

2014 Round-Up: Connecticut Court Decisions Affecting Healthcare Providers

Connecticut Health Law

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With the start of the New Year, we took a look back at last year's state court decisions affecting healthcare. November and December proved to be especially notable months with Connecticut's appellate courts rendering two significant decisions-- one regarding a hospital's vicarious liability for the actions of medical staff members and another in the area of patient privacy. These and other key 2014 state law decisions are summarized below.

Hospital Liability for Negligence of Non-Employee Physicians

During the past year, a number of trial courts wrestled with the question of whether a hospital can be held vicariously liable for the medical malpractice of its non-employee physicians.

- In *Noel v. Lawrence & Memorial Hospital*, the Superior Court (J.D. New London) held that a hospital's duty to its emergency room patients is so important that it cannot be delegated to its independent contractor physicians. Importantly, the *Noel* court limited its decision to the ER and noted that its reasoning would not apply in those instances where the patient selected the doctor he or she had seen at the hospital, nor would it apply when a patient's chosen physician was summoned to the ER to care for the patient. The *Noel* court noted that at least four Connecticut superior courts had previously rejected imposing a similar non-delegable duty on hospitals, including one that had done so in the ER context.

A number of trial courts in other Judicial Districts concluded that a hospital could be held liable for the negligence of non-employee physicians utilizing the facility, but instead of relying on a non-delegable duty as the basis for their decisions, these courts followed earlier decisions finding that an actual or apparent agency relationship existed between the hospital and the non-employee physician. However, just last month in *Cefaratti v. Aranow*, the Connecticut Appellate Court found that no agency relationship existed between a hospital and a private attending surgeon who did not have an employment contract or receive any compensation from the hospital. The court rejected plaintiff's apparent authority arguments, relying in large part on a 2012 Appellate Court decision which held, in the non-medical context, that a principal cannot be held vicariously liable for the tortious actions of an alleged agent based on a theory of apparent agency.

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As the court in Cefaratti noted, the law in Connecticut regarding the applicability of the doctrine of apparent authority in tort actions is not entirely clear and it would not be surprising to find the Connecticut Supreme Court weighing in on this issue in the near future.

Certificate of Need

- *Middlesex Hospital v. Department of Public Health*. The Superior Court (J.D. New Britain) refused to hear an appeal of a decision of the Office of Health Care Access (OHCA) denying a hospital's CON application to purchase imaging equipment because it lacked jurisdiction over OHCA'S decision. In this case, the court determined that if a state agency is not statutorily or regulatorily required to hold a hearing, but nonetheless holds a hearing gratuitously, an appealable "final decision" in a "contested case" does not arise.

This case holds that an aggrieved party has no automatic right to appeal an OHCA decision where OHCA exercises its discretion to hold a hearing under C.G.S. §19a-639a(f), but leaves open the question of whether a CON applicant could preserve its right to appeal by triggering a mandatory hearing under 19a-639a(e).

Medical Records/Patient Privacy

- *Byrne v. Avery Center for Obstetrics and Gynecology, P.C.* In this case, the defendant medical practice mailed the plaintiff's medical records to a probate court in response to a subpoena issued in a paternity suit brought against the patient. The patient sued and the trial court dismissed her claims that defendant had acted negligently by failing to use due care in disclosing her medical records on the basis that her claim essentially alleged a HIPAA violation for which no private right of action exists. The Connecticut Supreme Court reversed and held that to the degree state common law recognizes a cause of action for a healthcare provider's breaches of confidentiality, such a claim could be brought and was not preempted by HIPAA. The court also found that HIPAA may provide a basis for the standard of care applicable to the state law claims.

We note that the Supreme Court's decision makes clear that the issue of whether Connecticut common law does in fact provide a remedy for a healthcare provider's breach of its duty of confidentiality was not an issue on appeal and thus it made no finding in that regard.

- *Briggs v. Winters*. A methadone clinic was ordered to disclose the treatment records of a patient involved in a fatal car crash shortly after she received a higher than usual dose of methadone. The Superior Court (J.D.

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Windham) determined that under both federal (HIPAA and the Public Health Services Act) and state law (C.G.S. §17a-688, the confidentiality rule for persons receiving substance abuse treatment, and C.G.S. §52-146e, the psychiatrist-patient privilege statute), disclosure was permitted in part because the patient had already introduced her mental condition as an element in the case.

This case provides a good overview of the confluence of federal and state laws that apply a higher standard of confidentiality to mental health and substance abuse records and the steps that should be taken to limit disclosure of such records when good cause is shown for their release.

Informed Consent

- *Torres v. Carrese*. The plaintiff in this Appellate Court case alleged that her doctor had a duty to inform her of the option of having a C-section performed at a tertiary facility where other more experienced or specialized physicians dealing with her condition (which led to her having a post-delivery hysterectomy) would have been present. In a case of first impression, the court disagreed and held that the essential element of informed consent is a discussion of the material risks of the procedure itself. Under the circumstances, the court found that informed consent did not extend to the place where the procedure was to be performed.

Providers should keep in mind that this decision was limited to its facts and, as the court noted, a physician might be required to advise a patient about another facility if the location of the procedure somehow posed a material risk.

National Practitioner Data Bank

- *Commissioner of Public Health v. Freedom of Information Commission*. The Connecticut Supreme Court held that records received from the National Practitioner Data Bank (NPDB) are not subject to disclosure to an unauthorized person under the state Freedom of Information Act (FOIA). However, information in the Department of Public Health's files may be subject to disclosure under FOIA if DPH obtained the information independently from other sources.

This case offers a measure of reassurance to providers who are listed on the NPDB that unauthorized individuals will not have access to their records by claiming a right under FOIA.

Healthcare Representatives

- *Pyshnyi v. The Connecticut Hospice, Inc.* In this case, a hospice was found not to owe a duty of care to the daughter of a patient even though the daughter held a power of attorney (POA) from her mother. The Superior Court held that the daughter could not bring a nursing malpractice action based on alleged failure

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of the defendant's agent to provide her with the information necessary to exercise her decision-making responsibilities as POA. The court also found that the defendant did not breach the standard of care because the POA did not create an agency relationship between the daughter and the healthcare worker, nor did it make the daughter a patient of the hospice.

This case illustrates the limitations on powers of attorney, but we note that the court did not strike the daughter's direct claims for emotional distress.

Good Samaritan Law

- *Reyes v. Western Connecticut Health Network, Inc.* Connecticut's "Good Samaritan" statute (C.G.S. § 52-557b) provides immunity to police officers, firefighters, EMS workers and other specified individuals from civil damages for acts of ordinary negligence in connection with the rendering of "emergency first aid" under certain circumstances. In this case, the Superior Court (J.D. Danbury) granted summary judgment to the defendants and rejected plaintiff's argument that acts committed while transporting a patient to an ambulance by stretcher were not covered by the Good Samaritan statute because no "emergency first aid" was being provided at the time.

First responders should keep in mind that the immunity provided under the Good Samaritan statute does not apply to gross, willful, or wanton negligence.

Medical Staff Bylaws

- *Prince v. Johnson Memorial Hospital, Inc.* The court in this case held that a hospital was required to follow its own bylaws and adhere to a medical executive committee's decision not to terminate a physician's privileges. The hospital's Board of Trustees decided to terminate the physician notwithstanding the MEC's decision to reinstate her with limitations. Since the medical staff bylaws did not allow the trustees to overturn the MEC's decision absent an appeal to the board (which did not occur), the court held that the board's decision was a breach of contract entitling the physician to damages and reinstatement.

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This case highlights the necessity of understanding and complying with medical staff bylaws and fair hearing plans in corrective action matters.