

DOCKET NO.: UWY-CV19-6046456-S : SUPERIOR COURT
ANTHONY ENGALA : J.D. OF WATERBURY
VS. : AT WATERBURY
JOHN A. VISCHIO MD : MARCH 20, 2020
HARTFORD HOSPITAL, ET AL.

**REQUEST TO REVISE PLAINTIFF'S SECOND AMENDED COMPLAINT DATED
SEPTEMBER 26, 2019**

Pursuant to Connecticut Practice Book §10-35, the undersigned defendants, **SCOVILL MEDICAL GROUP, P.C.** and **DR. RALPH TREMAGLIO** hereby request that the plaintiff revise his second amended complaint dated September 26, 2019, in the following ways:

FIRST REQUEST TO REVISE

A. Portion Of Pleading Sought To Be Revised

Count Three, Paragraph 8:

On December 11, 2016, after the fluid aspirated from Engala's left ankle tested positive for Staph aureus, agents, Hartford Hospital alleges that, *servants or employees of Hartford Hospital* placed a call to Scovill Medical Group, which was Engala's primary care provider to inform it of that fact.

B. Requested Revision

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The undersigned defendants request that the plaintiff revise the Complaint by deleting Paragraph 8 or in the alternative identify and describe more completely and with particularity “*servants or employees of Hartford Hospital.*”

C. Reason For Requested Revision

As presently plead, the language used in the above cited paragraph is needlessly vague. The parties against whom the plaintiff is making claims against is highly relevant to various legal arguments and defenses.

A request to revise is proper “[w]henver a party desires to obtain ... the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial, or otherwise improper allegations in an adverse party’s pleading, or ... any other appropriate correction in an adverse party’s pleading.” Practice Book §10-35.

“The proper way to cure any confusion...[about what is being pled] is to file a motion to revise...” Rowe v. Godou, 209 Conn. 273, 279 (1988); *see also* Parsons v. United Technologies, Corp., 243 Conn. 66, 100 (1997). “The [request to revise] has for its limited purpose, the securing of a statement of the material facts upon which the adverse party bases his complaint or defense. The test is not whether the pleading discloses all that the adversary desires to know in aid of his own cause, but whether it discloses the material facts which

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constitute the cause of action or ground of defense.” Kileen v. General Motors Corp., 36 Conn. Supp. 347, 348 (1980) (internal quotation marks omitted).

“A request to revise is permissible to obtain information so that defendant may intelligibly prepare his case for trial[.]” Id. at 349. The complaint must “fully disclose the grounds relied thereon.” Fussenich v. DiNardo, 195 Conn. 144, 148 (1985). It is well settled that the test is whether the complaint “discloses the material facts which constitute the cause of action.” Brooks v. Borten, 8 Conn. Supp. 463 (1940). Where this standard is not satisfied a request to revise under Connecticut Practice Book Section 10-35 is appropriate.

The defendants have the right to be apprised of the allegations levied against them. Revisions may properly be sought to obtain a more complete or particular statement of the allegations in the complaint. Grimes v. Housing Authority, 242 Conn. 236, 251 n.11 (1997).

Here, in the present case “servants or employees” are not specifically identified and it is impossible for the defendants to defend the allegations levied against them. Therefore, this paragraph must be revised.

D. Objection (if any):

SECOND REQUEST TO REVISE

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A. Portion Of Pleading Sought To Be Revised

Count Three, Paragraph 14 subsection H:

Engala's condition, and his resulting harms and losses set forth below, were proximately caused by the negligence and/or carelessness of Tremaglio in one or more of the following ways:

H. *In that he failed to provide the Plaintiff with reasonable care under the circumstances.*

B. Requested Revision

The undersigned defendants request that the plaintiff revise the Complaint by deleting Paragraph 14 subsection H or in the alternative identify and describe more completely and with particularity how defendants “failed to provide the plaintiff with reasonable care under the circumstances.”

C. Reason For Requested Revision

The allegation of negligence set forth in the above cited paragraph is general and vague. In other portions of the complaint, the plaintiff outlines various, specific ways in which he believes the defendants were negligent. However, the above paragraph only contains a broad allegation of negligence that could be utilized to fit any theory the plaintiff develops overtime

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and, therefore, does not adequately put the defendants on notice as to the allegations of negligence being made against them.

A request to revise is proper “[w]henver a party desires to obtain ... the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial, or otherwise improper allegations in an adverse party’s pleading, or ... any other appropriate correction in an adverse party’s pleading.” Practice Book §10-35. The defendants request that the above quoted paragraph be deleted because the same are impermissibly broad, catch-all allegations of negligence that do not put the defendants appropriately on notice and therefore cannot be properly defended against.

“The proper way to cure any confusion...[about what is being pled] is to file a motion to revise...” Rowe v. Godou, 209 Conn. 273, 279 (1988); *see also* Parsons v. United Technologies, Corp., 243 Conn. 66, 100 (1997). “The [request to revise] has for its limited purpose, the securing of a statement of the material facts upon which the adverse party bases his complaint or defense. The test is not whether the pleading discloses all that the adversary desires to know in aid of his own cause, but whether it discloses the material facts which constitute the cause of action or ground of defense.” Kileen v. General Motors Corp., 36 Conn. Supp. 347, 348 (1980) (internal quotation marks omitted).

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“A request to revise is permissible to obtain information so that defendant may intelligibly prepare his case for trial[.]” *Id.* at 349. The complaint must “fully disclose the grounds relied thereon.” *Fussenich v. DiNardo*, 195 Conn. 144, 148 (1985). It is well settled that the test is whether the complaint “discloses the material facts which constitute the cause of action.” *Brooks v. Borten*, 8 Conn. Supp. 463 (1940). Where this standard is not satisfied a request to revise under Connecticut Practice Book Section 10-35 is appropriate.

The defendants have the right to be apprised of the allegations levied against them. Revisions may properly be sought to obtain a more complete or particular statement of the allegations in the complaint. *Grimes v. Housing Authority*, 242 Conn. 236, 251 n.11 (1997). Without a clear and complete articulation of the plaintiff’s allegations, the defendants cannot adequately prepare to refute them.

The above cited paragraph is vague and overly broad in that it contains no concrete identification of what the defendants allegedly did, or did not do, to constitute negligence. This paragraph is an improper catch-all allegation of negligence, which merely restates the legal conclusion that the defendants breached the standard of care. *See Gold v. Greenwich Hosp. Assoc.*, 262 Conn. 248, 254 (2002) (malpractice presupposes some improper conduct in treatment of operative skill). Further, this paragraph does not contain a plain and concise statement of material facts in support of the plaintiff’s allegations of negligence and fails to

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apprise the defendants of the factual basis for the claims being made against them as required by law. *See Pike v. Bugbee*, 115 Conn.App. 820, 828 n. 5 (2009) (stating that “[t]he purpose of fact pleading is to apprise court and defendant of issues to be tried”); *New Milford Savings Bank v. Roina*, 38 Conn. App. 240, 244 (1995) (a complaint “must provide adequate notice of the facts claimed and issues to be tried”).

Courts have regularly required plaintiffs to revise complaints to remove catch-all allegations like the allegation contained in the above cited paragraph. For example, in *Tisch v. Stamford Hospital, et al*, Superior Court, Judicial District of Fairfield at Bridgeport, CV116020610S, the plaintiffs’ objection to removing a similar catch-all allegation, “failed to adequately and properly care for, treat, diagnose, monitor and supervise,” was overruled by both Judge Levin and Judge Gilardi. *See*, Exhibit A. The defendants argued that the all-encompassing catch-all allegation did not give the defendants adequate notice of the claims against them, prevented the defendants from determining whether they had any legal or factual defenses to plaintiffs’ claims and failed to narrow the legal and factual issues for trial. The plaintiffs argued that the defendants were not entitled to know the plaintiffs’ proof but only what they claim as their cause of action. The plaintiffs further argued that the allegation of negligence was not vague. The Court disagreed and ordered that the plaintiffs provide a more specific statement of negligence.

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Additionally, in Duarte v. Norwalk Hospital, Superior Court, Judicial District of Fairfield at Bridgeport, CV095024544, the plaintiff objected to removing a catch-all allegation on the grounds that they were not obligated to reveal their proof but only their cause of action. The Court (Rush, J.) overruled the plaintiff's objection. See, Exhibit B.

Likewise, the plaintiff in Corbin v. Women's Obstetrics and Gynecology, P.C., et al., Superior Court, Judicial District of Fairfield at Bridgeport, CV146045638, objected to removing a catch-all allegation which stated that the defendant "failed to adequately and properly care for, treat, diagnose, and supervise..." The Court (Rush, J.) overruled the plaintiff's objection. See, Exhibit C.

The defendants in Hocker v. Schmidt, et al., Superior Court, Judicial District of Fairfield at Bridgeport, CV156051949, filed a Request to Revise, requesting that the plaintiff delete "catch-all" language claiming that the defendants "failed to adequately and properly care for, treat, diagnose, monitor and supervise the plaintiff's medical condition..." In the alternative, the defendant requested that the plaintiff describe how, when, and in what manner the defendant "failed to adequately and properly care for, treat, diagnose, monitor and supervise the plaintiff's medical condition." The plaintiff objected to same. The Court (Radcliffe, J.) overruled the plaintiff's objection to a majority of the defendants' Request to Revise, concluding that the allegations of "failure to...care for, treat, diagnose...and supervise" were redundant of the

plaintiff's other, more specific allegations of negligence in the remaining subparagraphs. During oral argument, the Court questioned whether this subparagraph was a "conclusion in search of an allegation" and noted that to properly "care for, treat, and diagnose" a patient represents the standard of care. See, Exhibit D at pp. 16-22. Similarly, in the present case, the language, "failed to provide the plaintiff with reasonable care under the circumstances" represents the standard of care and the defendants request that the plaintiff describe how the defendants "failed to provide the plaintiff with reasonable care under the circumstances."

Furthermore, the defendants in Katie O'Connor Admin. of the Estate of Stephen M. O'Connor, et al v. St. Mary's Hospital, Inc, et al, Docket No. FBT- CV18- 6078451-S Judicial District of Fairfield at Bridgeport, filed a Request to Revise, requesting that the plaintiff delete "catch-all" language claiming that the defendants "failed to adequately and properly care for, treat, diagnose, monitor and supervise..." the plaintiff's medical condition. In the alternative, the defendants requested that the plaintiff describe with particularity how the defendants "failed to adequately and properly care for, treat, diagnose, monitor and supervise" the plaintiff's medical condition. The plaintiff objected to same. The Court (*Stewart, J.*) overruled the plaintiff's objection. See, Exhibit E.

Ultimately, if the above cited paragraph is permitted to remain in the plaintiff's complaint, the plaintiff would be able to argue a practically infinite number of negligence

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theories at trial, unfairly complicating proceedings. *See generally* Bourquin v. Melsungen, 40 Conn. App. 302, 312 (1996) (stating that “since the unamended complaint contained a general allegation that the hospital had failed to exercise the care of reasonably prudent persons under the circumstances, the door had been left open to the proof of any acts that might reasonably tend to prove negligence in the context of the facts pleaded”); New Haven v. Torrington, 132 Conn. 194, 199 (1945) *overruled on other grounds* Anderson v. Bridgeport, 134 Conn. 260, 56 A.2d 650 (1947) (recognizing that a plaintiff’s legal theory may be hard to pin down if a complaint is not clarified and this may allow plaintiff to argue at trial or on appeal that the vague allegations support several legal theories); Morcarski v. Palmer, 132 Conn. 349, 355 (1945) (objection at trial on ground that evidence is outside allegations of complaint difficult to sustain if complaint is broad and vague).

Here, the plaintiff makes a catchall statement that defendants failed to provide the plaintiff with reasonable care under the circumstance without describing with particularity what “reasonable care” that the defendants failed to provide. As such, this paragraph in the plaintiff’s complaint must be deleted or revised.

D. Objection (if any)

THIRD REQUEST TO REVISE

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A. Portion Of Pleading Sought To Be Revised

Count Three, Paragraph 15:

As a direct and proximate result of Scovill's negligence and/or carelessness Engala was caused to suffer worsening septic arthritis in his left ankle and as a result was required to undergo significant *additional medical procedures and treatments* and will likely be required to undergo further such treatments in the future

B. Requested Revision

The undersigned defendants request that the plaintiff revise the Complaint by deleting Paragraph 15 or in the alternative identify and describe more completely and with particularity what "additional medical procedures and treatments" that plaintiff will be required to undergo.

C. Reason For Requested Revision

"The proper way to cure any confusion...[about what is being pled] is to file a motion to revise..." Rowe v. Godou, 209 Conn. 273, 279 (1988); *see also* Parsons v. United Technologies, Corp., 243 Conn. 66, 100 (1997). "The [request to revise] has for its limited purpose, the securing of a statement of the material facts upon which the adverse party bases his complaint or defense. The test is not whether the pleading discloses all that the adversary desires to know in aid of his own cause, but whether it discloses the material facts which constitute the cause of action or ground of defense." Kileen v. General Motors Corp., 36 Conn. Supp. 347, 348 (1980) (internal quotation marks omitted).

“A request to revise is permissible to obtain information so that defendant may intelligibly prepare his case for trial[.]” *Id.* at 349. The complaint must “fully disclose the grounds relied thereon.” *Fussenich v. DiNardo*, 195 Conn. 144, 148 (1985). It is well settled that the test is whether the complaint “discloses the material facts which constitute the cause of action.” *Brooks v. Borten*, 8 Conn. Supp. 463 (1940). Where this standard is not satisfied a request to revise under Connecticut Practice Book Section 10-35 is appropriate.

D. Objection (if any)

FOURTH REQUEST TO REVISE

A. Portion Of Pleading Sought To Be Revised

Count Four Paragraph 8:

On December 11, 2016, after the fluid aspirated from Engala's left ankle tested positive for *Staphylococcus aureus*, agents, Hartford Hospital alleges that *servants or employees* of Hartford Hospital placed a call to Scovill Medical Group, which was Engala's primary care provider, to inform it of that fact.

B. Requested Revision

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The undersigned defendants request that the plaintiff revise the Complaint by deleting Paragraph 8 or in the alternative identify and describe more completely and with particularity what “servants or employees” of Hartford Hospital placed a call to Scovill Medical Group.

C. Reason For Requested Revision

See First Reason For Requested Revision.

D. Objection (if any)

FIFTH REQUEST TO REVISE

A. Portion Of Pleading Sought To Be Revised

Count Four Paragraph 14 subsection H:

Engala's condition, and his resulting harms and losses set forth below, were proximately caused by the negligence and/or carelessness of Tremaglio in one or more of the following ways:

In that he failed to provide the Plaintiff with reasonable care under the circumstances.

B. Requested Revision

The undersigned defendants request that the plaintiff revise the Complaint by deleting Paragraph 14 subsection H or in the alternative identify and describe more completely and

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with particularity how the defendants “failed to provide the plaintiff with reasonable care under the circumstances”.

C. Reason For Requested Revision

See Second Reason For Requested Revision.

D. Objection (if any)

SIXTH REQUEST TO REVISE

A. Portion Of Pleading Sought To Be Revised

Count Four Paragraph 15:

As a direct and proximate result of Tremaglio's negligence and/or carelessness, Engala was caused to suffer worsening septic arthritis in his left ankle, and as a result was required to undergo significant additional medical procedures and treatments, and will likely be required to undergo further such treatments in the future.

B. Requested Revision

The undersigned defendants request that the plaintiff revise the Complaint by deleting Paragraph 14 subsection H or in the alternative identify and describe more completely and

with particularity what “additional medical procedures and treatments” that plaintiff will be required to undergo.

C. Reason For Requested Revision

See Third Reason For Requested Revision.

D. Objection (if any)

THE DEFENDANTS,
SCOVILL MEDICAL GROUP, P.C.,
AND DR. RALPH TREMAGLIO

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CERTIFICATION

This is to certify that on this 20th, day of March a copy of the foregoing was sent either via electronic mail or mailed, postage prepaid to all counsel and pro-se parties of record to:

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EXHIBIT

A

DOCKET NO.:FBT-CV11-6020610-S : SUPERIOR COURT
WENDY AND RICHARD TISCH : JD OF FAIRFIELD/
vs. : BRIDGEPORT
AT BRIDGEPORT
THE STAMFORD HOSPITAL, ET AL. : OCTOBER 11, 2011

REQUEST TO REVISE

Pursuant to Connecticut Practice Book Section 10-35, et. Seq., the defendants, Dr. Brian Hines and Urogynecology & Pelvic Surgery, LLC (herein after referred to as the undersigned defendants) respectfully request that the plaintiffs revise their complaint as detailed below:

FIRST REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Three, entitled WENDY TISCH v. UROGYNECOLOGY & PELVIC SURGERY, LLC, paragraph 5:

While under care, treatment, monitoring, diagnosing and supervision of the defendant, UROGYNECOLOGY & PELVIC SURGERY, LLC and its servants, agents, apparent agents and/or employees, WENDY TISCH suffered serious, severe, painful injuries as hereinafter set forth in Paragraph 7.

2. Requested Revision

Identify the "servants, agents, apparent agents and/or employees" who cared for, treated, monitored, diagnosed, and/or supervised Mrs. Tisch.

3. Reason for Requested Revision

Connecticut is a fact-pleading state and it is incumbent upon the plaintiff to file a plain and concise statement of the facts pursuant to §10-1 of the Connecticut Practice Book. "The purpose of the complaint is to limit the issues to be decided at the trial..." Borkowski v. Sachell, 43 Conn.App. 294, 320 (1996), citing to Farrell v. St. Vincent's Hosp., 203 Conn. 554 (1987). The idea behind a limited complaint is to prevent surprise at the time of trial. See, Id.. What is in issue is determined by the pleadings and, once they have been filed, the evidence offered must be relevant to the issues raised in the pleadings. Id. at 320-321. "Only those issues raised by the plaintiffs in the latest complaint can be tried before the jury." Farrell v. St. Vincent's Hosp., 203 Conn. at 558.

The plaintiffs' Complaint identifies several defendants in this case. The plaintiffs claim that there are additional unidentified "servants, agents, apparent agents and/or employees" who treated Mrs. Tisoli and goes on to identify "Grace Hiner" as such a servant, agent, apparent agent and/or employee of the undersigned defendant. If there are additional individuals, the plaintiff, they should identify same and allow the undersigned to investigate the claims being made against those individuals.

The plaintiff will claim that such information is evidence, and not properly within the scope of pleading, but the Complaint must put the defendant on notice of the claims being made against it. See Ferrell v. St. Vincent's Hosp., 203 Conn. 554, 557 (1987).

If the allegations are limited to only Dr. Hines and Grace Hiner, then the scope of the allegations should be narrowed. The plaintiff had access to the medical records prior to initiating this lawsuit, therefore, identification of these "servants, agents, apparent agents and/or employees" should not be difficult.

4. Objection

SECOND REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Three, entitled WENDY TISCH v. UROGYNECOLOGY & PELVIC SURGERY, LLC, paragraph 6:

6. Said injuries suffered by WENDY TISCH were caused by the failure of the defendant, UROGYNECOLOGY & PELVIC SURGERY, LLC and its servants, agents, apparent agents, and/or employees, to exercise reasonable care under all of the circumstances then and there present in that they:

- a. failed to adequately and properly care for, treat, diagnose, monitor and supervise WENDY TISCH for an abnormality on her July 1, 2008 chest x-ray;
- b. failed to follow-up on WENDY TISCH'S July 1, 2008 chest x-ray report;
- c. failed to obtain a copy of WENDY TISCH'S July 1, 2008 chest x-ray report;
- d. failed to review the results of WENDY TISCH'S July 1, 2008 chest x-ray report;
- e. failed to order and send WENDY TISCH for additional chest x-ray views following the July 1, 2008 chest x-ray;
- f. failed to order and send WENDY TISCH for chest CT Scan following the July 1, 2008 chest x-ray;
- g. failed to adequately and properly supervise its servants, agents, apparent agents and/or employees including but not limited to Grace Hince;
- h. failed to maintain proper medical records;
- i. failed to provide physicians and surgeon who possess the requisite knowledge, skill and experience to adequately and properly care for, treat, diagnose, monitor and supervise WENDY TISCH;
- j. failed to promulgate and/or enforce rules, regulations, standards and protocols for the care and treatment of patients such as WENDY TISCH.

2. Requested Revision

Identify the "servants, agents, apparent-agents, and/or employees" who allegedly failed to exercise reasonable care.

3. Reason for Requested Revision

See above request revision and reason for the same of Count Three, Paragraph 5 (Second Requested Revision)

4. Objection, if any:

THIRD REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Three, entitled WENDY TISCH v. UROGYNECOLOGY & PELVIC SURGERY, LLC, paragraph 6a,

Said injuries suffered by WENDY TISCH were caused by the failure of the defendant, UROGYNECOLOGY & PELVIC SURGERY, LLC and its servants, agents, apparent agents, and/or employees, to exercise reasonable care under all of the circumstances then and there present in that they:

- a. failed to adequately and properly care for, treat, diagnose, monitor and supervise WENDY TISCH for an abnormality on her July 1, 2008 chest x-ray

2. Requested Revision

The undersigned defendant respectfully requests that the plaintiff specify how it failed to adequately and properly care for, treat, diagnose, monitor and supervise Mrs. Tisch for an abnormality on her July 1, 2008 chest x-ray, or delete this allegation in its entirety.

3. Reason for Requested Revision

As currently pled the plaintiffs' Complaint alleging that the undersigned defendant "failed to adequately and properly care for, treat, diagnose, monitor and supervise [Mrs. Tisch] for an abnormality" does nothing to put the undersigned defendants on notice of the claims of negligence. Specifically, the Complaint does absolutely nothing to provide the

undersigned defendant with any notice of how it failed to adequately and properly care for, treat, diagnose, monitor and supervise Mrs. Tisch for an abnormality.

Significant prejudice to the undersigned defendant will result if the above paragraph is permitted to remain in the Complaint. While the undersigned defendant will engage in diligent discovery efforts, this sweeping allegation would permit an unreasonable risk of unfair surprise at trial, and will hamper the defendant's ability to conduct discovery and mount a defense in the interim. What the plaintiffs are trying to accomplish with this subparagraph is preserve their right to offer evidence of any alleged negligence at the time of trial. This is impermissible under the fact-pleading standard in Connecticut. See CONN. PRACTICE BK. §10-1.

"[A] complaint must fairly put the defendant on notice of the claims of negligence against him." Farrell v. St. Vincent's Hosp., 203 Conn. 554, 557 (1987). "The purpose of the complaint is to limit the issues to be decided at the trial..." Borkowski v. Sachet, 43 Conn.App. 294, 320 (1996), citing to Farrell v. St. Vincent's Hosp., 203 Conn. 554 (1987). The idea behind a limited complaint is to prevent surprise at the time of trial. See, Id. Permitting the plaintiffs to plead in such a broad manner places absolutely no restriction on the issues to be decided at trial, and gives the defendants little notice as to the claims being made. See Wafai v. Chaddha, 218 Conn. 200, 205 (1991).

Because Count Three, Paragraph 6a makes no effort to apprise the undersigned defendant of the factual basis for the allegation against it and fails to provide any additional material facts in support of the plaintiffs' claim of negligence, the above referenced Count must be deleted from the Complaint in its entirety.

4. Objection, if any:

COURTE REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Three, entitled WENDY TISCH v. UROGYNECOLOGY & PELVIC SURGERY, LLC, paragraph 6g,

Said injuries suffered by WENDY TISCH were caused by the failure of the defendant, UROGYNECOLOGY & PELVIC SURGERY, LLC and its servants, agents, apparent agents, and/or employees, to exercise reasonable care under all of the circumstances then and there present in that they:

g. failed to adequately and properly supervise its servants, agents, apparent agents and/or employees including but not limited to Grace Hiner;

2. Requested Revision

Identify the "servants, agents, apparent agents, and/or employees" who were not adequately and/or properly supervised.

3. Reason for Requested Revision

See above request revision and reason for the same of Count Three, Paragraph 5 (Second Requested Revision)

4. Objection, if any:

HERE REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Three, entitled WENDY TISCH v. UROGYNECOLOGY & PELVIC SURGERY, LLC, paragraph 7f

7. As a result of the carelessness and negligence of the defendant, UROGYNECOLOGY & PELVIC SURGERY, LLC and its servants, agents, apparent agents and/or employees, WENDY TISCH suffered the following serious, severe, painful and permanent injuries:

f. loss of chance to be diagnosed earlier with lung cancer;

2. Requested Revision:

That the plaintiff describe more completely and with particularity what causes of action are being alleged against the undersigned defendant. If the plaintiff alleges separate and distinct causes of action, i.e. for negligence and loss of chance, then the plaintiff is requested to separate the distinct causes of action as to the undersigned defendant into separate and distinct counts. As it currently stands, this Count incorporates both a negligence claim and a claim for loss of chance - which is impermissible.

3. Reason for Requested Revision

As the Complaint is drafted it is unclear how many causes of action are being claimed and incorporated as the count incorporates both a negligence claim and a claim for loss of chance.

Separate and distinct causes of action should be set forth in separate counts, Practice Book §10-26; Falby v. Zarembecki, 221 Conn. 14, 24 (1992). "A cause of action is that single group of facts which is claimed to have brought an unlawful injury to the plaintiff and which entitles the plaintiff to relief." *Id.*

Loss of Chance is a separate and distinct cause of action. "In a loss of chance case, a tortfeasor, through his [negligent failure to act], causes an individual to lose a chance to avoid some form of physical harm from a preexisting medical condition." (Internal quotation marks omitted.) Carrano v. Yale-New Haven Hospital, 279 Conn. 622, 659 n. 31, 904 A.2d 149 (2006). In such cases, the plaintiff must show that "if proper treatment had been given, better results would have followed." (Internal quotation marks omitted.) Boone v. William W. Backus Hospital, 272 Conn. 551, 573, 864 A.2d 1 (2005). "Connecticut recognizes a cause of action for lost chance . . . [and follows] a traditional approach in the determination of proximate cause." (Citations omitted.) Poulin v. Yarnes, 64 Conn.App. 730, 744, 781 A.2d 422, cert. denied, 258 Conn. 911, 782 A.2d 1245 (2001).

"To prevail on [a loss of chance] claim, a plaintiff must show (1) that he has in fact been deprived of a chance for successful treatment and (2) that the decreased chance for successful treatment more likely than not resulted from the defendant's negligence. In other words, the plaintiff must show that what was done or failed to be done probably would have

affected the outcome." (Citation omitted; internal quotation marks omitted.) LaBianca v. Baker, 11 Conn.App. 199, 207, 525 A.2d 1341 (1987). "[I]t is not sufficient for a lost chance plaintiff to prove merely that a defendant's negligent conduct has deprived him or her of some chance; in Connecticut, such plaintiff must prove that the negligent conduct more likely than not affected the actual outcome." (Internal quotation marks omitted.) Boone v. William W. Backus Hospital, 272 Conn. at 574, 364 A.2d 1.

This requested revision seeks to clarify and distinguish the allegations against the undersigned defendant so that the undersigned may properly respond to the Complaint. Furthermore, combining two causes of action into one count not only makes it impossible to answer the complaint with clarity and accuracy, but it also prevents the undersigned defendant from filing a motion to strike or other responsive pleading.

4. Objection; if any:

SIXTH REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Three, entitled WENDY TISCH v. UROGYNECOLOGY & PELVIC SURGERY, LLC, paragraph 7g:

7. As a result of the carelessness and negligence of the defendant, UROGYNECOLOGY & PELVIC SURGERY, LLC and its servants, agents, apparent agents and/or employees, WENDY TISCH suffered the following serious, severe, painful and permanent injuries:

g. loss of chance to be treated earlier for lung cancer;

2. Requested Revision

That the plaintiff describe more completely and with particularity what causes of action are being alleged against the undersigned defendant. If the plaintiff alleges separate and distinct causes of action, i.e. for negligence and loss of chance, then the plaintiff is requested to separate the distinct causes of action as to the undersigned defendant into separate and distinct counts. As it currently stands, this Count incorporates both a negligence claim and a claim for loss of chance – which is impermissible.

3. Reason for Requested Revision

See above request revision and reason for the same of Count Three, Paragraph 7f (Fifth Requested Revision)

4. Objection

SEVENTH REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Five, entitled WENDY TISCH v. BRIAN HINES, paragraph 4:

4. Commencing on or about July 1, 2008 and continuously until on or about July 10, 2008, for the same or similar condition, the defendant, BRIAN HINES and his servants, agents, apparent agents and/or employees, undertook the care, treatment, monitoring, diagnosing and supervision of WENDY TISCH for pre-operative testing, including a chest X-ray.

2. Requested Revision

Identify the "servants, agents, apparent agents and/or employees" of Dr. Hines who treated Mrs. Tisch. Otherwise, this phrase should be deleted in its entirety.

3. Reason for Requested Revision

See above request revision and reason for the same of Count Three, Paragraph 5 (Second Requested Revision)

4. Objection, if any:

EIGHTH REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Five, entitled WENDY TISCH v. BRIAN HINES, paragraph 5:

5. While under the care, treatment, monitoring, diagnosing and supervision of the defendant, BRIAN HINES and his servants, agents, apparent agents and/or employees, WENDY TISCH suffered serious, severe, painful and permanent injuries as hereinafter set forth in Paragraph 7.

2. Requested Revision

Identify the "servants, agents, apparent agents and/or employees" of Dr. Hines who were allegedly negligent. Otherwise, this phrase should be deleted in its entirety.

3. Reason for Requested Revision

See above request revision and reason for the same of Count Two, Paragraph 5 (Second Requested Revision)

4. Objection, if any:

NINTH REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Five, entitled WENDY TISCH v. BRIAN HINES, paragraph 6:

6. The said injuries suffered by WENDY TISCH were caused by the failure of the defendant, BRIAN HINES and his servants, agents, apparent agents and/or employees, to exercise that degree of Care and skill ordinarily and customarily used by physicians and surgeons specializing in obstetrics and gynecology under all of the circumstances then and there present in that he:

- a. Failed to adequately and properly care for, treat, diagnose, monitor and supervise WENDY TISCH for an abnormality on her July 1, 2008 chest x-ray;
- b. Failed to follow-up on WENDY TISCH'S abnormal July 1, 2008 chest x-ray;
- c. Failed to obtain a copy of WENDY TISCH'S July 1, 2008 chest x-ray report;
- d. Failed to review the results of WENDY TISCH'S July 1, 2008 chest x-ray report;
- e. Failed to order and send WENDY TISCH for additional chest x-ray views following the July 1, 2008 chest x-ray;
- f. Failed to order and send WENDY TISCH for a chest CT scan following the July 1, 2008 chest x-ray;
- g. Failed to adequately and properly supervise his servants, agents, apparent agents and/or employees including but not limited to Grace Miller;
- h. Failed to maintain proper medical records.

2. Requested Revision

Identify the "servants, agents, apparent agents and/or employees" of Dr. Hines who cared for, treated, monitored, diagnosed and/or supervised Mrs. Tisch. Otherwise, this phrase should be deleted in its entirety.

3. Reason for Requested Revision

See above request revision and reason for the same of Count Three, Paragraph 5 (Second Requested Revision)

4. Objection, if any:

TENTH REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Five, entitled WENDY TISCH v. BRIAN HINES, paragraph 6a:

6. The said injuries suffered by WENDY TISCH were caused by the failure of the defendant, BRIAN HINES and his servants, agents, apparent agents and/or employees, to exercise that degree of Care and skill ordinarily and customarily used by physicians and surgeons specializing in obstetrics and gynecology under all of the circumstances then and there present in that he:

- a. Failed to adequately and properly care for, treat, diagnose, monitor and supervise WENDY TISCH for an abnormality on her July 1, 2008 chest x-ray;

2. Requested Revision

The undersigned defendant respectfully requests that the plaintiff specify how he failed to adequately and properly care for, treat, diagnose, monitor and supervise Mrs. Tisch for an abnormality, or delete this allegation in its entirety.

3. Reason for Requested Revision

As currently pled the plaintiffs' Complaint alleging that the undersigned defendant "failed to adequately and properly care for, treat, diagnose, monitor and supervise [Mrs. Tisch] for an abnormality" does nothing to put the undersigned defendant on notice of the claims of negligence. Specifically, the Complaint does absolutely nothing to provide the

undersigned defendant with any notice of how he failed to adequately and properly care for, treat, diagnose, monitor and supervise Mrs. Tisch for an abnormality.

Significant prejudice to the undersigned defendant will result if the above paragraph is permitted to remain in the Complaint. While the undersigned defendant will engage in diligent discovery efforts, this sweeping allegation would permit an unreasonable risk of unfair surprise at trial, and will hamper the defendant's ability to conduct discovery and mount a defense in the interim. What the plaintiffs are trying to accomplish with this subparagraph is preserve their right to offer evidence of any alleged negligence at the time of trial. This is impossible under the fact-pleading standard in Connecticut. See CONN. PRACTICE BR. §10-1.

"[A] complaint must fairly put the defendant on notice of the claims of negligence against him." Farrell v. St. Vincent's Hosp., 203 Conn. 554, 557 (1987). "The purpose of the complaint is to limit the issues to be decided at the trial..." Borkowski v. Sachetti, 43 Conn.App. 294, 320 (1996), citing to Farrell v. St. Vincent's Hosp., 203 Conn. 554 (1987). The idea behind a limited complaint is to prevent surprise at the time of trial, See, Id.. Permitting the plaintiffs to plead in such a broad manner places absolutely no restriction on the issues to be decided at trial, and gives the defendants little notice as to the claims being made. See Wafsi v. Chaddha, 210 Conn. 200, 205 (1991).

Because Count Five, Paragraph 6a makes no effort to apprise the undersigned defendant of the factual basis for the allegation against him and fails to provide any additional material facts in support of the plaintiffs' claim of negligence, the above referenced Count must be deleted from the Complaint in its entirety.

4. Objection; if any:

ELEVENTH REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Five, entitled WENDY TISCH v. BRIAN HINES, paragraph 6g:

6. The said injuries suffered by WENDY TISCH were caused by the failure of the defendant, BRIAN HINES and his servants, agents, apparent agents and/or employees, to exercise that degree of Care and skill ordinarily and customarily used by physicians and surgeons specializing in obstetrics and gynecology under all of the circumstances then and there present in that he:

g. Failed to adequately and properly supervise his servants, agents, apparent agents and/or employees including but not limited to Grace Hiner

2. Requested Revision

Identify the "servants, agents, apparent agents and/or employees" who treated Dr. Hines failed to supervise. Otherwise, this phrase should be deleted in its entirety.

3. Reason for Requested Revision

See above request revision and reason for the same of Count Three, Paragraph 5 (Second Requested Revision)

4. Objection, if any:

TWELFTH REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Five, entitled WENDY TISCH v. BRIAN HINES, paragraph 7f

7. As a result of the carelessness and negligence of the defendant, UROGYNECOOGY & PELVIC SURGERY, LLC and its servants, agents, apparent agents and/or employees, WENDY TISCH suffered the following serious, severe, painful and permanent injuries:

f. loss of chance to be diagnosed earlier with lung cancer;

2. Requested Revision

That the plaintiff describe more completely and with particularity what causes of action are being alleged against the undersigned defendant. If the plaintiff alleges separate and distinct causes of action, i.e. for negligence and loss of chance, then the plaintiff is requested to separate the distinct causes of action as to the undersigned defendant into separate and distinct counts. As it currently stands, this Count incorporates both a negligence claim and a claim for loss of chance - which is impermissible.

3. Reason for Requested Revision

See above request revision and reason for the same of Count Three, Paragraph 7f (5th Requested Revision)

4. Objection; if any:

THIRTEENTH REQUESTED REVISION

1. Portion of Pleading Sought to be Revised:

Count Five, entitled WENDY TISCH v. BRIAN HINES, paragraph 7g:

7. As a result of the carelessness and negligence of the defendant, UROGYNECOLOGY & PELVIC SURGERY, LLC and its servants, agents, apparent agents and/or employees, WENDY TISCH suffered the following serious, severe, painful and permanent injuries:

g. loss of chance to be treated earlier for lung cancer;

2. Requested Revision


That the plaintiff describe more completely and with particularity what causes of action are being alleged against the undersigned defendant. If the plaintiff alleges separate and distinct causes of action, i.e. for negligence and loss of chance, then the plaintiff is requested to separate the distinct causes of action as to the undersigned defendant into separate and distinct counts. As it currently stands, this Count incorporates both a negligence claim and a claim for loss of chance--which is impermissible.

3. Reason for Requested Revision

See above request revision and reason for the same of Count Three, Paragraph 7f (Fifth Requested Revision)

4. Objection; if any:

THE DEFENDANTS,
BRYAN HINES, M.D. AND
UROGYNECOLOGY &
PELVIC SURGERY, LLC



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CERTIFICATION

This is to certify that on 10/11/11, a copy of the foregoing was mailed,

postage prepaid to all counsel and pro-se parties of record to:

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Hartford, CT 06106


Nancy Merini

DOCKET NO: FBTCV116020610S

TISCH, WENDY ET AL
V.
STAMFORD HOSPITAL, T ET AL

SUPERIOR COURT

ORDER 419018

JUDICIAL DISTRICT OF FAIRFIELD
AT BRIDGEPORT

12/30/2011

ORDER

ORDER REGARDING:
10/17/11 189.00 OBJECTION TO REQUEST TO REVISE

Judicial Notice (JDNO) was sent regarding this order;

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

ORDER:

The objections to request revise numbers 1, two, four, seven, eight, nine, 11 are sustained, The objections to numbers three, five, six, 10, 12, and 13 are overruled. 356 912 and 13 are overruled

419018

Judge: RICHARD P GILARDI
Processed by: VICTORIA MARKOVA

EXHIBIT

B

DOCKET NO. FBT CV 09 5024544 S : SUPERIOR COURT
DANIEL DUARTE ppa MIRNA DUARTE and :
SANTOS DUARTE, MIRNA DUARTE, : J.D. OF FAIRFIELD
INDIVIDUALLY and SANTOS DUARTE and :
MIRNA DUARTE, INDIVIDUALLY : AT BRIDGEPORT
v. :
NORWALK HOSPITAL : JULY 13, 2012

PLAINTIFFS' OBJECTION TO
DEFENDANT'S REQUEST TO REVISE

The plaintiffs in the above-captioned case hereby objection to the defendants' Request to Revise, dated July 10, 2012, as follows:

FIRST REQUEST TO REVISE

A. Portion of Pleading Sought to be Revised:

First Count, Paragraph 9(a), which states:

Said injuries sustained by the infant plaintiff, Daniel Duarte, were caused by the failure of the defendant, Norwalk Hospital and its servants, agents, apparent agents and/or employees, to exercise reasonable care under all of the facts and circumstances then and there present in that they:

- a. failed to adequately and properly care for, treat, diagnose and supervise the infant plaintiff, Daniel Duarte then in utero, and the infant plaintiff's mother, Mirna Duarte during pregnancy, labor, delivery and post-natal care.

B. Requested Revision:

The defendant requests that Plaintiffs revise the Complaint by either deleting Paragraph 9(a) or by providing a more particular statement of the allegations contained in Paragraph 9(a). Specifically, the defendant requests that Plaintiffs state with specificity how and in what manner

Norwalk Hospital failed to adequately and properly care for, treat, diagnose and supervise Daniel Duarte and Múria Duarte.

C. Reason for Requested Revision:

The allegations of negligence set forth in Paragraph 9(a) of the Amended Complaint are general and vague. A party may request a revision of a complaint "[w]henver any party desires to obtain (1) a more complete or particular statement of the allegations of an adverse party's pleading; or (2) the deletion of any unnecessary, repetitious...or otherwise improper allegations in an adverse party's pleading[.]" Connecticut Practice Book § 10-35. "The proper way to cure any confusion...[about what is being pled] is to file a motion to revise..." Rowe v. Godoy, 209 Conn. 273, 279 (1988); See also Parsons v. United Technologies, Corp., 243 Conn. 66, 100 (1997). "The [request to revise] has for its limited purpose, the securing of a statement of the material facts upon which the adverse party bases his complaint or defense. The test is not whether the pleading discloses all that the adversary desires to know in aid of his own cause, but whether it discloses the material facts *which constitute the cause of action* or ground of defense." (Internal quotation marks omitted.) (Emphasis added.) Kilceen v. General Motors Corporation, 36 Conn. Supp. 347, 348 (1980).

"A request to revise is permissible to obtain information so that defendant may intelligibly prepare his case for trial[.]" Id. at 349. The complaint must "fully disclose the grounds relied thereon." Fussenech v. DiNardo, 195 Conn. 144, 148 (1985). The test is whether the complaint "discloses the material facts which constitute the cause of action," Brooks v. Borten, 8 Conn. Supp. 463 (1940). Where this standard is not satisfied a request to

revise under Connecticut Practice Book Section 10-35 is appropriate, Fussenich v. DiNardo, 195 Conn. 144, 148 (1985); Mocarski v. Palmer, 132 Conn. 349, 355 (1945) (difficult to sustain objection at trial on ground that evidence is outside the complaint when complaint is broad and vague); New Haven v. Torrington, 132 Conn. 194, 199 (1945) (plaintiff may be permitted to argue that allegations support several legal theories when broad allegations are not clarified).

The defendant has the right to be apprised of the allegations levied against him. Revisions may properly be sought to obtain a more complete or particular statement of the allegations in the complaint. Grines v. Housing Authority, 242 Conn. 236, 251 n.11, 698 A.2d 302 (1997). Without articulation of the plaintiff's allegations, the defendant cannot adequately prepare to refute them.

Subparagraph (a) is vague and overly broad in that it contains no identification of what the defendant did, or did not do, to constitute negligence. Subparagraph (a) constitutes an improper "catch-all" allegation of negligence, which merely restates the legal conclusion that the defendant breached the standard of care. See Gold v. Greenwich Hospital Association, 262 Conn. 243, 254 (2002) (malpractice presupposes some improper conduct in treatment of operative skill). The subparagraph does not contain a plain and concise statement of material facts in support of the plaintiff's allegations of negligence and fails to apprise the defendant of the factual basis for the claims being made against him as required by law. See Pfite v. Bugbee, 115 Conn. App. 820, 823 n. 5 (2009) (purpose of fact pleading is to apprise court and defendant of issues to be tried); see also Bourquin v. Melsungen, 40 Conn. App. 302, 312

(1996) ("since the unamended complaint contained a general allegation that the hospital had failed to exercise the care of reasonably prudent persons under the circumstances, the door had been left open to the proof of any acts that might reasonably tend to prove negligence in the context of the facts pleaded"); New Milford Savings Bank v. Raine, 38 Conn. App. 240, 244 (1995) (complaint "must provide adequate notice of the facts claimed and issues to be tried"); New Haven v. Torrington, 132 Conn. 194, 199 (1945) (plaintiff's legal theory may be hard to pin down if a complaint is not clarified and this may allow plaintiff to argue at trial or on appeal that the vague allegations support several legal theories); Morganski v. Palmer, 132 Conn. 349, 355 (1945) (objection at trial on ground that evidence is outside allegations of complaint difficult to sustain if complaint is broad and vague). As pled, this subparagraph would permit the plaintiff to claim at trial instances of negligence conduct of which the defendant had no prior notice and therefore could not adequately investigate and defend.

in Tisch v. Stamford Hospital, et al, Superior Court, judicial district of Fairfield at Bridgeport, No. CV11-6020610S, Superior Court, the plaintiffs' objection to removing a virtually identical catch-all allegation, "failed to adequately and properly care for, treat, diagnose, monitor and supervise," was overruled by both Judge Levin and Judge Gillard. See Exhibit A. The defendants argued that the all-encompassing catch-all allegation did not give the defendants adequate notice of the claims against them, prevented the defendants from determining whether they had any legal or factual defenses to plaintiffs' claims and failed to narrow the legal and factual issues for trial. Id. The plaintiffs argued that the defendants were not entitled to know the plaintiffs' proof but only what they claim as their cause of action. Id.

The plaintiffs further argued that the allegation of negligence was not vague. *Id.* The Court disagreed and ordered that the plaintiffs provide a more specific statement of negligence. *Id.*

Additionally, Paragraph 9(a) is duplicative or repetitious as (b-j) set forth the alleged deviations.

OBJECTION:

The plaintiffs object to the defendant's request to revise on the grounds that this subparagraph is in satisfaction of Connecticut Practice Book Section 10-3, which requires that the allegations provide the facts on which the pleader relies but not the evidence by which they are to be proved. "A request to revise is permissible to obtain information so that a defendant may intelligently plead and prepare his case for trial but it is never appropriate where the information sought is merely evidential." *Tishkevich v. Connecticut Light and Power Company*, 9 Conn. Sup. 6. The defendant is not entitled to know the plaintiffs' proof but only what they claim as their cause of action. *Sebastianello v. Warden*, 10 Conn. Sup. 283. Further, this request cannot be complied with until discovery occurs. Without knowing specifically what information exists, it is impossible to be more specific.

SECOND REQUEST TO REVISE

A. Portion of Pleading Sought to be Revised:

Second Count, Paragraph 9(a), which states:

Said injuries sustained by the infant plaintiff, Daniel Duarte, were caused by the failure of the defendant, Norwalk Hospital and its servants, agents, apparent agents and/or employees, to exercise reasonable care under all of the facts and circumstances then and there present in that they:

- a. failed to adequately and properly care for, treat, diagnose and supervise the infant plaintiff, Daniel Duarte then in utero, and the infant plaintiff's mother, Mirna Duarte during pregnancy, labor, delivery and post-natal care.

B. Requested Revision:

The defendant requests that Plaintiffs revise the Complaint by either deleting Paragraph 9(a) or by providing a more particular statement of the allegations contained in Paragraph 9(a). Specifically, the defendant requests that Plaintiffs state with specificity how and in what manner Norwalk Hospital failed to adequately and properly care for, treat, diagnose and supervise Daniel Duarte and Mirna Duarte.

C. Reason for Requested Revision:

See First Request to Revise subsection C.

OBJECTION:

The plaintiffs object to the defendant's request to revise on the grounds that this subparagraph is in satisfaction of Connecticut Practice Book Section 10-1, which requires that the allegations provide the facts on which the pleader relies but not the evidence by which they are to be proved. "A request to revise is permissible to obtain information so that a defendant may intelligently plead and prepare his case for trial but it is never appropriate where the information sought is merely evidential." Tishkevich v. Connecticut Light and Power Company, 9 Conn. Sup. 6. The defendant is not entitled to know the plaintiffs' proof but only what they claim as their cause of action. Sebastianello v. Granden, 18 Conn. Sup. 283. Further, this request cannot be complied with until discovery occurs. Without knowing specifically what information exists, it is impossible to be more specific.

THIRD REQUEST TO REVISE

A. Portion of Pleading Sought to be Revised:

Third Count, Paragraph 9(a), which states:

Said injuries sustained by the infant plaintiff, Daniel Duarte, were caused by the failure of the defendant, Norwalk Hospital and its servants, agents, apparent agents and/or employees, to exercise reasonable care under all of the facts and circumstances then and there present in that they:

a. failed to adequately and properly care for, treat, diagnose and supervise the infant plaintiff, Daniel Duarte then in utero, and the infant plaintiff's mother, Mima Duarte during pregnancy, labor, delivery and post-natal care,

B. Requested Revision:

The defendant requests that Plaintiffs revise the Complaint by either deleting Paragraph 9(a) or by providing a more particular statement of the allegations contained in Paragraph 9(a). Specifically, the defendant requests that Plaintiffs state with specificity how and in what manner Norwalk Hospital failed to adequately and properly care for, treat, diagnose and supervise Daniel Duarte and Mima Duarte.

C. Reason for Requested Revision:


See First Request to Revise subsection C.

OBJECTION:

The plaintiffs object to the defendant's request to revise on the grounds that this subparagraph is in satisfaction of Connecticut Practice Book Section 10-1, which requires that the allegations provide the facts on which the pleader relies but not the evidence by which they are to be proved. "A request to revise is permissible to obtain information so that a defendant may intelligently plead and prepare his case for trial but it is never appropriate where the information sought is merely evidential," Tishkevich v. Connecticut Light and Power Company, 9 Conn. Sup. 6. The defendant is not entitled to know the plaintiffs' proof but only what they claim as their cause of action. Sebastianello v. Hamden, 10 Conn. Sup. 283. Further, this request cannot be complied with until discovery occurs. Without knowing specifically what information exists, it is impossible to be more specific.

THE PLAINTIFFS,

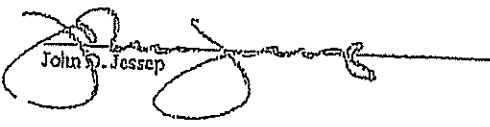
BY:


JOHN D. JESSEP
KOSKOFF, KOSKOFF & BYEDER, PC
150 FAIRFIELD AVENUE
BRIDGEPORT, CONNECTICUT 06604
TELEPHONE NO. 203-336-4421
JURIS NO.: 32250

CERTIFICATION

This is to certify that a copy hereof was mailed on the date hereon to all counsel and pro se parties of record as follows:

Heidi M. Cilano, Esquire
Sinead Rafferty, Esquire
Heidell, Pitoni, Murphy & Bach, LLP
855 Main Street, Suite 1100
Bridgeport, CT 06604


John D. Jessep

DOCKET NO: FBTCV09S024544S

DUARTE, DANIEL Et Al
V.
NORWALK HOSPITAL

SUPERIOR COURT

ORDER 403963

JUDICIAL DISTRICT OF FAIRFIELD
AT BRIDGEPORT

7/23/2012

ORDER

ORDER REGARDING:
07/13/2012 171.00 OBJECTION TO REQUEST TO REVISE

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

ORDER: OVERRULED

Short Calendar Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

403963

Judge: WILLIAM B RUSEH

EXHIBIT

C

DOCKET NO.: FBT-CV-14-6045638-S : SUPERIOR COURT
 IMANI CORBIN, PPA MARITZA AND : J.D. OF FAIRFIELD/
 SEBASTIAN CORBIN, ET AL. : BRIDGEPORT
 VS. : AT BRIDGEPORT
 WOMEN'S OBSTETRICS AND : OCTOBER 20, 2014
 GYNECOLOGY, P.C., ET AL.

REQUEST TO REVISE

Pursuant to *Practice Book* § 10-35, the undersigned defendants hereby request that the plaintiffs revise their Complaint dated September 10, 2014, in the following manner and for the following reasons:

FIRST REQUEST

I. PORTION OF FLEADING SOUGHT TO BE REVISED:

Count One, Paragraph 5 (a):

5. The said injuries suffered by Imani Corbin were caused by the failure of Women's Obstetrics and Gynecology, PC and/ or its servants, agents, apparent agents and/ or employees to exercise reasonable care under the facts and circumstances then and there present in that they:

(a) failed to adequately and properly care for, treat, diagnose and supervise the infant plaintiff, Imani Corbin, then in utero and the infant plaintiff's mother Maritza Corbin, during labor and delivery;

II. REQUESTED REVISION:

Delete subparagraph (a) or, in the alternative, describe more completely and with particularity how, when and in what manner the undersigned defendant "failed to adequately

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and properly care for, treat, diagnose and supervise the infant plaintiff and the plaintiff's mother Maritza Corbin during labor and delivery."

III. REASON FOR REQUESTED REVISION:

The requested revision is necessary so that the undersigned defendant can "obtain...a more complete or particular statement of the allegations of an adverse party's pleading." Practice Book Section 10-35. It is unclear, based on the allegations in subparagraph (a) exactly when and in what manner the undersigned defendant failed to provide proper and timely care and treatment. Subparagraph (a) is merely a vague and overly broad allegation of negligence as the specific allegations of negligence are set forth in subsections (b) through (g).

A party may request a revision of a complaint "[w]henever any party desires to obtain (1) a more complete or particular statement of the allegations of an adverse party's pleading; or (2) the deletion of any unnecessary, repetitious...or otherwise improper allegations in an adverse party's pleading[.]" Connecticut Practice Book §10-35.

As pled, subparagraph (a) is a "catchall" paragraph that does not meet the requirements of fact pleading. The foregoing does not contain a plain and concise statement of the material facts on which the pleader relies. Connecticut Practice Book Section 10-1 provides that the complaint "shall contain a plain and concise statement of the material facts in which the pleader relies," and if it does not, the judicial authority may order a fuller and more particular statement. See also Sampier v. Zaretsky, 26 Conn. App. 490, 492 (Conn.

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1992). (Purpose of complaint is to limit issues to be decided at the trial of the case and to "prevent surprise.")

"The proper way to cure any confusion...[about what is being pled] is to file a motion to revise..." Rowe v. Godou, 209 Conn. 273, 279 (1988); See also Parsons v. United Technologies, Corp., 243 Conn. 66, 100 (1997). "The [request to revise] has for its limited purpose, the securing of a statement of the material facts upon which the adverse party bases his complaint or defense. The test is not whether the pleading discloses all that the adversary desires to know in aid of his own cause, but whether it discloses the material facts which constitute the cause of action or ground of defense." (Internal quotation marks omitted.) (Emphasis added.) Kileen v. General Motors Corporation, 36 Conn. Supp. 347, 348 (1980)¹. "A request to revise is permissible to obtain information so that defendant may intelligibly prepare his case for trial," Id. at 349. The complaint must "fully disclose the grounds relied thereon." Fussenich v. DiNardo, 195 Conn. 144, 148 (1985).

Connecticut Practice Book Section 10-2 also dictates that a complaint "fairly apprise the adverse party of the state of facts which it is intended to prove." D'Ussis v. Board of Directors of Notre Dame High School, 202 Conn. 206 (1987). The test is whether the complaint "discloses the material facts which constitute the cause of action." Brooks v. Borten, 8 Conn. Supp. 463 (1940). Where this standard is not satisfied a request to revise under Connecticut Practice Book Section 10-35 is appropriate. Fussenich v. DiNardo, 195 Conn. 144, 148 (1985); Mocarski v. Palmer, 132 Conn. 349, 355 (1945) (difficult to sustain

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¹ All unreported cases are attached alphabetically in Exhibit A.

objection at trial on ground that evidence is outside the complaint when complaint is broad and vague); New Haven v. Torrington, 132 Conn. 194, 199 (1945) (plaintiff may be permitted to argue that allegations support several legal theories when broad allegations are not clarified).

The plaintiffs' Complaint must contain a plain and concise statement of the facts, which includes exactly how, when and in what manner the undersigned defendant failed to provide proper and timely care and treatment. Clearly, the undersigned defendant cannot be expected to adequately defend the claims made in the plaintiffs' Complaint if it is not even put on notice of how, when and in what manner it failed to provide proper and timely care and treatment. The allegation of negligence set forth in subparagraph (a) is insufficiently specific for the undersigned defendant to make a meaningful response. Moreover, its broadness essentially allows the plaintiffs to introduce any evidence at trial and claim that it falls within the confines of this allegation.

In Tisch v. Stamford Hospital, et al, Superior Court, judicial district of Fairfield at Bridgeport, No. CV11-6020610S, the plaintiffs' objection to removing a virtually identical catch-all allegation, "failed to adequately and properly care for, treat, diagnose, monitor and supervise," was overruled by both Judge Levin and Judge Gilardi. The defendants argued that the all-encompassing catch-all allegation did not give the defendants adequate notice of the claims against them, prevented the defendants from determining whether they had any legal or factual defenses to plaintiffs' claims and failed to narrow the legal and factual issues for trial. Id. The plaintiffs argued that the defendants were not entitled to know the plaintiffs' proof

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but only what they claim as their cause of action. Id. The plaintiffs further argued that the allegation of negligence was not vague. Id. The Court disagreed and ordered that the plaintiffs provide a more specific statement of negligence. Id.

Additionally, in the case of Duarte v. Norwalk Hospital, Superior Court, judicial district of Fairfield at Bridgeport, No. 09-5024544, the plaintiff objected to removing a catch-all allegation on the grounds that they were not obligated to reveal their proof but only their cause of action. The Court (Rush, J.) overruled the plaintiff's objection.

IV. OBJECTION, IF ANY:

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SECOND REQUEST

I. PORTION OF PLEADING SOUGHT TO BE REVISED:

Count Four, Paragraph 6 (a):

6. The said injuries suffered by Imani Corbin were caused by the failure of Ronika Choudhary and/or her servants, agents, apparent agents and/ or employees to exercise that degree of care and skill ordinarily and customary used by physicians specializing in obstetrics and gynecology under all the facts and circumstances then and there present in that she:

(a) failed to adequately and properly care for, treat, diagnose and supervise the infant plaintiff, Imani Corbin, then in utero and the infant plaintiff's mother Maritza Corbin, during labor and delivery;

II. REQUESTED REVISION:

Delete subparagraph (a) or, in the alternative, describe more completely and with particularity how, when and in what manner the undersigned defendant "failed to adequately and properly care for, treat, diagnose and supervise the infant plaintiff and the plaintiff's mother Maritza Corbin during labor and delivery,"

III. REASON FOR REQUESTED REVISION:

The requested revision is necessary so that the undersigned defendant can "obtain...a more complete or particular statement of the allegations of an adverse party's pleading." Practice Book Section 10-35. It is unclear, based on the allegations in subparagraph (a) exactly when and in what manner the undersigned defendant failed to provide proper and

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timely care and treatment, Subparagraph (a) is merely a vague and overly broad allegation of negligence as the specific allegations of negligence are set forth in subsections (b) through (g).

A party may request a revision of a complaint "[w]henver any party desires to obtain (1) a more complete or particular statement of the allegations of an adverse party's pleading; or (2) the deletion of any unnecessary, repetitious...or otherwise improper allegations in an adverse party's pleading[.]" Connecticut Practice Book §10-35.

As pled, subparagraph (a) is a "catchall" paragraph that does not meet the requirements of fact pleading. The foregoing does not contain a plain and concise statement of the material facts on which the pleader relies. Connecticut Practice Book Section 10-1 provides that the complaint "shall contain a plain and concise statement of the material facts in which the pleader relies," and if it does not, the judicial authority may order a fuller and more particular statement. See also Sampier v. Zaretsky, 26 Conn. App. 490, 492 (Conn. 1992). (Purpose of complaint is to limit issues to be decided at the trial of the case and to "prevent surprise.")

"The proper way to cure any confusion...[about what is being pled] is to file a motion to revise..." Rowe v. Godou, 209 Conn. 273, 279 (1988); See also Parsons v. United Technologies, Corp., 243 Conn. 66, 100 (1997). "The [request to revise] has for its limited purpose, the securing of a statement of the material facts upon which the adverse party bases his complaint or defense. The test is not whether the pleading discloses all that the adversary desires to know in aid of his own cause, but whether it discloses the material facts which

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constitute the cause of action or ground of defense." (Internal quotation marks omitted.) (Emphasis added.) Kileen v. General Motors Corporation, 36 Conn. Supp. 347, 348 (1980)². "A request to revise is permissible to obtain information so that defendant may intelligibly prepare his case for trial." Id. at 349. The complaint must "fully disclose the grounds relied thereon." Fussenich v. DiNardo, 195 Conn. 144, 148 (1985).

Connecticut Practice Book Section 10-2 also dictates that a complaint "fairly apprise the adverse party of the state of facts which it is intended to prove." D'Ulisse v. Board of Directors of Notre Dame High School, 202 Conn. 206 (1987). The test is whether the complaint "discloses the material facts which constitute the cause of action." Brooks v. Borten, 8 Conn. Supp. 463 (1940). Where this standard is not satisfied a request to revise under Connecticut Practice Book Section 10-35 is appropriate. Fussenich v. DiNardo, 195 Conn. 144, 148 (1985); Mocarski v. Palmer, 132 Conn. 349, 355 (1945) (difficult to sustain objection at trial on ground that evidence is outside the complaint when complaint is broad and vague); New Haven v. Torrington, 132 Conn. 194, 199 (1945) (plaintiff may be permitted to argue that allegations support several legal theories when broad allegations are not clarified).

The plaintiffs' Complaint must contain a plain and concise statement of the facts, which includes exactly how, when and in what manner the undersigned defendant failed to provide proper and timely care and treatment. Clearly, the undersigned defendant cannot be expected to adequately defend the claims made in the plaintiffs' Complaint if it is not even

² All unreported cases are attached alphabetically in Exhibit A.

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put on notice of how, when and in what manner it failed to provide proper and timely care and treatment. The allegation of negligence set forth in subparagraph (a) is insufficiently specific for the undersigned defendant to make a meaningful response. Moreover, its broadness essentially allows the plaintiffs to introduce any evidence at trial and claim that it falls within the confines of this allegation.

In Tisch v. Stamford Hospital, et al, Superior Court, judicial district of Fairfield at Bridgeport, No. CV11-6020610S, the plaintiffs' objection to removing a virtually identical catch-all allegation, "failed to adequately and properly care for, treat, diagnose, monitor and supervise," was overruled by both Judge Levin and Judge Gilardi. The defendants argued that the all-encompassing catch-all allegation did not give the defendants adequate notice of the claims against them, prevented the defendants from determining whether they had any legal or factual defenses to plaintiffs' claims and failed to narrow the legal and factual issues for trial. Id. The plaintiffs argued that the defendants were not entitled to know the plaintiffs' proof but only what they claim as their cause of action. Id. The plaintiffs further argued that the allegation of negligence was not vague. Id. The Court disagreed and ordered that the plaintiffs provide a more specific statement of negligence. Id.

Additionally, in the case of Duarte v. Norwalk Hospital, Superior Court, judicial district of Fairfield at Bridgeport, No. 09-5024544, the plaintiff objected to removing a catch-all allegation on the grounds that they were not obligated to reveal their proof but only their cause of action. The Court (Rush, J.) overruled the plaintiff's objection.

IV. OBJECTION, IF ANY:

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THE DEFENDANTS,
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GYNECOLOGY, P.C. AND
RONIKA CHOUDHARY, M.D.

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CERTIFICATION

This is to certify that on this 20th day of October, 2014, a copy of the foregoing was mailed, postage prepaid to all counsel and pro-se parties of record to:

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DOCKET NO: FBTCV146045638S

SUPERIOR COURT

ORDER 403963

CORBIN, IMANI, PPA CORBIN MARITZA
AND CORBIN SEBAS Et Al
V.
WOMEN'S OBSTETRICS AND
GYNECOLOGY, P.C. Et Al

JUDICIAL DISTRICT OF FAIRFIELD
AT BRIDGEPORT

12/1/2014

ORDER

ORDER REGARDING:
11/18/2014 110.00 OBJECTION TO REQUEST TO REVISE

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

ORDER: OVERRULED

Short Calendar Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

403963

Judge: WILLIAM B RUSH

EXHIBIT

D

FBI CV15 60519498 : SUPERIOR COURT
KRISTIN HOCKER : JUDICIAL DISTRICT
OF FAIRFIELD
v. : AT BRIDGEPORT, CONNECTICUT
WILLIAM T. SCHMIDT, M.P. : OCTOBER 26, 2015

H E A R I N G

BEFORE THE HONORABLE DALE RADCLIFFE, JUDGE

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

Representing the Plaintiff:

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Representing the Defendant:

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Recorded By:
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THE COURT: Hocker, and Schmidt and Orthopaedic Associates.

Everybody here on that?

ATTY SACCO: Yes, Your Honor.

THE COURT: I thought so.

ATTY SACCO: I think.

THE COURT: Come on forward.

ATTY SACCO: The defense is here.

THE COURT: I think the plaintiff is here too, right?

ATTY GIORDANO: Plaintiff is here, Your Honor.

ATTY SACCO: Oh, okay.

THE COURT: Come on, I'll -- that's -- that's the last matter, all right, okay.

This is the matter Kristin, I believe it's Hocker versus William Tracy Schmidt, M.D. and Orthopaedic Associates of Stamford, P.C.

The docket number is 15-6051949.

Will counsel identify themselves for the record please indicating the party or parties they represent.

ATTY GIORDANO: Yes, Your Honor.

I'm Michael Giordano. I'm from the Faxon Law Group and I represent Kristin Hocker; the plaintiff.

ATTY SACCO: Good morning, Your Honor.

Madonna Sacco from Heidell, Pittoni, Murphy and Bach on behalf of the defendants.

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Your Honor, with me is -- from my office is Kristine Roland (phonetic).

THE COURT: Good morning.

ATTY SACCO: I'm sorry, oh, my goodness.

Courtney has passed the bar, she has not been admitted yet so with the Court's --

THE COURT: All right.

ATTY SACCO: -- permission, I would ask that she be allowed to sit at counsel table.

THE COURT: Absolutely, and the record should reflect the Court's congratulations.

ATTY ROLAND: Thank you, Your Honor.

THE COURT: Absolutely.

There's no objection, I take it, counsel?

ATTY GIORDANO: No -- no, sir.

THE COURT: No, good.

ATTY SACCO: I think this is the first time Attorney Roland's been in court as admitted?

ATTY ROLAND: Yes.

ATTY SACCO: Okay.

THE COURT: All right.

ATTY SACCO: So it's a big day.

THE COURT: All right, good morning.

And -- and if you need help, just free to call. I won't enforce the one attorney rule.

ATTY SACCO: Oh, thank you, Your Honor. I think I may -- I may --

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THE COURT: You may.

ATTY SACCO: I may very much need help so --

THE COURT: All right.

ATTY SACCO: -- in that case, Attorney Roland will be here.

THE COURT: All right.

ATTY SACCO: Thank you.

THE COURT: The -- the operative complaint here is the complaint of August 17th, 2015. I think I should deal with the protective order before the request to revise.

So this is a request for a protective order regarding the order of depositions. Counsel, I'll -- I'll hear you on your motion, I believe it's the plaintiff's or defendant's motion rather.

ATTY SACCO: Yes; it is, Your Honor.

THE COURT: For a protective order regarding the order of depositions. This is the pleading dated September 22nd, 2015. So we have a chicken and egg situation. Attorney Sacco, you want to take the deposition of the plaintiff before they take the deposition of Doctor Schmidt and vice versa. On these facts, given the fact that I'm sure that all of the medical information has already been released, already is in the control of the plaintiff, what difference does it make?

ATTY SACCO: Well, Your Honor, it -- it makes a

1 big difference. And my familiarity with this issue,
2 I think the Court is also quite familiar with this
3 issue as well as I think we've made these arguments
4 before the Court on previous cases. But as it stands
5 right now, Your Honor, we have nothing. We have a --
6 a limited medical record that the plaintiffs had
7 given us.

8 This is a case in which Doctor Schmidt saw the
9 plaintiff in his office and then there was quite a
10 bit of care in an emergency department and thereafter
11 which tracks the development of a -- of an entity
12 called necrotizing fasciitis.

13 THE COURT: The -- the claim is, I believe, that
14 he examined the plaintiff, treated the plaintiff,
15 the plaintiff went home. The plaintiff was brought to
16 the hospital where Doctor Schmidt in the company of
17 other members of the hospital staff met her. It was
18 discovered that there was a septic infection which
19 required amputation of one leg and the claim is as I
20 see it, and this is only the claim. The claim is
21 there was a deviation from the applicable standard of
22 care in the care and treatment because the septic
23 condition was not diagnosed when -- and it was a
24 deviation from the applicable standard of care for a
25 board certified orthopedic surgeon not to have
26 recognized that when he examined, right?

27 ATTY SACCO: You've got it right on the money --

1 THE COURT: Okay.

2 ATTY SACCO: -- Your Honor.

3 THE COURT: That's what I thought. I try to read
4 the complaint.

5 ATTY SACCO: And what's worth noting though,
6 Your Honor, is that the claims of medical negligence
7 against Doctor Schmidt do not start at the -- at the
8 initial visits with Ms. Hocker. Actually the claims
9 of negligence surround into the next visits with
10 Doctor Schmidt and into the hospital where -- where
11 other healthcare providers were brought in and there
12 was a consultative aspect to the treater provider to
13 the -- to Ms. Hocker.

14 But Your Honor essentially has the facts as laid
15 out in the complaint.

16 THE COURT: But the -- the records are
17 the records. I mean, he's going to be deposed on the
18 records. He's going to be asked if he was a -- if
19 there was a doctor, patient relationship. He's going
20 to say, yes. He's going to ask -- be asked if he's a
21 board certified orthopedic surgeon, he's going to say
22 right on -- on the second count. And then he's going
23 to be asked if he -- he treated her, what were the
24 conditions. He's going to be cross-examined on
25 his record which, of course, you have and I assume
26 the plaintiff also has. And whether that occurs
27 before or after the deposition of the plaintiff --

1 although I agree you have a right to take the
2 plaintiff's deposition in a timely fashion. What
3 difference does it make?

4 ATTY SACCO: Well, it makes a big difference,
5 Your Honor, because we don't have any medical
6 records. All we have is a truncated version of the --
7 of Stamford Hospital record. The -- we have --
8 the plaintiffs have -- have blocked every single
9 aspect of discovery that we have -- have tried.

10 THE COURT: Well, you've got your -- you have
11 your own records.

12 ATTY SACCO: I have my own records.

13 THE COURT: Okay.

14 Now, you need the records of Stamford Hospital,
15 right?

16 ATTY SACCO: But I also need, Your Honor, to
17 develop a defense on a variety of issues, including
18 proximate cause. I have to understand in order to
19 adequately represent my client at deposition just as
20 the plaintiffs have had several years to develop
21 their case." I'm only asking that I be able to
22 develop my case in a timely manner, but in a way that
23 the standard discovery orders by the
24 Connecticut Courts have been set out, that due
25 process be protected. And I'm entitled to be able to
26 develop a defense on a variety of issues. Not only
27 standard of care, but proximate cause. I have the

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right, for instance, to understand what the pathology was.

THE COURT: Well, the -- the jury will, of course, be told that no burden rests upon the defendant to disprove any allegation, that the plaintiff must prove the existence of a physician patient relationship which I assume here is going to be admitted. Must prove what the standard of care is, the fact that there was a breach and then must prove proximate causation and must do so through expert testimony. So that's his burden not yours, isn't it?

ATTY SACCO: That's correct.

But how can I develop my defense to that claim without having all the information available to me. For instance, Your Honor, at -- this has been and -- and Your Honor's quite familiar with this issue, has been a race to the courthouse which -- which the case law has said, that is not to be condoned by the Court. How a -- how a doctor is required to attend a deposition prior to even being aware of what a notice of deposition is, prior to him being assigned or retaining counsel, is simply prejudicial and not fair.

THE COURT: Well, of course, we're beyond that now. He's got -- he's got --

ATTY SACCO: Yes.

THE COURT: He's represented by counsel.

1 ATTY SACCO: Yes.

2 THE COURT: If they -- if he's deposed, counsel
3 will be present. He will be able to discuss the
4 deposition with you beforehand. He will be able to be
5 told that the deposition is a statement under oath.
6 And if he's asked whether he discussed it with you,
7 he's to say yes, and you told him to tell the truth
8 and that these are, in fact, his records and he's
9 going to be shown them. So all of that's gone now,
10 right?

11 ATTY SACCO: Yes.

12 But the fact of the matter is, let's talk about
13 proximate cause for instance.

14 THE COURT: All right.

15 ATTY SACCO: How am I -- because plaintiff's
16 counsel is clearly going to ask Doctor Schmidt about
17 questions about proximate cause as an orthopedic
18 surgeon, and the development and the process of
19 necrotizing fasciitis. How am I supposed to defend
20 and prepare, most importantly, prepare my client for
21 deposition without having even the basic opportunity
22 to develop that part of the case. I don't have
23 pathology slides. I don't have a full medical record.
24 I haven't had the opportunity therefore to have the
25 case reviewed or talk to Doctor Schmidt about that
26 issue. And instead, I'm being forced to defend a
27 lawsuit with both hands tied behind my back. I have

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virtually no medical records. I -- and I've also noticed the deposition of the plaintiff before Doctor Schmidt, and both of those depositions have been marked off.

Most importantly, Your Honor, I have filed interrogatories and requests for production. As soon as my appearance was filed on that date, I filed interrogatories and requests for production. The plaintiff have not only not answered the interrogatories and requests for production, they've asked for an extension of time beyond the notice of deposition of the defense -- of the defense witness. So they won't even avail themselves and provide me with basic information that I need.

THE COURT: So before you -- before your client's deposed, you want HIPAA compliant authorizations allowing you to receive the records of Stamford Hospital, which would include the pathology reports, which would include the operative notes, which would include all of the information regarding the amputation of the leg.

ATTY SACCO: I also, Your Honor, I have no information did Mrs. Hocker go to a walk-in in between. I have no information about that. Did she see any physicians in the period of time that is at issue in the case.

THE COURT: Well, that you can find out when

1 you depose her, certainly.

2 ATTY SACCO: But if -- I can't prepare a defense
3 to that issue without deposing her, and the burden of
4 proof lies with the plaintiff as Your Honor is
5 well -- well familiar with.

6 But that's why -- I'm not talking about -- I'm
7 not concerned about timeframes, so to speak, as to
8 when these depositions take place. I am concerned
9 about the order. And suppose I find out after I've
10 given a complete deposition on -- on all aspects of
11 the case, meaning my client, I find out that there
12 were other people who were involved in the care and
13 treatment. How am I supposed to bring an
14 apportionment complaint if I don't even know what the
15 basic trajectory and process of healthcare was in
16 that very pivotal period of time.

17 Suppose Ms. Hocker not only went to a walk-in
18 but saw or spoke to her internal medicine physician
19 at some point in time. Suppose there was another
20 physician that was involved. I have no way of knowing
21 any of that information, and --

22 THE COURT: What's the -- what's the return date
23 here?

24 ATTY SACCO: The return date, Your Honor, was
25 9-15-15.

26 THE COURT: All right.

27 So you have 120 days to bring an apportionment

1 complaint.

2 ATTY SACCO: Correct. I have 120 days to bring an
3 apportionment complaint and I have nothing. I'm
4 already past 30 days so I really only have now
5 90 days, and I have no ability to determine --
6 remember, as Your Honor well knows, I have to have
7 an expert opinion in order to get an apportionment
8 complaint started.

9 I -- I again, don't have the basic information
10 to put forth my client for deposition. Your Honor
11 quite accurately asked me what the prejudice is. I've
12 listed a number of prejudices.

13 THE COURT: Well, that's a prejudice of your not
14 being able to depose his client. And I agree, these
15 depositions should take place probably simultaneously
16 because you should have that opportunity at the
17 same time based on the apportionment statute which
18 only gives you 120 days within which to bring a
19 complaint.

20 ATTY SACCO: I -- I think Your Honor ruled in a
21 very recent case in our office that the plaintiff
22 goes first then the doctors could be produced a week
23 later. I --

24 THE COURT: Yes.

25 ATTY SACCO: -- have a problem with that.

26 THE COURT: Which -- which is almost
27 simultaneous.

1 ATTY SACCO: Absolutely.

2 THE COURT: That's --

3 ATTY SACCO: I have no problem with that as long
4 as the plaintiff goes first so that I can prepare
5 some defense.

6 THE COURT: And as long -- and as long as we get
7 the deposition within a reasonably short period of
8 time.

9 ATTY SACCO: Correct.

10 And as long --

11 THE COURT: All right.

12 ATTY SACCO: -- as I get the medical records
13 within a reasonably short period --

14 THE COURT: Well --

15 ATTY SACCO: -- of time, which we --

16 THE COURT: Let me -- let me --

17 ATTY SACCO: -- also have an order --

18 THE COURT: -- just ask you.

19 ATTY GIORDANO: Yes, sir.

20 THE COURT: Do you have -- I'll -- I'll hear
21 you on the -- the opposition to the protective order.
22 But you don't have a problem with giving them HIPAA
23 compliant releases to get this information, do you?

24 ATTY GIORDANO: No, sir. No, sir.

25 THE COURT: That can be done how many days?

26 ATTY GIORDANO: Matter of two days.

27 THE COURT: Two days; all right.

1 ATTY GIORDANO: Almost instantly.

2 THE COURT: Consider that -- consider that done,
3 all right.

4 What's the basis on the protective order?

5 ATTY GIORDANO: Well, a couple of issues, sir,
6 that -- that counsel brought up. In fact, we have
7 given them the Stamford records. The only other
8 records that exist pertinent to the case are the ones
9 that you mention; they are the defendant's records
10 which I assume they have.

11 As far as --

12 THE COURT: Now, you've given them all of the
13 Stamford Hospital records, including the surgical
14 notes and all of that?

15 ATTY GIORDANO: To my knowledge, we've given them
16 the entire Stamford --

17 THE COURT: Well, if you -- if you --

18 ATTY GIORDANO: -- file.

19 THE COURT: -- have, terrific. If you haven't,
20 give them the HIPAA compliant authorization --

21 ATTY GIORDANO: Yes, sir.

22 THE COURT: -- within two days so they can
23 get them.

24 ATTY GIORDANO: Yes, sir.

25 THE COURT: All right.

26 ATTY GIORDANO: As far as the -- we've already
27 discussed that the Practice Book is silent on any

1 type of first --

2 THE COURT: It is,

3 ATTY GIORDANO: -- in -- in time rule, as well
4 as custom, which is at issue.

5 In both our -- both plaintiff's counsel and
6 defense counsel cite their own ensamples where their
7 firms have --

8 THE COURT: Right.

9 ATTY GIORDANO: -- have had it both -- both ways.
10 It's relatively moot: --

11 THE COURT: I take --

12 ATTY GIORDANO: -- at that point.

13 THE COURT: -- the position that they ought to be
14 done reasonably simultaneous. The plaintiff has a
15 reason to -- to get the deposition -- the defendant
16 has a reason to get the deposition or the plaintiff
17 because the clock is running on any claim for
18 apportionment particularly in a case of -- of this
19 nature when there's a claim of misdiagnosis and
20 there's a claim of amputation which may or may not
21 have been required. There may have been more
22 conservative treatment available. I don't know any of
23 that at this point. So there's a (inaudible) there.
24 So they have a right to take and find out perhaps a
25 neurologist was -- was consulted; perhaps someone
26 from a different discipline was consulted. We have
27 the -- the good faith certificate requirement

1 unfortunately for -- for these types of claims so
2 that would -- that would mitigate in favor of having
3 that deposition taken reasonably soon.

4 Also I understand the reason to take the
5 deposition of the defendant after they've had
6 the opportunity to consult with -- with counsel, and
7 I'm disposed to order those to be done within a week
8 of each other.

9 ATTY GIORDANO: Yes, sir.

10 THE COURT: I mean, I don't think that prejudices
11 you. The fact that -- her story -- your client's
12 story isn't going to change.

13 ATTY GIORDANO: No, sir.

14 THE COURT: And the doctor's records are the
15 doctor's records.

16 ATTY GIORDANO: That's right, sir.

17 THE COURT: So if the only claim is the --
18 the need to -- to bring an apportionment complaint,
19 I would, my view is the plaintiff can be deposed
20 first and the -- the defendant should be deposed
21 within one week thereafter, subject to your giving
22 them the HIPAA compliant medical authorizations. And
23 if you've given them all the hospital records that --
24 that are there and there aren't any more, fine. If
25 there are, they can obtain them for themselves.

26 ATTY SACCO: Thank you, Your Honor.

27 THE COURT: How's that?

1 ATTY GIORDANO: Sounds right.

2 THE COURT: And when -- when can you -- when can
3 you -- can you have the depositions; within a --
4 within a month of today's date for both of them?

5 ATTY GIORDANO: We'd have to prepare our --
6 our plaintiff for --

7 THE COURT: Sure.

8 ATTY GIORDANO: -- deposition. She's somewhat
9 timid person. I'd say maybe 45 days.

10 THE COURT: All right.

11 ATTY GIORDANO: Would -- would that be
12 reasonable?

13 THE COURT: Plaintiff's deposition within
14 45 days. Defendant's deposition within one week
15 thereafter. And HIPAA compliant authorizations to be
16 given. You can fight about the disclosure and when,
17 I'm not going to get into that right now. A request
18 for an extension of time is normal and appropriate
19 for both parties in many cases of this nature. So
20 we're not going to get into who asked for a request
21 for extension of time. But the HIPAA compliant
22 results; once you get them, the information's equally
23 available to both parties and then there's no
24 argument.

25 ATTY SACCO: Thank you, Your Honor.

26 THE COURT: All right.

27 Now, we've got a request to revise.

1 ATTY SACCO: Oh, right.

2 THE COURT: For which there was a -- a request
3 for oral argument and which I certainly will
4 entertain.

5 It was the plaintiff's request --
6 the defendant's request, it's the plaintiff's
7 objection. I'll hear you on your objection.

8 The request to revise deals really with
9 paragraph 12a, right?

10 ATTY GIORDANO: Yes, sir.

11 THE COURT: All right.

12 Fail to adequately and properly care for, treat,
13 diagnose, monitor and supervise the medical
14 condition.

15 ATTY GIORDANO: Yes, sir.

16 THE COURT: That's a conclusion in search of
17 an allegation, isn't it?

18 ATTY GIORDANO: Not necessarily, sir.

19 Basically that is the allegation.

20 THE COURT: That's the standard of care.

21 ATTY GIORDANO: Yes -- yes, sir.

22 But it -- it is not a -- a catchall statement as
23 has been alleged by defense counsel. There was
24 inadequate monitoring of the patient's condition
25 which was initially a twisted ankle, which then
26 became an -- an infection.

27 THE COURT: Mm-hmm.

1 ATTY GIORDANO: I -- I don't know how else to
2 actually put that in words other than failure to
3 care, monitor and supervise. So it was not intended
4 to be a -- a catchall statement, Your Honor.

5 THE COURT: Well, where it says, properly care
6 for, I mean, there are specific things. Failed to
7 recognize the significance of increasing pain. Failed
8 to communicate or advise. Failed to examine. Failed
9 to recognize the infection. Failed to evaluate and
10 treat. Inappropriately debrided -- (inaudible) the
11 plaintiff's foot without obtaining any testing.
12 Dismissed the plaintiff to home without any treatment
13 or referral for evaluation or potential infection.

14 Now, if -- if what you're saying in paragraph A
15 is failed to monitor and supervise the
16 plaintiff's medical condition or failed to adequately
17 monitor, that's fine. That's a separate allegation.
18 But properly care for, treat and diagnose, that's the
19 standard of care.

20 ATTY GIORDANO: Yes, sir.

21 THE COURT: Wish to be heard?

22 ATTY SACCO: Just very briefly, Your Honor.

23 It -- it is a catchall allegation. I -- I
24 haven't asked for a revision on subparagraphs B
25 through H.

26 THE COURT: No.

27 ATTY GIORDANO: Judges in this very judicial

1 district have ruled that that exact allegation is a
2 catchall allegation. Judge Levin, Judge Gilardi,
3 Judge Rush have all said that allegations like that
4 are too broad in order for us to understand the
5 allegations of the complaint. Moreover as a seasoned
6 trial lawyer, I have been in situations where we're
7 on trial and that allegation is used against the
8 defense as -- as something that was not specifically
9 pled.

10 So either if A is to -- if subparagraph 12a
11 is -- is different than subparagraphs B through H,
12 then they should at least have to specifically state
13 it or eliminate the subparagraph.

14 THE COURT: Well, I looked at the -- the other
15 subparagraphs. I didn't see a specific allegation for
16 failure to monitor the medical condition.

17 ATTY SACCO: Well, I think that --

18 THE COURT: That -- that's the -- that's the only
19 one I didn't see. The others --

20 ATTY SACCO: And if that's --

21 THE COURT: -- I did.

22 ATTY SACCO: -- what it is, then -- then revise
23 the paragraph to do that, but it -- I would argue
24 that --

25 THE COURT: There -- there clearly are
26 allegations in paragraph B through M of a failure to
27 supervise, a failure to care for, a failure to treat

1 and a failure to diagnose.

2 ATTY SACCO: And -- and I --

3 THE COURT: Those are all there. But -- but
4 monitoring I didn't see. That's the only one I didn't
5 see.

6 ATTY SACCO: Well, I would argue that -- that
7 subparagraph C is monitoring a failure to communicate
8 and H is a failure to monitor. But I'm willing to
9 accept if -- if there's something different.

10 THE COURT: Well, it could be squeezed into there
11 but I -- I'll sustain the objection only to the
12 failure to adequately monitor the medical condition.
13 I think he can allege that she failed to monitor. The
14 rest of the paragraph is an appropriate revision.

15 ATTY SACCO: Okay.

16 THE COURT: The -- the paragraph should be
17 revised to say, failed to monitor and -- monitor the
18 plaintiff's medical condition.

19 ATTY SACCO: Okay.

20 ATTY GIORDANO: Yes, Your Honor.

21 ATTY SACCO: That's fine.

22 THE COURT: Because I don't think -- I don't
23 think I saw anything like that in the other
24 paragraph. The others, I think, were all concluded
25 and in these types of cases as with any negligence
26 cases, that's -- that's sort of like a --
27 an allegation that the plaintiff failed to act as a

1 reasonably prudent person would've acted under the
2 same or similar circumstances, you know. That's a
3 conclusion, it's not an allegation.

4 ATTY GIORDANO: So just so I am -- I'm clear,
5 sir, we'll rewrite the -- the account just as failure
6 to monitor.

7 THE COURT: Failure to monitor --

8 ATTY GIORDANO: Correct.

9 THE COURT: -- right.

10 ATTY GIORDANO: Yes, sir.

11 THE COURT: And I think that was the only
12 request that there was --

13 ATTY SACCO: There was.

14 THE COURT: -- if I am correct.

15 ATTY SACCO: That was, Your Honor.

16 THE COURT: All right.

17 So I guess that takes care of everything that we
18 had. You'll get the depositions then we'll revisit
19 any of these issues if we have to.

20 ATTY GIORDANO: Thank you, Your Honor.

21 ATTY SACCO: Your Honor, there was just one --
22 I'm sorry, Attorney Giordano. Did you have something
23 else?

24 ATTY GIORDANO: No, I was --

25 ATTY SACCO: Oh.

26 ATTY GIORDANO: I was just thanking His Honor.

27 ATTY SACCO: Okay.

1 Your Honor, there is an objection to
2 an extension of time. Plaintiffs have -- we filed
3 interrogatories and requests for --

4 THE COURT: All right.

5 ATTY SACCO: -- production. Plaintiff filed
6 an extension and I objected only because of the whole
7 problem with the depositions.

8 THE COURT: Okay.

9 ATTY SACCO: So I don't have a problem with --

10 THE COURT: Granting the objection -- granting
11 the extension at this point?

12 ATTY SACCO: Correct, as long as I get those
13 HIPAA --

14 THE COURT: Subject to -- subject to giving you
15 the -- all right.

16 So the extension of time is granted on the
17 condition that HIPAA compliant releases be provided.

18 ATTY SACCO: Correct.

19 Thank you, Your Honor.

20 THE COURT: All right,

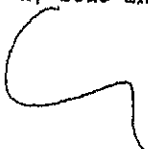
21 (Whereupon this matter was concluded.)
22
23
24
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27

FBT CV15 6051949S : SUPERIOR COURT
KRISTIN HOCKER : JUDICIAL DISTRICT
OF FAIRFIELD
v. : AT BRIDGEPORT, CONNECTICUT
WILLIAM T. SCHMIDT, M.D. : OCTOBER 26, 2015

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

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Fairfield, Bridgeport, Connecticut, before the Honorable, Dale Radcliffe, Judge, on the 26th day of October, 2015.

Dated this 27th day of October, 2015 in Bridgeport, Connecticut.



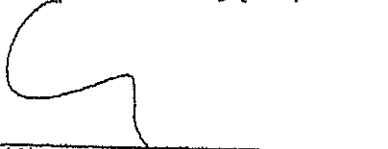
P' Shaunda D. Gibbs-Hopkins
Court Recording Monitor

FBI CV15 60519498 : SUPERIOR COURT
KRISTIN HOCKER : JUDICIAL DISTRICT
OF FAIRFIELD
v. : AT BRIDGEPORT, CONNECTICUT
WILLIAM T. SCHMIDT, M.D. : OCTOBER 26, 2015

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

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P' Shaunda D. Gibbs-Hopkins
Court Recording Monitor

EXHIBIT

E

10/10/2018

<https://sso.eservices.jud.ct.gov/eservinbox/templates/PrintDisplay?rt=def&cid=1080994>

JDNO NOTICE

FBT-CV-18-6078451-S O'CONNOR, KATIE, ADMIN. OF THE ESTATE OF STEPHEN M Et Al v. ST. MARY'S
HOSPITAL, INC. Et Al

Notice Issued: 10/09/2018

Court Address:
CLERK, SUPERIOR COURT
JUDICIAL DISTRICT OF FAIRFIELD
1061 MAIN STREET
BRIDGEPORT, CT 06604
Website: www.jud.ct.gov

Notice Content:

Notice Issued: 10/09/2018

Docket Number: FBT-CV-18-6078451-S

Case Caption: O'CONNOR, KATIE, ADMIN. OF THE ESTATE OF STEPHEN M Et Al v. ST. MARY'S HOSPITAL, INC.
Et Al

Notice Sequence #: 1

JDNO NOTICE

IN RE: 117.00 OBJECTION TO REQUEST TO REVISE

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

Order 10/9/2018

The objection to the first request to revise is overruled. The objections to the second, third and fourth requests to revise are sustained.

By the Court,
Hon. Elizabeth Stewart
10/9/2018

DOCKET NO.: RBT-CV-18-6078451 -S : SUPERIOR COURT
KATIE O'CONNOR, ADMINISTRATRIX : JD OF FAIRFIELD
OF THE ESTATE OF STEPHEN M.
O'CONNOR (DECEASED) AND KATIE :
O'CONNOR INDIVIDUALLY
V. : AT BRIDGEPORT
ST. MARY'S HOSPITAL, INC. :
CARDIOLOGY ASSOCIATES OF :
GREATER WATERBURY, LLC : SEPTEMBER 18, 2018

REQUEST TO REVISE PLAINTIFF'S COMPLAINT DATED JUNE 26, 2018

Pursuant to Connecticut Practice Book §10-35, the undersigned defendants, Raghuraman Vidhun, MD, and Cardiology Associates of Greater Waterbury, LLC, hereby request that the plaintiffs revise their Complaint dated June 26, 2018, in the following ways:

FIRST REQUEST TO REVISE

A. Portion Of Pleading Sought To Be Revised

Count Three, Paragraph 7a and Count Five, Paragraph 8a:

Failed to adequately and properly care for, treat, diagnose, monitor and supervise STEPHEN M. O'CONNOR for a heart condition.

B. Requested Revision

The undersigned defendants request that the plaintiff revise the Complaint by deleting Paragraph 7/8a or in the alternative identify and describe more completely and with particularity how the defendant "failed to adequately and properly" care for, treat, diagnose, monitor and supervise Stephen M. O'Connor for a heart condition.

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C. Reason For Requested Revision

The plaintiffs have plead 7b-7w outlining the ways in which they claim the undersigned defendants are negligent. The above quoted portion of the plaintiffs' complaint constitutes an improperly broad, catch-all allegation that is needlessly duplicative of the plaintiffs' numerous other allegations. The defendants cannot properly prepare to defend against such an allegation as it allows the plaintiff to effectively change the allegations of negligence throughout the course of this litigation, presenting an unfair and moving target for the undersigned defendant. For the reasons that follow, the above quoted paragraph must be removed from the plaintiffs' complaint.

A request to revise is proper "[w]henver a party desires to obtain ... the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial, or otherwise improper allegations in an adverse party's pleading, or ... any other appropriate correction in an adverse party's pleading." Practice Book § 10-35. The foregoing paragraph does not contain a plain and concise statement of the material facts on which the pleader relies.

"The proper way to cure any confusion...[about what is being pled] is to file a motion to revise...." Rowe v. Godon, 209 Conn. 273, 279 (1988); see also Parsons v. United Technologies, Corp., 243 Conn. 66, 100 (1997). "The [request to revise] has for its limited purpose, the securing of a statement of the material facts upon which the adverse party bases his complaint or defense. The test is not whether the pleading discloses all that the adversary desires to know in aid of his own cause, but whether it discloses the material facts which constitute the cause of action or ground of defense." Kileen v. General Motors Corp., 36 Conn. Supp. 347, 348 (1980) (internal quotation marks omitted).

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"A request to revise is permissible to obtain information so that defendant may intelligibly prepare his case for trial[.]" Id. at 349. The complaint must "fully disclose the grounds relied thereon." Fussenich v. DiNardo, 195 Conn. 144, 148 (1985). It is well settled that the test is whether the complaint "discloses the material facts which constitute the cause of action." Brooks v. Borten, 8 Conn. Supp. 463 (1940). Where this standard is not satisfied a request to revise under Practice Book Section 10-35 is appropriate.

The defendants have the right to be apprised of the allegations levied against them. Revisions may properly be sought to obtain a more complete or particular statement of the allegations in the complaint. Grimes v. Housing Authority, 242 Conn. 236, 251 n.11 (1997). Without a clear and complete articulation of the plaintiff's allegations, the defendant cannot adequately prepare to refute them.

The above-quoted paragraph does not contain a plain and concise statement of material facts in support of the plaintiff's allegations of negligence and fails to apprise the defendant of the factual basis for the claims being made against her as required by law. *See* Pike v. Bugbee, 115 Conn.App. 820, 828 n. 5 (2009) (stating that "[t]he purpose of pleading is to apprise court and defendant of issues to be tried"); New Milford Savings Bank v. Roina, 38 Conn. App. 240, 244 (1995) (a complaint "must provide adequate notice of the facts claimed and issues to be tried"). Simply put, the language contained in the above-quoted paragraph provides no more notice as to the specifics of the plaintiffs' claims than the basic knowledge that the plaintiffs have brought a malpractice action. The defendants are entitled to more in order to properly defend against the plaintiffs' allegations.

Courts have regularly required plaintiffs to revise complaints to remove catch-all allegations like the allegation contained in the above quoted paragraph. For example, in Tisch

v. Stamford Hospital, et al., Superior Court, Judicial District of Fairfield at Bridgeport, CV116020610S, the plaintiffs' objection to removing a similar catch-all allegation, "failed to adequately and properly care for, treat, diagnose, monitor and supervise," was overruled by both Judge Levin and Judge Gilardi. *See Exhibit A.* The defendants argued that the all-encompassing catch-all allegation did not give the defendants adequate notice of the claims against them, prevented the defendants from determining whether they had any legal or factual defenses to plaintiffs' claims and failed to narrow the legal and factual issues for trial. The plaintiffs argued that the defendants were not entitled to know the plaintiffs' proof but only what they claim as their cause of action. The plaintiffs further argued that the allegation of negligence was not vague. The Court disagreed and ordered that the plaintiffs provide a more specific statement of negligence.

Additionally, in Duarte v. Norwalk Hospital, Superior Court, Judicial District of Fairfield at Bridgeport, CV095024544, the plaintiff objected to removing a catch-all allegation on the grounds that they were not obligated to reveal their proof but only their cause of action. The Court (*Rush, J.*) overruled the plaintiff's objection. *See Exhibit B.*

Likewise, the plaintiff in Corbin v. Women's Obstetrics and Gynecology, P.C., et al., Superior Court, Judicial District of Fairfield at Bridgeport, CV146045638, objected to removing a catch-all allegation which stated that the defendant "failed to adequately and properly care for, treat, diagnose, and supervise..." The Court (*Rush, J.*) overruled the plaintiff's objection. *See Exhibit C.*

Similarly, the defendants in Hooker v. Schmidt, et al., Superior Court, Judicial District of Fairfield at Bridgeport, CV156051949, filed a Request to Revise, requesting that the plaintiff delete "catch-all" language claiming that the defendants "failed to adequately and

properly care for, treat, diagnose, monitor and supervise the plaintiff's medical condition..."

In the alternative, the defendant requested that the plaintiff describe how, when, and in what manner the defendant "failed to adequately and properly care for, treat, diagnose, monitor and supervise the plaintiff's medical condition." The plaintiff objected to same. The Court (*Radcliffe, J.*) overruled the plaintiff's objection to a majority of the defendants' Request to Revise, concluding that the allegations of "failure to...care for, treat, diagnose...and supervise" were redundant of the plaintiff's other, more specific allegations of negligence in the remaining subparagraphs. During oral argument, the Court questioned whether this subparagraph was a "conclusion in search of an allegation" and noted that to properly "care for, treat, and diagnose" a patient represents the standard of care. *See Exhibit D* at pp. 16-22.

Ultimately, if the above mentioned paragraph is permitted to remain in the plaintiff's complaint, the plaintiff would be able to argue for a practically infinite number of negligence theories at trial, unfairly complicating proceedings. *See generally Bourquin v. Melsungen*, 40 Conn. App. 302, 312 (1996) (stating that "since the unamended complaint contained a general allegation that the hospital had failed to exercise the care of reasonably prudent persons under the circumstances, the door had been left open to the proof of any acts that might reasonably tend to prove negligence in the context of the facts pleaded"); *New Haven v. Torrington*, 132 Conn. 194, 199 (1945) *overruled on other grounds Anderson v. Bridgeport*, 134 Conn. 260, 56 A.2d 650 (1947) (recognizing that a plaintiff's legal theory may be hard to pin down if a complaint is not clarified and this may allow plaintiff to argue at trial or on appeal that the vague allegations support several legal theories); *Morcarsid v. Palmer*, 132 Conn. 349, 355 (1945) (objection at trial on ground that evidence is outside allegations of complaint difficult

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to sustain if complaint is broad and vague). As such, Paragraph 7a of Count Three and Paragraph 8a of Count Five in plaintiffs' complaint must be deleted.

D. Objection (if any):

SECOND REQUEST TO REVISE

A. Portion of Pleading Sought to Be Revised

Count Three, Paragraphs 7k, 7m, 7n and 7o and Count Five, Paragraphs 8k, 8m, 8n and 8o:

7/8k: failed to recognized the urgency in having Stephen M. O'Connor evaluated by a specialist such as a surgeon, an interventional radiologist, an interventional cardiologist for management of a large pericardial effusion;

7/8m: failed to timely order and arrange for an immediate consultation with a specialist such as a surgeon, an interventional radiologist, an interventional cardiologist;

7/8n: improperly delayed a consultation with a specialist such as a surgeon, an interventional radiologist, an interventional cardiologist;

7/8o: improperly allowed the surgical consultation to be obtained the day following hospital admission.

B. Requested Revision

The undersigned defendants request that the plaintiff revise the Complaint by deleting Paragraphs 7k, 7m, 7n, 7o, 8k, 8m, 8n, and 8o.

C. Reason for Requested Revision

The Defendants request that the Plaintiff revise the Complaint by deleting Paragraphs 7/8k, 7/8m, 7/8n and 7/8o. Practice Book § 10-35 provides that a Request to Revise is the appropriate mechanism to delete "unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adversary's pleadings..." Paragraphs 7/8k,

7/8m, 7/8n and 7/8o repeat the same allegations contained within Paragraph 7/8l as such they are repetitive, inflammatory and unnecessary, and should be deleted.

D. Objection (if any):

THIRD REQUEST TO REVISE

A. Portion Of Pleading Sought To Be Revised:

Count Three, Paragraph 7u and Count Five, Paragraph 8u:

7/8u: Failed to keep proper and adequate medical records in accordance with §19a-14-40 et. seq. of the Department of Public Health and Addiction Services regulations.

B. Requested Revision

The undersigned defendants request that the plaintiffs revise the Complaint by deleting Paragraph 7/8u.

C. Reason For Requested Revision

The plaintiffs have no private right of action under to bring a claim under §19a-14-40 et. seq. of the Department of Public Health and Addiction Services regulations. The law presumes that private enforcement of a statute or regulation does not exist unless expressly provided in a statute. The Supreme Court held that "in order to overcome the presumption in Connecticut that private enforcement does not exist unless expressly provided in a statute, the plaintiff must demonstrate that, in applying the three part test we established in Napoletano v. CIGNA Healthcare of Connecticut, Inc., supra, 238 Conn. 249 no factor weighs against affording an implied right of action and the balance of factors weighs in their favor." Asylum Hill Problem Solving Revitalization Ass'n v. King, 227 Conn. 238, 246-247 (2006).

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In Napolitano v. CIGNA Healthcare of Connecticut, 238 Conn. 216 (1997), overruled on other grounds by Batter-Holmgren v. Comm'r of Pub. Health, 281 Conn. 277, 284 (2007), the Supreme Court held that there are three relevant factors in "determining whether a private remedy is implicit in a statute not expressly providing one... First, is the plaintiff one of the class for whose... benefit the statute was enacted...? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one?... Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?" Napolitano at 249.

There is no private cause of action explicitly under §19a-14-40 et. seq. of the Department of Public Health and Addiction Services regulations. The plain text of the regulation does not provide an explicit cause of action, but does set forth the purpose of medical records.

The purpose of a medical record is to provide a vehicle for: documenting actions taken in patient management; documenting patient progress; providing meaningful medical information to other practitioners should the patient transfer to a new provider or should the provider be unavailable for some reason. A medical record shall include, but not be limited to, information sufficient to justify any diagnosis and treatment rendered, dates of treatment, actions taken by non-licensed persons when ordered or authorized by the provider; doctors' orders, nurses notes and charts, birth certificate worksheets, and any other diagnostic data or documents specified in the rules and regulations. All entries must be signed by the person responsible for them. Regs., Conn. State Agencies § 19a-14-40.

Absent from this text is language that states that there is liability for damages or the existence of a private cause of action under this regulation.

A request to revise is proper "[w]henever a party desires to obtain ... the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial, or otherwise improper

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allegations in an adverse party's pleading, or ... any other appropriate correction in an adverse party's pleading." Practice Book §10-35.

D. Objection (if any):

FOURTH REQUEST TO REVISE

A. Portion Of Pleading Sought To Be Revised

Count Three, Paragraph 7w:

Failed to promulgate and/or enforce rules, regulations, standards and protocols for the care and treatment of patients such as Stephen M. O'Connor.

B. Requested Revision

The undersigned defendants request that the plaintiff revise the Complaint by deleting Paragraph 7w or in the alternative identify and describe more completely and with particular how the defendant "failed to promulgate and/or enforce" rules, regulations, standards and protocols for the care and treatment of patients such a Stephen M. O'Connor and what "rules, regulations, standards and protocols" the defendants should have promulgates and/or enforced

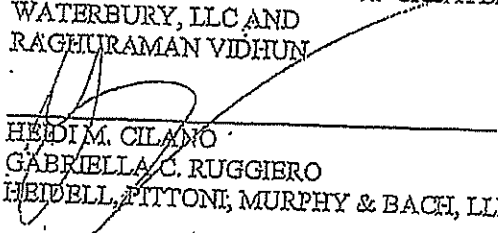
C. Reason For Requested Revision

Please see Reason for Requested Revision in First Request to Revise.

D. Objection (if any):

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THE DEFENDANTS,
CARDIOLOGY ASSOCIATES OF GREATER
WATERBURY, LLC AND
RAGHURAMAN VIDHUN



HEDI M. CILANO
GABRIELLA C. RUGGIERO
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CERTIFICATION

This is to certify that on this 18th day of September 2018, a copy of the foregoing was sent either via electronic mail or mailed, postage prepaid to all counsel and pro-se parties of record to wit:

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