If doctors cannot talk to each other, perhaps the computer can.



Stephanie Theresa Lukas

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Quality Healthcare is a Right

Twice I asked the doctor to do an ultra sound... She looked at me like I was crazy.



Todd Milhomme — 4 1/2 years old

*"Why should he
and the rest of us
pay for the mistake
that doctor made?"*

Twenty five years ago I was pregnant with our third child. But in the course of my pregnancy I became convinced that I was carrying more than one baby. Twice I asked the doctor to do an ultra sound, he looked at me as if I was crazy. When I experienced a lot of pain at 7 and one half months, the doctor said I should be induced. My labor began and he quickly realized there was something wrong. He called in a specialist and that specialist said to my husband "It's too late, he's already induced her, but she is carrying triplets, Two more weeks and they would have been fine."

Two of my sons died that day. But Todd lived. Since then he has lived with cerebral palsy and learning disabilities.

It is important for you to know that when there is a victim like Todd, the entire family is impacted. I have been a machinist, a department manager and when Todd could work, I worked with him as a janitor. But many times I have had to leave jobs because I had to spend so much time getting Todd what he needed within our school systems, at doctors offices, physical therapists to say nothing of the struggle to get him job coaches and support from social service agencies. Health providers and public institutions seem always to find a reason to not do something rather than provide a helping hand.

We built an apartment for Todd in our basement. We want to see him be able to live as independently as he can. For a while he had a job at a mushroom farm earning \$7.50 an hour. He liked this work. But the farm was closed and his new job, working on a work crew outside, pays just \$4.25 an hour. That's not even minimum wage, but I have to fight for him even to get that.

My two older daughters have been wonderful. We are a close-knit family and support each other in every way we can. We have to fight to get what Todd needs and he needs a lot. We know the costs of malpractice, not just to one victim but to the family members. Capping awards would only make these situations so much worse. I think doctors just don't want to be sued. I would like to see them be as responsible as we have had to be.

I am against capping malpractice awards because taking away Todd's right to confront the doctor responsible for his condition would victimize Todd twice. Why should he and the rest of us pay for the mistake that doctor made?

Sharon Milhomme

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Ex 16

When a doctor destroys the life of his patient he also destroys the lives of her family.



**Agnes Elizabeth Kaldus,
Greenwich Connecticut**

I was crazy about Manhattan. I would get off at Grand Central Station and think I was in Heaven, but very often I would drive into the City. I was a member of the Met. I loved the opera. I was a walker, walked all over town, but mostly in the mornings around the track at a nearby school. I traveled extensively, across the country by car and flew to many countries in Europe. But that's all over now. I'm confined to a wheelchair, in diapers and in pain, all of this because of a flawed diagnosis and incompetence.

On Memorial Day weekend, 1999, my friend and I had plans to spend a nice day. When she called on me to go out, I had garbled speech. She tried to contact my family but no one was home. So, she took me to the hospital. Barbara, who is my sister, arrived shortly thereafter. A neurologist suspected meningitis and asked if he could do a spinal tap saying I may have bleeding to the brain and would be dead within 24 hours. Barbara consulted with an older sister, Caroline, who held a very important position at the hospital at one time. Caroline said that we must trust the doctor and O.K. the request. Immediately after the spinal tap, I had great pain and was sedated. The neurologist and attending nurse disappeared. Barbara heard from the doctor four days later.

My family arrived the next day at the hospital to find me sedated but still in great pain. Barbara telephoned her concern about the great pain I had in my spine to my medical doctors the next morning. My family was pleading with everyone to do something for me. Nothing was being done.

Four days later the neurologist telephoned Barbara to say he wanted to do a further test on my spine because he couldn't get anyone to do an MRI. Barbara said that another sister had been the X-ray technician in charge of that department for over thirty years. Said to mention her name and everyone would come running. When Barbara arrived at the hospital, I was on a gurney going to have an MRI. Shortly thereafter, a concerned neurological surgeon arrived and asked permission to do an laminectomy. He said he didn't know if he could save me medically but that I was paralyzed and incontinent.

At the hospital I was being transferred from the bed to a chair via a lift when the lift collapsed. I fell and received a large hematoma on my head. Several weeks later, I was transferred to a rehab hospital where I was to receive intense physical therapy. The physical therapy was limited because I had bedsores and phlebitis. They were anxious for me to leave. Then I went to a very pretty nursing home. The prescribed doctor hardly ever visited me and later I learned from the local paper, that he had been arrested for being on drugs. A water pipe broke and gushed in through the light fixtures over my bed and saturated my entire room, I was yanked out of bed fast. A few days later I ended in the hospital with an infection. I was transferred to a local nursing home receiving good care despite my frequent returns to the hospital for infections and seizures from over medication. With the first seizure, I bit my tongue in two.

This neglectful episode has taken a toll on my entire family. When a doctor destroys the life of his patient he also destroys the lives of her family. My sister has devoted herself to my care. She is now suffering from a serious back problem and stress. Her husband, although he has had two cancers, problems with his heart and replacement of three joints, takes me out as often as he can along with Barbara. My retirement income, all my personal treasures, and money received from the sale of my home, pays for the costly expenses of the nursing -- over \$10,000 a month. I now have one room instead of a beautiful home.

Again the holidays are approaching and it is so sad. I was considered a good cook and loved to prepare dinners for my friends and family. Holidays were always such a beautiful family gathering. Now I am in a wheelchair and limited to where I can go.

The doctors complain that their insurance costs have increased. If that is so, the obvious reason is because there are too many mistakes being made by careless doctors. I don't know of any doctor who has left his profession because he couldn't afford the increase. Most doctors have a beautiful house, backcountry with all the amenities: boats, fancy cars and second homes. I would like one of them to take my place in the wheelchair in diapers for one week and see how it is.

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Quality Healthcare is a Right

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Ex 16

When mistakes are made hospitals need to tell the truth.

*Testimony before the Insurance Committee
March 4, 2004*

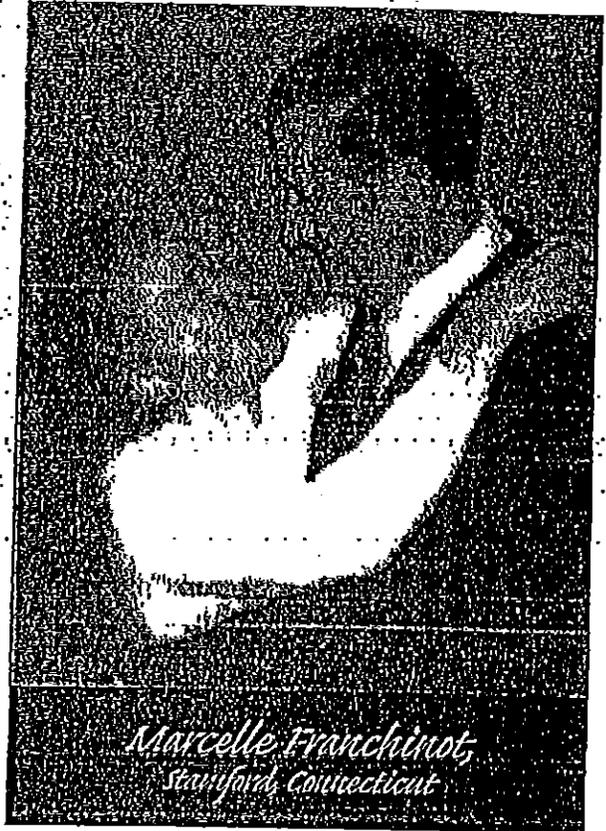
I was born between the wars in a small village in France, near Grenoble. By the time I was 2, both my parents had died and my brother, sister and I were raised by an aunt and uncle. Then the war came and the Germans took over the countryside. My Aunt died because the Germans had a curfew and when her appendix burst the doctor could not go to the small clinic nor come to our house.

But the end of the war brought a new beginning for me. I married and moved to the United States. My husband was very special, not just to me but to his fellow employees at Pliny Bowes and to our relatives and to the good friends we made here. He always had a game he would make up and all our guests would enter in and play. We built a chalet on the side of a hill in Stamford and it reminded me of my origins. We both loved to work outside and garden. We planted trees, built walls and enjoyed our sylvan retreat.

The day before my husband had surgery to remove benign tumors, he rebuilt the railing on our deck. The next day he went in for surgery. Twenty days later he died of an infection, malnutrition and dehydration.

I knew that there was a problem with my husband's condition several days after the surgery when he developed a fever. Whatever caused the lack of continuity in his care, he became severely dehydrated, and just deteriorated before my eyes. After he died, it took me months to obtain his records. The hospital said they would provide them, but just kept stalling and stalling.

We must do something about the quality of our health care in our hospitals. There are too few nurses, and the system of rotating them means that they do not observe the changes in a patient from day to day. Who is in charge? The doctor who runs in for a few minutes in the morning? He or she may not even be the doctor



*Marcelle Franchinot,
Stamford, Connecticut*

who did the surgery. Patients are supposed to bring their own advocates but can they be there every day every minute? Isn't that the job of the hospital?

When mistakes are made hospitals need to tell the truth. Please don't tell me that my husband's surgery was successful. What is happening in our hospitals is the fault of the hospitals and the doctors who commit the errors. The public must be told about what is happening in our hospitals.

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Quality Healthcare is a Right

*At birth, Tony was given
only 24 hours to live...*



TONY JOHN SABIA

Berry Werth wrote a 370 page book called Damages. This book is about the Sabia Malpractice case, the story of what happened to my son Tony — and our family.

My wife Donna went into labor on April 1, 1984. We were expecting healthy twin boys, Michael James Sabia was still born and Tony John Sabia (Little Tony) was barely clinging on to life. Little Tony was given only 24 hours to live, But he did live and now is severely disabled, unable to feed himself, speak, or let us know his needs. Something had gone very wrong. The doctors had known the boys were growing in utero at different rates, but they never considered that this was a high risk pregnancy or delivery.

We always believed that we should take care of Tony at home, and at the beginning it put a severe strain on our family emotionally and financially. I worked two jobs, day and night just to make ends meet, but still fell behind. Finally two years after he was born we contacted a lawyer about filing a medical malpractice lawsuit against the doctor and the hospital. We needed help! I worked so much I missed my kids growing up, my family, my wife, and some things you can never get back. Just think, a doctor's lives with it 5 minutes, 5 days, 5 months, maybe even years, but a family... well it's for life.

It took nearly seven years to resolve this lawsuit, and during that time my family worked hard trying to make ends meet. It didn't work, we just sank deeper and deeper into debt. I saw first hand the big institutions that we were up against. Knowing each of them would fight to protect their own turf. Little Tony didn't seem to matter to these people, not any of the doctors or the insurance companies. Each postured and threatened in order to serve their own needs, and not the needs of my family.

At the beginning I wanted justice! I wanted some kind of acknowledgement that the hospital, doctors, and nurses had screwed up. Instead my family had to settle without that acknowledgement. But financial settlement has eased our burden. If any of those people involved, hospital, doctor, nurse, etc... had to walk in our shoes for one week they would understand that it isn't about the money, it was about survival for my family. Some of the institutions stated "Why should we pay, when he's going to die anyway!" Needless to say Little Tony has had 8 major surgeries in his life and has survived. This does not include the numerous Emergency room and hospitalizations he's had during his life. On April 1, 2005, Tony will be 21 years old. What a big difference from only 24 hours to live.

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Quality Healthcare is a Right

I want my life back.



MARILYN JASMIN

My husband died of a massive coronary when he was just 41 years old. Our youngest had turned two and I had no idea how I would raise our five children. But I was fortunate and found another wonderful man - we have been married now for thirty years and he helped me raise the children. They are smart and good people. We have a close warm family; nineteen grandchildren and they all live in CT.

But what happened to me in May 2002 has changed everything. I am an insulin dependent diabetic and I needed back surgery. The surgeon did an excellent job and everything was fine but he had to go

out of town just after the operation. Three days later I was shipped to a nursing home for recovery, a little bit earlier than planned because the hospital was crowded.

He says he gave orders to give me antibiotics to prevent infection but the nursing home says that they never got those orders.

Six days after the operation I woke up screaming in pain and was ambulated back to the hospital. When the surgeon saw me, I was immediately taken into surgery and filleted like a fish. He scraped and scraped to get the infection out.

Thirty years of savings are now gone and my poor, dear husband, at 74 has gone back to work. Our lives have been turned upside down and I am in pain all the time. Since that day I was returned to the hospital, I have never walked unaided. And now, because of the massive dosages of antibiotics I had to take, I have other medical complications. Now I take prednisone and percocet for the pain. I fall and need a wheelchair.

I can't turn off the pain.

I can't turn off the money problems.

I wish you could have seen me when I was younger. I am so ashamed of how I look now. The steroids have added 60 pounds and it makes it even harder to get around. I wish you could have seen my house when I could clean. I wish you could have seen the garden. I want my life back.

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EX 14

*I continue to
be haunted by
my experience.*

I am a victim of incompetent and negligent anesthesia during my Caesarean on March 9, 2003. The anesthesia team consisted of an MD and a Certified Registered Nurse Anesthetist (CRNA) who failed to diagnose inadequate spinal anesthesia. I did my best to convince the nurse anesthetist who was sitting next to me that I was in pain and that the right side of my abdomen was not numb.

At first she told me that I was just feeling pressure. I persisted with my complaints and she suggested that I breathe through it. I was paralyzed with fear and pain as she dismissed my complaints. As my surgery progressed I said that the anesthesia was wearing off but was ignored.

In the recovery room, I told the CRNA that I could feel my feet. She saw me move them, too. She continued to dismiss my complaints. In addition to suffering incomplete anesthesia during surgery, I had to wait for pain medication after surgery because the anesthesia team failed to place an order for the proper medication, Demerol, until after I arrived in the recovery room. Before surgery I informed the MD that Morphine did not work for me and that I required something else. They failed to place the order before surgery and then had great difficulty locating the Demerol in the building. Throughout ordeal, no one asked about my comfort.



Denise Heinen

When I told the OB about my experience, he too dismissed my complaint. I wrote a letter to the hospital administration and they told me that no one perceived my pain. I filed complaints with the DPH and they chose to do nothing.

"Current anesthesia standards were met," they all said. But current standards do not require anesthetists to

assess and record pain as a vital sign at the same interval as pulse and blood pressure. Solution: Change the standard!

I continue to be haunted by my experience. I now suffer from serious tremors. How could two people, the MD and CRNA, disregard my pleas when their very job is the alleviation of pain?

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Ex 16

My faith and trust in physicians have all but disappeared.

The dictionary defines "frivolous" as "lacking in seriousness, without importance." This is my experience with a "frivolous" malpractice incident in the hands of "healthcare professionals."

It was supposed to be a relatively simple out-patient procedure, and I was assured I'd be home in two hours. I entered the hospital for the placement of a "central line" necessary for IV antibiotics for the treatment of advanced Lyme disease.

The line, inserted by a radiologist, caused me excruciating pain immediately. I screamed. The line had been forced out of my vein, hitting nerves. He continued threading the line through my upper arm, despite my repeated screams. I began to lose feeling in my hand. The doctor removed the first line and inserted a second, this time supposedly correctly. But when I tried to move my arm it flopped lifelessly on the table. I feared I was paralyzed, as did the doctor, who then removed the second line as well. I was suddenly left alone, in tremendous pain, and terrified.

In the recovery room the nurses quickly assessed that I was injured, and ignored me. Eight hours passed. They gave me nothing for pain although I asked repeatedly. I wasn't allowed to make or receive phone calls. I left the hospital, relieved to be going home to seek help. But I was leaving with permanent nerve damage in my hand and a blood clot forming in my chest. I am alive today only because the clot was large enough to lodge inches from my heart, averting a pulmonary embolism.

The only follow-up by the hospital were the efforts to protect itself.

Getting medical help for my injuries turned out to be as painful emotionally as it was physically. For two years, I persevered, seeing 18 specialists. Seventeen wanted nothing to do with me because of the cause of my injuries. Only one tried to help. The doctor who injured me was paid \$5,000.

Six months later I had to go through the same procedure and was petrified. At that time the clot was discovered, I was told that it was "stable." Ten months later I was told to go to the intensive care unit "for the weekend" to dissolve the clot. But another doctor advised me that the risks were too great. I had had a close enough brush with death. So my "stable" clot remains.

When I asked my HMO for an "explanation of benefits" for this "error" and its consequences, it was 49 pages long.



Jeanne Konecny

The financial cost to my HMO? A total of \$28,508 - all caused by a doctor who was never held accountable.

But even more serious than the cost was the falsification of my hospital records. Almost all of the specialists whitewashed the rest of my records. I had a case, but hiring the 6 medical experts to support it proved too costly. So "frivolous lawsuits" sounds more like an oxymoron to me than the reality of medical "errors."

My faith and trust in physicians have all but disappeared. "Do no harm?" Injuries happen and no one is held accountable. No one is responsible, and seemingly no one has a conscience. This has changed me for the rest of my life. My pain reminds me every day.

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EX 16

Her death has never been explained and many questions remain.



Mary Ann Piccolo

My mother and I became very concerned when Mary Ann's behavior changed. She had hot flashes, vomiting, and was sometimes disoriented. Something was going on and we wanted to know what it was. We notified and inquired at the DSS, the DMR and two hospitals for guidance. We were ignored. Even her caseworker ignored us. On June 11, 2001 she began to rock her head back and forth and slipped into a coma. Three months later she died.

The two doctors who treated her told the state of Connecticut Department of Public Health that a seizure had caused her pneumonia. We asked for an investigation. But we were kept in the dark. No doctor spoke with us after her death and the funeral director, stranded in Florida due to 9/11 had her embalmed even though I told him I was consulting with an attorney because I had many questions.

Her death has never been explained and many questions remain. I am as angry at the bureaucratic indifference to her death as I am to the poor care she received. Was it because she was retarded? We were her advocates but even then it didn't help save her life.

I am devoting my life to trying to expose the flaws in our healthcare system. Something must change.

No one will listen. I cannot understand why doctors either promised to get experts and specialists and then didn't, nor can I understand why all of the institutions we dealt with were asked to test and treat this woman carefully because of her retardation and then didn't. No one seems to care that I believe my little sister didn't need to die. She died on September 15, 2001 of pneumonia, and why she died has never been explained to me.

Mary Ann required special care. She was just six years old when it was confirmed that she was mentally retarded and that was in 1962. While she suffered two epileptic seizures as a child, Phenobarbital was highly effective in treating her. She had only two seizures in 15 years.

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Ex 16

My name is Benita Toussaint.

I am a mother of four whose life was turned upside down in 1988. My problems began when I was pregnant with another child. My water broke in the fifth month of the pregnancy and I was admitted to the hospital. By the following day I was running a high fever and the doctor said I would have to be induced. My labor was induced by an untrained intern. The baby died and the placenta would not come out. The doctor punched and punched my stomach and finally put me under.

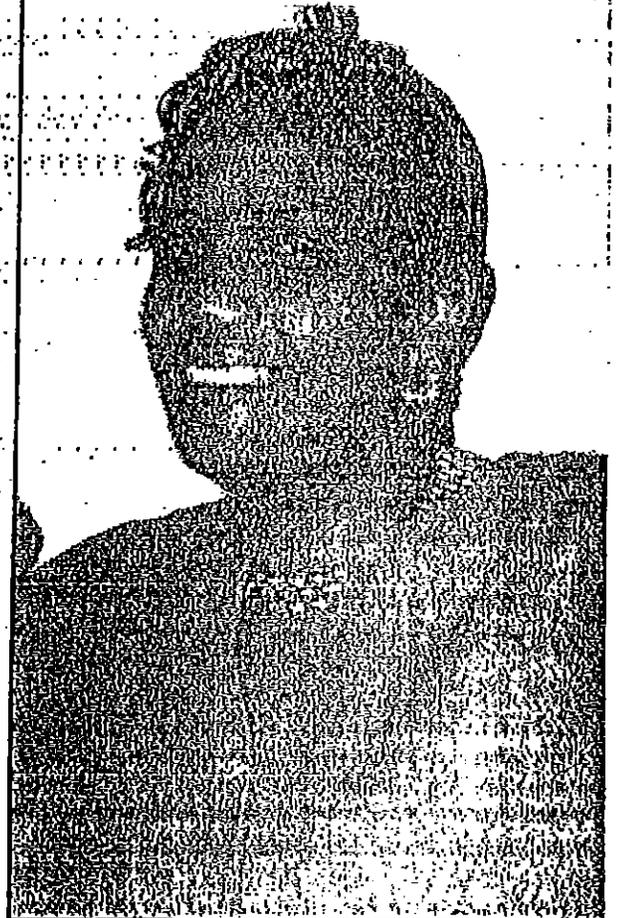
After that I could not hold a pregnancy. I had two more pregnancies and the last of the three was in 1991. This time, the physician mistakenly tied my left ovary and Fallopian tube to a stomach wall. Afterward the pain I experienced for the next 13 years was enormous.

Because of the continuing pain, I was told to go see an orthopedic surgeon. He referred me to a psychiatrist. No one would listen to me about the pain. In our healthcare world, you just keep getting handed off to yet another doctor who won't listen and answer questions.

Finally this past year, 2003, fifteen years after my initial problem began, I was told that the nerve root had grown together and my left ovary and fallopian tube were creating the pain I had been experiencing all these years. In March 2004, another doctor found the harm that had been done to me and had made me so ill. But I still suffer pain and anguish.

How could people so profoundly harm another individual under the guise of care?

*How could people so
profoundly harm
another individual
under the guise of care?*



Benita Toussaint II

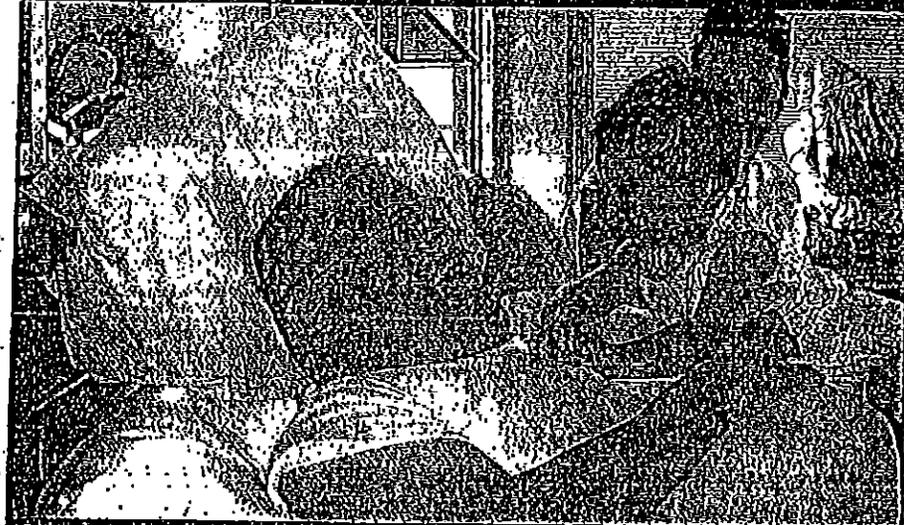
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Ex 16"

"When malpractice occurs it is just the beginning"



RORY FREEMAN

I have always been a fighter and so has my husband, Rory. I have even thought about going to law school to be a more effective advocate and somehow try to do something to change the system.

This all began over 10 years ago when Rory was just 37 and our kids were eight and three. Rory slipped and fell on his back. This began our odyssey through the healthcare industry. Let me be clear. We have had some wonderful physicians to whom we will always be grateful. But we have had incompetent doctors whose arrogance has led to flawed decisions.

Briefly put, a neurosurgeon performed the wrong type of operation, operated on the wrong spinal levels and failed to relieve spinal cord compression and further injured an already injured spinal cord. As a result Rory suffered paralysis, bowel dysfunction, bladder dysfunction, intra operative brain damage, multiple strokes and short term memory loss. Excruciating and disabling pain has led to depression.

As awful as that sounds, it does not really convey the depth and breadth of this experience for our family. Rory is confined to a hospital bed most of the time and that wonderful mind of his, which had a photographic memory, now has cognitive short term memory problems. And our children have grown up not being able to camp or hike or do all those wonderful things kids do with their father.

What I have learned;

- When malpractice occurs it is just the beginning. Because of that error, bad things just keep happening. Rory gets pneumonia about twice a year now. When he has been in rehab or the hospital he sometimes gets staph infections which continue to weaken him. A staph infection that was introduced to his system during his original surgery, continues to recur from time to time, and smaller insults to his system often have grave consequences.

- When one thing goes wrong a hundred things go wrong. You can only do what you can do. Problems continually crop up and we both work to solve them one problem at a time.

- There is no normal - only what has become normal to us. We now have a severely limited access, as individuals and as a couple and as a family, to the texture and diversity that life has to offer.

What we have lost is priceless. Yet it is grossly unfair to place a restriction on our right to justice and recovery in the face of this profound loss. Victims' full access to the courts must be preserved. And every effort must be made to reduce situations of malpractice in the first place.

— Lisa Freeman

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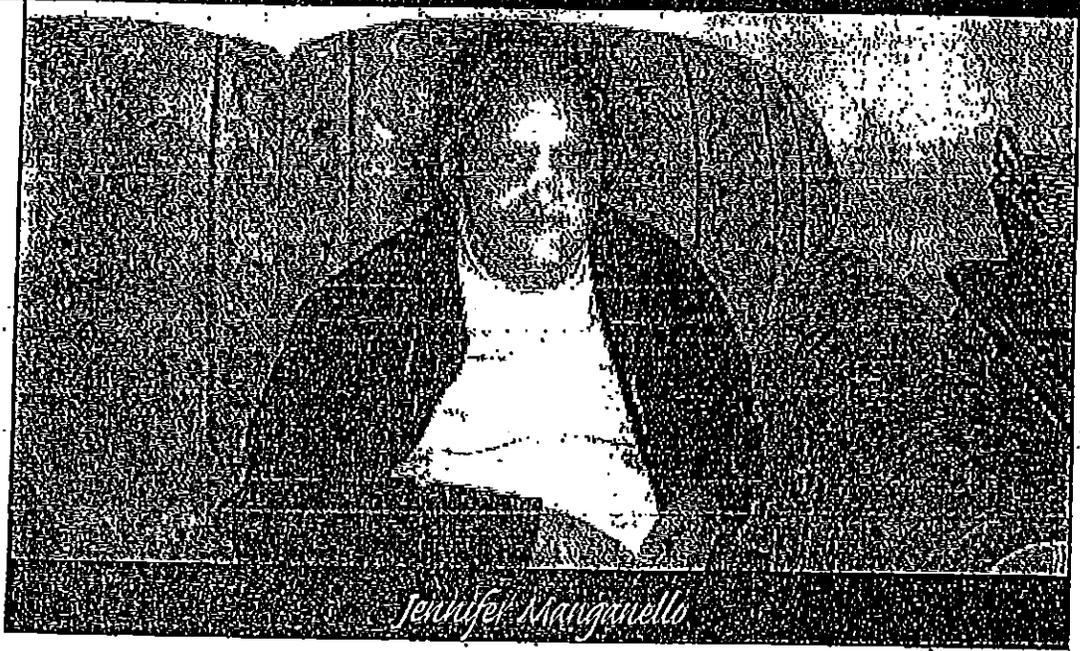
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Ex 16

*She is a prisoner in her own body.
There is no escape.*



Jennifer Manganiello

My daughter Jennifer became significantly disabled following a spinal fusion four years ago. Because her case is still in litigation, I cannot discuss the details of the surgery. She was fifteen years old at the time.

As a result of the surgery she is primarily wheelchair bound and has very little endurance.

Secondary to the nerve damage along the thoracic and lumbar region of the spine, she suffers from a neurogenic bladder, chronic and recurrent urinary infections and reflux from high pressure into the kidneys. Complications have intensified and she was recently diagnosed with end-stage kidney disease. She now requires regular kidney dialysis to stay alive.

Since her original surgery, she has had many hospital stays.

One was for suicidal depression. She is a prisoner in her own body. There is no escape.

Never to run again, work after school, never mind attending school on a regular basis. Who can put a value on that?

She cannot work and cannot live independently. Who will care for her in the years to come?

It is wrong to try to solve this problem of medical malpractice rates by limiting patients' rights. Jennifer's non-economic damages may make the difference between a future with some quality of life and one of a dismal existence in a tax-supported care setting.

Susan Manganiello

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Elizabeth, Patrick, and Mary Ellen Ladd celebrate Peter's first birthday.



"...how disability impacts quality of life."

Our son Peter is 2 years old. He has cerebral palsy, a seizure disorder and a gastrostomy tube in his stomach because of feeding difficulties. He is still unable to roll over, sit, or hold on to objects. He needs adaptive equipment including very expensive feeding chairs, strollers and standers. For tube feeding, Peter requires special medical equipment and a nutritional supplement that costs almost \$200/month. Most of these supplies are not covered by insurance.

We believe that his birth injuries were caused by the negligence of the two doctors who were involved in his delivery. Obvious warning signs were ignored and, as a result, Peter has a lifelong disability.

Doctors are calling for caps on non-economic or "pain and suffering" damages. They say that \$250,000 is enough to compensate Peter for a lifetime of limited abilities and extraordinary challenges. They say that a cap is fair because injured patients will still be paid for economic losses like medical expenses. Well, capping non-economic losses is severely limiting and discriminatory to children (as well as to many women and the elderly) because children are not wage earners.

Non-economic losses are not just about transient or recurrent pain and suffering. They are about compensation

for permanent disability and how disability impacts a person's quality of life. And they are about accountability for negligence.

Everyone needs to pay attention to what caps really mean to the thousands of people out there who are going to be the victims of medical malpractice in the years ahead. If they could visit our home and see what life after medical malpractice is really like they would never accept a future in which their recovery for "pain and suffering" - lifelong disability - would be limited to \$250,000.

We need to continue to make negligent doctors accountable for their actions. Hospitals and doctors must enact the kinds of system reforms that have been shown to prevent medical error. 5% of doctors nationwide commit over half of all malpractice. Why are they still practicing?

Legislators must act - not to limit victims' rights, but to require the medical community to reduce medical error.

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"My father went in for a routine surgery... eleven days later he was dead."



Rudolph A. Passero, Jr.

It's called Polycythemia Vera, the Mediterranean sickle cell disease, an over-abundance of red blood cells. But that's not what killed my father. What killed him was bad medicine and careless decision-making. Based on the recommendation of his primary physician and his urologist, my father went in for a routine surgery to remove his prostate. Eleven torturous days later he was dead.

My Dad's name was Rudolph Anthony Passero, Jr., or Rudy for short. He had been a dentist in Norwalk for many years, and was an important part of the community. He always participated enthusiastically in the many events in which my brother and I were involved. We miss him very much.

At a pre-operation appointment, he informed his urologist that he had Polycythemia Vera and wanted to know if that affected surgical procedures. The physician insisted that it didn't matter; no special measures needed to be taken.

But it did matter. Soon after the first surgery, it became clear that there was a lot of bleeding. The blood of people with PCV doesn't clot like normal people, but the doctors didn't take this into consideration, even as he continued to bleed internally. My father's stomach was badly distended. Strapped to a hospital bed in the recovery room, he repeatedly told my brother and mother that he felt he was not getting enough oxygen.

Over the course of two days and two additional exploratory

surgeries, his problems grew and his health deteriorated rapidly. The doctors knew that there was bleeding but not the extent. He was put into intensive care and on a respirator and lingered in a confused and irritated, drug induced state. Whisked off to a quiet floor in the hospital, my mother, brother or I was by his bedside for more than a week. We were repeatedly urged to take him home, even though he could hardly get out of bed with assistance. On a beautiful summer Sunday, he died of a pulmonary embolism, a large blood clot, ironically, that the doctors say dislodged itself from his leg.

Standard procedure, prior to surgery, for anyone with Polycythemia is to perform a course of blood work over several weeks to prepare the patient's blood to handle the trauma of surgery. A family friend found this information on an internet web site and sent it to us. Sadly it arrived after my dad had died. No one, not his primary physician, surgeon, nor the hospital, has ever explained what happened.

I want to see change in the system. I would like to see mandatory continuing physician education and evaluation to ensure that the pre-operative procedures that might have saved my father's life are known and practiced. Computerized data bases of patients and their conditions, medications and standard courses of care might also be a positive step to improving outcomes.

Most importantly, I want to see accountability. A readily accessible, up-to-date database of doctors and their history of patient care including malpractice settlements, jury awards and actions would help patients make more informed decisions about their health care providers. Doctors with previous settlements or actions, according to the research submitted to the CT General Assembly, often have multiple infractions. This information may have helped our family to be more informed consumers of our health care services instead of blindly trusting the opinions of our doctors who apparently did not do their homework. The medical establishment has waited long enough to institute change. Now it is time to legislate it.

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Quality Healthcare is a Right

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EX 16

It seems that the way to reduce the cost of malpractice is to stop tragic injuries like hers from happening in the first place.



Katty Chavarria

She is a bright little girl trapped in a body that won't work for her.

Katherine, we call her Katty, was born almost five years ago on January 1, 1999. She was our first child and my husband rushed me to the emergency room when I went into labor. I had been diagnosed with a separation of the placenta, bleeding and indications of fetal distress when I was eight months pregnant. But the obstetrical staff gave me a labor-inducing drug, pitocin, and delayed performing a caesarean section. My baby suffered severe oxygen deprivation with resulting brain damage and cerebral palsy.

Katty was in intensive care for two months and has already had two surgeries. She has serious reflux problem and has to be suctioned frequently. She'll never be able to eat-she has what they call a G tube for eating. I can't just leave her because I never know what she might need and I am the one who knows how to do it.

But she is a bright little girl trapped in a body that won't work for her. She gets very frustrated and cries and carries on. But she is smart. We can see her mind working and she has had enough body control to begin to learn how to sign. She can "sign" daddy, hungry, apple, goodbye. I was told she would probably just lie on the floor for most of her life. But that's not true. She is smart and she follows a lot of what is going on around her. She is amazing. She will never be able to cross a street, write her name or live a normal life. But she is still amazing.

Katty faces a lifetime of extraordinary challenges because of her reduced capabilities. Restricting a jury from compensating Katty for the way her life was changed is wrong. It seems that the way to reduce the cost of malpractice is to stop tragic injuries like hers from happening in the first place.

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Quality Healthcare is a Right

I was told it was minor surgery and I would be bringing her home in an hour.



Sadie Cole



My wife Sadie was 36 years old when she went to the hospital to have her tubes tied. I was told it was minor surgery and I would be bringing her home in an hour. It turns out, Sadie had monitors on during the surgery but nobody was paying attention to her blood pressure which had dropped dangerously and damagingly low. Now she is in a coma. And has been in this persistent vegetative state since July 1998.

This should not have happened. Two summers ago the same anesthesiologist was negligent in another case; yet another woman in a coma. The Department of Public Health has concluded that he suffers "from a psychiatric or neurological illness that disables him." But if everyone had paid attention, this physician would never have been allowed to practice unsupervised. Earlier in his career, he had passed out during surgery. He moved to another state, and practiced with supervision. And then he returned to CT. Didn't the hospital check? Didn't the practice he joined

look into his background? Surely nurses and other physicians had noticed he had problems.

Yet no one spoke up. Five percent of the doctors are responsible for over 50 percent of malpractice payouts. CT's Medical Examining Board ranks 40th in the country in getting rid of bad doctors. Their silence is profoundly dangerous.

My family found out tragically that the medical profession is silent about its own problems. And they are silent when a tragedy happens to us. This is a broken system.

I go see my wife everyday and our children visit her often. We hope that someday she will wake up.

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EX 1/6

Matthew Gersz



On January 16, 2001 our family was devastated by the loss of our beautiful son, Matthew David Gersz, at the age of 22. Matt was our first born son and the first grandchild on both sides of the family. You can imagine the joy he brought into all of our lives. From the beginning, he had that cheshire-cat grin and that gleam in his eyes. He always loved joking around, making others laugh and teasing his brother, Peter. He loved all sports and was a good athlete himself. He was a kind, thoughtful, and loyal friend and he had many, from all walks of life. He had a girlfriend, Heather, who he loved dearly, and when he wasn't with her in Boston, he loved family gatherings, going to the movies, fishing, and his favorite activity - going out to eat.

Things began to change for Matt, when at the age of 19, he was in a serious car accident. He was hit broadside by a drunk driver, who left the scene on foot. Matt's injuries were life threatening and he was hospitalized for 13 days. We were overjoyed when Matt fully recovered and he returned to work a few months later. Later that year we noticed changes in Matt. This is when he began seeing Dr. Khu. Matt was given huge amounts of narcotics and controlled substances for scoliosis, a condition that wasn't an issue for Matt. We had no idea he could be prescribed the amounts given, especially since he had no condition to warrant their use. Confidentiality

laws prevented us from obtaining his medical treatment. Family concerns and pleas with Dr. Khu to stop prescribing, were ignored.

Matthew saw Dr. Khu on Jan. 16, 2001, the day of his death, and was given 4 prescriptions, 2 of them post-dated. Matthew died soon after at home. The doctor was charged with manslaughter, reckless endangerment, and post dating scripts. It was at this time that a complaint was filed with the Department of Public Health. We found the two and a half year ordeal with the DPH completely inadequate. We weren't notified of upcoming hearing dates, and when we arrived the hearing would begin late (unprepared lawyer) postponed, excused early and so on. I also provided the attorney with valuable printouts of actual prescriptions where Dr. Khu clearly exceeded recommended dosages on numerous occasions, of which this material was never presented. Most importantly, though, I was refused my request to make a statement. I thought it would be important to let the panel know that my son was perfectly healthy, and didn't require any medication, especially opiates. This past December the panel met with the board. A new committee member suggested the removal of his license. He was immediately shot down by a committee veteran who said, 'taking away a doctors license is too draconian'. The decision the board recommended was a permanent restriction on his license. He can no longer treat chronic pain patients. We were disappointed with this decision as it still puts the public at risk. On Jan 22, 2004 the courts had to do what DPH failed to do, and banned him from practicing for a year. Why the different outcome, when they had the same facts? The truth is the DPH only investigates 8% of complaints against physicians and health care facilities. They are there to protect the health of Connecticut residents. Instead they are putting the public at risk by failing to act promptly and appropriately against these egregious abuses.

I want to see our legislature demand changes. We need a professional, impartial staff to review the cases. We need to insist that physicians file adverse event reports as hospitals are required by law to do. Bad doctors should not be allowed to practice.

Although our family will never recover from the loss of someone so precious to us, it is my hope that these changes will have prevented other families from experiencing the grief we are enduring.

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QUALITY HEALTHCARE IS A RIGHT

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Ex 1/6

EXHIBIT 17

NO. CV 06 5001159

SYLVESTER TRAYLOR, ET AL

SUPERIOR COURT

V.

JUDICIAL DISTRICT OF NEW LONDON
AT NEW LONDON

BASSAM AWWA, M.D., ET AL

JUNE 3, 2009

MEMORANDUM OF DECISION
DISCLOSURE RE: PHONE RECORDS

At a hearing before Honorable James W. Abrams on July 28, 2008, the parties were at issue concerning certain discovery matters in the above matter.

The court ordered the defendant to subpoena the cell phone records of Dr. Awwa, for the period from November 2003 to the end of March 2004, for an in camera review to determine what if anything they would reflect relating to communications between the plaintiff, the plaintiff's decedent and the defendant, Dr. Awwa, a psychiatrist.

There were concerns about the confidential/personal nature of the communications which would be reflected in the returns from the subpoena, thus the in camera review by the court. See § 52-146d of the General Statutes.

FILED

JUN - 3 2009

SUPERIOR COURT - NEW LONDON
JUDICIAL DISTRICT AT NEW LONDON

(c/s 6/3/09)

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EX 17

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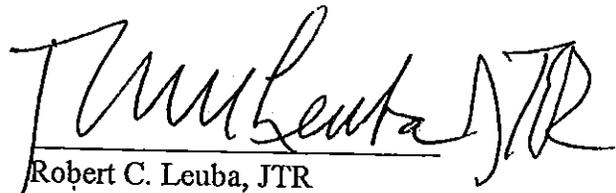
The subpoena was issued on July 30, 2008, for the number (860) 460-8461 the defendant's cell phone. Presumably in response to the same a computer disc was received by the court thereafter and delivered to this court.

The court did an in camera review of the contents of the disc which revealed that only the phone numbers of outgoing calls were reflected. For incoming calls, the defendant's phone number appears. Thus only outgoing calls from Dr. Awwa's cell phone can be connected to another number.

The analysis of the calls reflected for the above period indicates that on March 2, 2004 at 6:44 a.m. a call was placed from the defendant's cell phone to (860) 443-7293, a number identified with the plaintiff. This call lasted six minutes and was the only call identified to any of the plaintiff's telephone numbers.

The disc and the contents will remain confidential until further order of the court.

IT IS SO ORDERED


Robert C. Leuba, JTR

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EX 174

EXHIBIT B

Yale University

School of Medicine
Department of Psychiatry
Connecticut Mental Health Center
Law & Psychiatry Division
34 Park Street
New Haven, Connecticut 06519-1187
Howard Zanana, M.D., Director
Telephone: 203 974-7158
Fax: 203 974-7177

October 18, 2006

Mr. Sylvester Traylor
881 Vauxhall St. Ext.
Quaker Hill, CT 06375

Re: Roberta Traylor

Dear Mr. Traylor,

Pursuant to your request I have reviewed copies of:

1. Treatment records of your wife Roberta by Connecticut Behavioral Health Associates, PC and Dr. Bassam Awwa M.D. Medical Director and treatment provider.
2. A document of the dates that you provided detailing the phone calls that you placed to Dr. Awwa.
3. A letter to Dr. Awwa from Roberta Traylor that was faxed from CBHA (Dr. Awwa's office to Mr. Traylor on 12/28/2005) and was originally dated and faxed on December 23, 2003 to Dr. Awwa.
4. Report from the office of the Chief Medical Examiner, State of Connecticut dated 26 April 2004 stating the cause of death to be carbon monoxide poisoning and the manner of death to be suicide- signed by Edward McDonough III MD
5. Letter from State of Connecticut DMHAS Southeaster Mental Health Authority dated May 16, 2005 to Mr. Traylor summarizing phone contacts regarding his wife Roberta on 11/28/03 by Jeffrey Watson LCSW
6. Complaint June 1, 2006 and Amended Complaint dated July 31, 2006

Mrs Traylor committed suicide on March 1, 2004. She had been seen by Dr. Awwa on 4 occasions: 4/18/02, 1/20/04/2/3/04, and 2/17/04. Between December 23 and February 22, 2004, Mr. Traylor called Dr. Awwa's office approximately 9 times and none of those phone calls were returned. The only call by Dr. Awwa occurred on March 2, 2004 one day after the suicide to inquire, "What happened?"

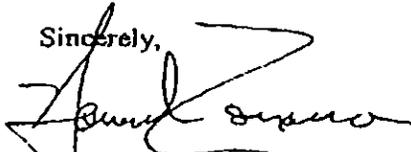
Based on my review of the above documents it appears that Roberta Traylor was being treated for a Major Depressive Disorder, Recurrent, Severe. It is my opinion that the standard of care for psychiatrists treating such patients would require some return of phone calls to at least hear what family members were concerned about so that their experience could be factored into the treatment plan. I saw nothing in the treatment record that indicated that the patient did not want the physician to speak with her husband. I feel that, absent other information, failure to make those calls played a

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Exhibit 17

proximate role in the ultimate death of the patient as it would have added to concerns re suicidality and prompted more active intervention by the physician.

Sincerely,



Howard Zonana MD
Professor of Psychiatry

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Ex 176

EXHIBIT A

1 DOCKET NO. CV06-5001159 : SUPERIOR COURT
2
3 SYLVESTER TRAYLOR, et al : NEW LONDON J.D.
4
5 vs. : AT NEW LONDON
6
7 BASSAM AWWA, et al : JULY 28, 2008
8

9 Motions

10
11 HEARD BEFORE:
12 The Honorable James W. Abrams, Judge
13

14
15
16 APPEARANCES:

17
18
19 For the Plaintiff;

20
21 Andrew Pianka, Esquire
22 86 Buckingham Street
23 Waterbury, Connecticut
24

25
26 For the Defendant;

27
28 Donald Leone, Esquire
29 Chinigo, Leone & Maruzo
30 141 Broadway
31 Norwich, Connecticut
32

33
34
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36
37
38 Recorded by:
39 Robin M. Quinn, Court Monitor
40 Transcribed by:
41 Cheryl C. Straub, Court Reporter

1 point.

2 MR. LEONE: I'm only obligated and I've done
3 what I can to produce that which he has asked. If
4 I'm told by the company and by the client that they
5 don't have them, they destroy them, they're not
6 available, I don't know what else I can do, your
7 Honor.

8 THE COURT: Yeah. No, I'm shocked and it's
9 just -- and I have nothing to base it on, I just
10 always -- I assumed they kept everything.

11 MR. LEONE: For instance, your Honor, I believe
12 and I could be wrong -- Andy, you correct me if I am
13 -- I'm not certain if you've asked for Mr. -- Dr.
14 Awwa's cell phone number. I think at one of the
15 depositions you did but I could be -- the point is,
16 your Honor, he has a subpoena power. Subpoena the
17 phone records. What he's going to get is what --
18 the response that I've gotten, that they don't
19 exist, we don't keep them, we don't have them going
20 back that far and that's -- that's the reality.

21 So, again, I can't produce that which I don't
22 have or have access to.

23 THE COURT: No, no, I understand that. I mean
24 --

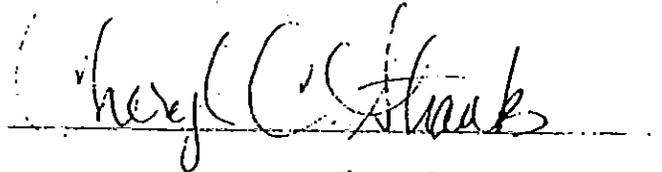
25 MR. LEONE: Well, that addresses, I guess, that
26 issue, your Honor, is my point.

27 THE COURT: I mean, if you could -- if you find

C E R T I F I C A T I O N

By affixing my original signature below, I,
Cheryl C. Straub, Certified Court Reporter, do
hereby certify that the within and foregoing is an
accurate transcription of the audio recording made
by Robin M. Quinn, Court Monitor in the matter of
Sylvester Traylor, et al vs. Bassam Awwa, et al,
heard on the 28th day of July, 2008, before the
Honorable James Abrams, a Judge in the Judicial
District of New London at New London, Connecticut.

Certified this 10th day of December, 2008.



Cheryl C. Straub,
Certified Court Reporter

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Ex 18

COURT OF PROBATE, New London Probate District

DISTRICT NO. PD31

ESTATE OF/IN THE MATTER OF

Roberta M. Traylor (04-0150)

DATE OF CERTIFICATE

February 16, 2012

Valid for:

1 year from this date

FIDUCIARY'S NAME AND ADDRESS

Sylvester Traylor, 881 Vauxhall Street Ext., Quaker Hill,
CT 06375

FIDUCIARY'S POSITION OF TRUST

Administrator

DATE OF APPOINTMENT

March 12, 2004

The undersigned hereby certifies that the fiduciary of the above-named estate has accepted appointment, has executed bond according to law or has been excused from executing bond by will or by statute, and is legally authorized and qualified to act as such fiduciary on said estate because said appointment is unrevoked and in full force as of the above date of certificate.

Limitation, if any, on the above certificate:

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of this Court on the above date of certificate.

Eileen W Bagwell

Eileen Bagwell, Clerk

Court
Seal

NOT VALID WITHOUT COURT OF PROBATE SEAL IMPRESSED