STATE OF CONNECTICUT

Docket No. X10-UWY-CV-23-6074188-S

ROBIN McSHANE, EXECUTOR OF THE ESTATE OF JESSICA DIAZ	:	SUPERIOR COURT
v.	:	COMPLEX LITIGATION DOCKET AT WATERBURY
PROSPECT ECHN, INC. d/b/a ROCKVILLE GENERAL HOSPITAL	:	
	:	MAY 31, 2024

MEMORANDUM OF DECISION RE MOTION TO DISMISS (No. 102), REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT (No. 114), AND OBJECTION (No. 118)

STATEMENT OF THE CASE

This wrongful death action, brought pursuant to General Statutes § 52-555, alleges specifications of negligence against the institutional defendant, in a single count, sounding in medical malpractice. The original (and currently operative) complaint in this action, dated April 17, 2023, asserts that the plaintiff's decedent, Jessica Diaz, was under the defendant's care from July 21, 2019 through July 28, 2019, on which date the decedent died. In the original complaint, the plaintiff contends that, while in the defendant's care, her decedent suffered, inter alia, a hypoxic/anoxic brain injury, cardiac dysrhythmias, and aspiration pneumonia, and that these injuries, conditions, and death were caused by the defendant, Prospect ECHN, Inc. d/b/a Rockville General Hospital, "including its employees, agents and

apparent agents," by failing "to provide care, treatment and monitoring as required by the standard of care" in one or more of several ways.

Within the body of the original complaint, the plaintiff identifies two physicians, Savita Sheth, M.D. and Naveen Gnanabakthan, M.D., as being physicians "licensed by the State of Connecticut to practice medicine and who practiced" at the defendant hospital, and further, that Drs. Sheth and Gnanabakthan were agents, apparent agents, servants, and/or employees of the defendant. No other agents, apparent agents, servants, and/or employees of the defendant are identified by name in the body of the original complaint.

Attached to the original complaint are two opinion letters. The first, which is dated April 2, 2023, is authored by an individual who identifies as a "Registered Nurse licensed to practice nursing by the State of Connecticut Department of Public Health. I have practiced nursing for over 25 years. I have undergraduate and graduate nursing degrees. I am a professor of nursing and have been involved in teaching nursing for over 25 years. My teaching responsibilities include teaching clinical aspects of nursing. I am trained and experienced in the same discipline of nursing as the nurses involved in this case. My training and experience is as a result of active involvement in the practice and teaching of nursing within the five-year period before the care at issue in this case which was rendered in 2019." The author of the first letter goes on to state that "[i]t is my opinion, [to] a reasonable degree of medical probability that Rockville General Hospital including Kathy Hartigan and

Malgorzata Czenowskia, and its employees, agents, apparent agents, and staff departed from the standard of care" in certain specified ways.

The second letter states that its author is "board certified and re-certified in Internal Medicine," who is further described as a "hospitalist" practicing "hospital-based medicine" and is "an Assistant Professor of General Internal Medicine in the Department of Internal Medicine at a major medical school." The author also claims to be a member of the Society of Hospital Medicine and a Fellow of the American College of Physicians. The author declares that, "[a]s a practicing hospitalist with board certification in Internal Medicine, I am trained and experienced in the same discipline or school of practice as the caregivers involved in this case." The second letter goes on to reflect that, in the author's opinion, and to a reasonable degree of medical probability, "Rockville General Hospital and its employees, agents, and apparent agents departed from the standard of care" in a variety of respects.

In response to the original complaint, the defendant filed a motion to dismiss and supporting memorandum of law (No. 102), arguing that this action should be dismissed on the ground that the plaintiff failed to comply with the requirements of General Statutes § 52-190a because the complaint fails to allege "the qualifications of the healthcare providers who [the plaintiff] claims acted negligently and the 'similar health care provider' standard that plaintiff alleges was breached, . . ." The defendant contends that because of the deficiencies in the complaint, "neither [the] defendant nor this [court] can determine whether [the] plaintiff obtained opinions from similar health care providers as required by General Statutes §§ 52-190a and

52-184c . . . ." After the defendant filed a supplemental supporting memorandum of law (No. 104), the plaintiff filed an opposition brief (No. 116), to which the defendant replied (No. 117).

During the time the motion to dismiss was being briefed, and prior to oral argument on the motion, the plaintiff filed a request for leave to file an amended complaint (No. 114), by which the plaintiff seeks to add more specific allegations to the complaint pertaining to the identities and qualifications of the defendant's purported agents and employees. For example, in the amended complaint, the plaintiff identifies Drs. Sheth and Gnanabakthan as "practicing hospitalist[s]" who are board certified in internal medicine. Amended Complaint (No. 114), ¶¶ 9 and 11. In addition, the plaintiff identifies Nurses Hartigan and Czesnowska as licensed nurses who practiced hospital-based nursing at the defendant's facility, and further, that at all times relevant, they were agents, apparent agents, servants and/or employees of the defendant. Id., 12, 13, 16, and 17. The plaintiff goes on to allege specifications of negligence against Drs. Sheth and Gnanabakthan, and the defendant's agents, servants, and employees, for their failure to adhere "to the standard of care [applicable to] board certified internists practicing hospital-based medicine," and against Nurses Hartigan and Czesnowska, as well as the defendant's agents, servants, and employees, for their "failure to adhere to the standard of care for hospital nursing staff, . . ." Id., ¶¶ 28 and 29. By her request for leave to amend, the plaintiff does not attempt to alter or supplement the two opinion letters appended to the original complaint.

On February 16, 2024, the defendant filed an objection to the plaintiff's request for leave to amend (No. 118), arguing that Connecticut case law prohibits the requested amendment, and further, that the proposed amendments are time-barred as they relate to alleged violations of the nursing standard of care. Oral argument was held on February 20, 2024, on which date the court took these matters under advisement.

DISCUSSION

I

The court begins with the defendant's objection to the plaintiff's request for leave to amend her complaint. See, e.g., *Thurz* v. *Hartford Hospital*, Superior Court, judicial district of Hartford, Docket No. 16-6065596 S (September 12, 2016, *Noble, J.*) (in medical malpractice action, addressing request for leave to amend complaint before considering motion to dismiss based on claimed failure to attach opinion letter from "similar health care provider"). It does so because a ruling on the objection will define the issues to be decided in connection with the motion to dismiss, and may render some or all of those issues moot. See, e.g., *DiBattista* v. *Danbury Hospital*, Superior Court, judicial district of Hartford, Docket No. CV-16-6067895 S (August 10, 2016, *Noble, J.*) ("[I]f the amendment were permitted the amended opinion letter would render moot [the] motion to dismiss").[1]

[1] As a motion to dismiss filed pursuant to Section 52-190a is nonjurisdictional; *Carpenter* v. *Daar*, 346 Conn. 80, 111, 287 A.3d 1027 (2023); there is no procedural bar to addressing the request for leave to amend before turning to the motion to dismiss.

"The granting or denial of a motion to amend the pleadings is a matter within the trial court's discretion." (Citation omitted; internal quotation marks omitted.) *Deutsche Bank National Trust Co.* v. *Speer*, 225 Conn. App. 439, 446, ___ A.3d ____ (2024). In fact, "[t]he trial court has wide discretion in granting or denying amendments before, during, or after trial." (Internal quotation marks omitted.) *McLaughlin* v. *Charette,* 7 Conn. App. 570, 573, 509 A.2d 1068 (1986).

Connecticut courts are liberal in allowing amendments to a pleading. As observed by our Appellate Court, "[i]n the interest of justice courts are liberal in permitting amendments; unless there is a sound reason, refusal to allow an amendment is an abuse of discretion. . . . The trial court is in the best position to assess the burden which an amendment would impose on the opposing party in light of the facts of the particular case. The essential tests are whether the ruling of the court will work an injustice to either the plaintiff or the defendant and whether the granting of the motion will unduly delay a trial. . . . In exercising its discretion with reference to a motion for leave to amend, a court should ordinarily be guided by its determination of the question whether the greater injustice will be done to the mover by denying him his day in court on the subject matter of the proposed amendment or to his adversary by granting the motion, with the resultant delay. . . . The law of this state favors allowing amendments in the absence of some sound basis for not doing so . . . particularly if the record fails to disclose some significant injustice or prejudice to the nonmoving party." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Ocwen Loan Servicing, LLC* v. *Mordeca*i, 209 Conn. App. 483, 498-

99, 268 A.3d 704 (2021); see also *McPhee Electric Ltd., LLC* v. *Konover Construction Corp.,* Superior Court, judicial district of New Haven at New Haven, Docket No. CV-07-5009694-S (October 22, 2009, *Lager, J.*) ("[a]s a matter of policy expressed in statute, General Statutes § 52-130, court rule, Practice Book § 10-60, and case law, see, e.g., *Johnson* v. *Toscano,* 144 Conn. 582, 587, 136 A.2d 341 [1957], Connecticut liberally permits the amendment of pleadings").

Nevertheless, "[w]hile our courts have been liberal in permitting amendments . . . this liberality has limitations . . . Factors to be considered in passing on a motion to amend are the length of the delay, fairness to the opposing parties and the negligence, if any, of the party offering the amendment . . . The motion . . . is addressed to the trial court's discretion . . . Whether to allow an amendment is . . . left to the sound discretion of the trial court." (Internal quotation marks omitted.) *LaFrance* v. *Lodmell,* 322 Conn. 828, 846-47, 144 A.3d 373 (2016).

An additional limitation on the ability of a party to amend her pleading is imposed by our relation back doctrine. The doctrine is well established in Connecticut. *Briere* v. *Greater Hartford Orthopedic Group, P.C.,* 325 Conn. 198, 207, 157 A.3d 70 (2017). "There is a well settled body of case law holding that a party may properly amplify or expand what has already been alleged in support of a cause of action, provided the identity of the cause of action remains substantially the same . . . If a new cause of action is alleged in an amended complaint . . . it will [speak] as of the date when it was filed . . . . A cause of action is that single group of facts which is claimed to have brought about an unlawful injury to the plaintiff and which entitles

the plaintiff to relief." (Internal quotation marks omitted.) *Briere* v. *Greater Hartford Orthopedic Group, P.C.*, supra, 325 Conn. 207.

"Our relation back doctrine provides that an amendment relates back when the original complaint has given the party fair notice that a claim is being asserted stemming from a particular transaction or occurrence, thereby serving the objectives of our statute of limitations, namely, to protect parties from having to defend against stale claims . . . . [I]n the cases in which we have determined that an amendment does not relate back to an earlier pleading, the amendment presented different issues or depended on different factual circumstances rather than merely amplifying or expanding upon previous allegations." (Citations omitted; internal quotation marks omitted.) *Briere* v. *Greater Hartford Orthopedic Group, P.C.*, supra, 207-08; see also *Keenan* v. *Yale New Haven Hospital,* 167 Conn. 284, 285, 355 A.2d 253 (1974) ("Amendments relate back to the date of the complaint unless they allege a new cause of action . . . An amendment to a complaint which sets up a new and different cause of action speaks as of the date when it is filed" [citations omitted]). "[I]t is apparent that in order to provide fair notice to the opposing party, the proposed new or changed allegation of negligence must fall within the scope of the original cause of action . . ." (Footnoted omitted.) *Briere* v. *Greater Hartford Orthopedic Group, P.C., supra*, 325 Conn. 210.

In this case, it is clear that the proposed amended complaint relates back to the original complaint as it falls within the scope of the original cause of action. To begin, and although formatted differently in the plaintiff's new pleading, the

specifications of negligence alleged in the proposed amended complaint are *identical* to those alleged in the original complaint. Compare Complaint dated April 17, 2023, ¶ 15 a.-j., with Amended Complaint (No. 114), ¶¶ 27 a.-i., 28 a.-f., 29 a.-f. Moreover, by the proposed amended complaint, the plaintiff seeks to (1) allege specifically that Drs. Sheth and Gnanabakthan, who were identified in the original complaint as the defendant's agents, are hospitalists who are board-certified in internal medicine, and (2) identify by name, in the body of the complaint, that Nurses Hartigan and Czesnowska were members of the defendant's nursing staff who provided care to the decedent in violation of the standard of care applicable to hospital nursing staff. These proposed changes do not constitute a new group of operative facts.

As stated by the court in *Thurz* v. *Hartford Hospital*, supra, Docket No. 16-6065596 S, the identification of previously-unnamed hospital agents does not present "an entirely new and different factual situation or a new and different cause of action which would preclude the amendment from relating back to the original date of filing. . . . [T]he amendment differs only in that it merely clarifies who the previously unnamed agents, servants, and/or employees of [the defendant] are. The theory of negligence [and] the vicarious liability of the defendant for the 'surgical team' for identical enumerated acts of negligence is in no way changed. . . . [B]y identifying by name previously unidentified actors upon whose tortious conduct the vicarious liability of [the defendant] is based, [the plaintiff] has merely properly amplified what has already been alleged in support of a cause of action . . . ."

Similarly, in *Hall* v. *New Britain General Hospital*, Superior Court, judicial district of New Britain, Docket No. CV-08-5007423 S (July 7, 2011, *Pittman, J.*), the court observed: "It is true that the original complaint contained no reference to these individuals by name. But the original complaint contained sufficient reference to employees and/or agents of [the defendant], without naming them, and did indicate in general terms what acts of negligence were involved. . . . [T]he later complaints do not allege any facts or causes of action that can fairly be described as new, in a way that prevents a proper reading of them as relating back to the allegations in the original complaint. The amended complaints contain permissible amplifications of allegations in earlier complaints, relating all the way back to the original complaint, without alleging any new and different factual situation or cause of action."

Moreover, allowing the amendment would not impose significant injustice upon or be unduly prejudicial to the defendant. In accordance with the reasoning of *Thurz* and *Hall*, and in the circumstances present here, the subsequent identification of the defendant's previously-unidentified agents and employees is not significantly unjust. This is particularly so in this case where, although the body of the original complaint did not make reference to Nurses Hartigan and Czesnowska, the first opinion letter attached to the original complaint states specifically that Nurses Hartigan and Czesnowska departed from the applicable standard of care. Given the identification of these two nursing providers in an opinion letter attached to the plaintiff's original pleading, the defendant cannot be prejudiced by an amendment

that identifies them, in the body of the amended complaint, as the defendant's agents, servants, and employees, involved in the purportedly negligent care of the decedent.

Moreover, a further description of the training, experience, and board certifications of Drs. Sheth and Gnanabakthan—previously named in the complaint—as being consistent with the training, experience, and board certification held by the physician author of the second opinion letter, is not prejudicial to the defendant. It merely amplifies the allegations with respect to Drs. Sheth and Gnanabakthan, in conformity with the requirements of § 52-184c. The defendant's objection to the plaintiff's request for leave to amend is overruled accordingly.

II

The court turns to the defendant's motion to dismiss, as it applies to the allegations of the now-operative amended complaint. The defendant argues for dismissal on the ground that the complaint "lacks allegations of the qualifications of the healthcare providers" such that the defendant cannot determine whether the plaintiff obtained opinions from "similar health care providers" as required by §§ 52-190a and 52-184c. In light of the amplified allegations of the amended complaint, this argument fails.

General Statutes § 52-190a (a) provides, in part, as follows: "No civil action . . . shall be filed to recover damages resulting from personal injury or wrongful death . . . , whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action . . . has made a reasonable inquiry as permitted by the circumstances

to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint, . . . shall contain a certificate of the attorney or party filing the action or apportionment that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant . . . . To show the existence of such good faith, the claimant or the claimant's attorney, . . . shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. . . . The claimant or the claimant's attorney, . . . shall retain the original written opinion and shall attach a copy of such written opinion, with the name and signature of the similar health care provider expunged, to such certificate."

"The legislature added the opinion letter requirement to § 52-190a . . . to address a perceived crisis resulting from skyrocketing medical malpractice insurance premiums in high-risk specialties, in part by deterring frivolous medical malpractice actions. . . . The opinion letter provision, with enforcement via motion to dismiss, addressed the perceived problem that attorneys were misrepresenting—often 'innocently'—the extent to which a factual basis existed for their good faith in bringing the action." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Carpenter* v. *Daar*, supra, 346 Conn. 107-08.

In the amended complaint, Drs. Sheth and Gnanabakthan are identified as hospitalists who are board-certified in internal medicine. Amended Complaint, ¶¶ 9, 11. Thus, the training and experience of the named physicians, as alleged, match that of the author of the second opinion letter—who identifies as a hospitalist—as does their certification by the American board in the same specialty, namely, internal medicine. These contentions satisfy the requirements of General Statutes § 52-184c (c) for health care providers "certified by the appropriate American board as a specialist, ..."

As for Nurses Hartigan and Czesnowska, and the author of the first opinion letter, "[a]bsent evidence of specialized training, registered nurses are considered non-specialists under § 52-184c (b)." *Ruff* v. *Yale-New Haven Hospital*, *Inc.* 172 Conn. App. 699, 712, 161 A.3d 552 (2017). Here, "there are no allegations in the complaint that [Nurses Hartigan and Czesnowska are] certified by any American board as being . . . specialist[s], [are] trained or experienced in a medical specialty, or hold [themselves] out as . . . specialist[s]. . . . On these allegations, the court finds that § 52-184c (b), the non-specialist subsection, supplies the appropriate definition for a 'similar health care provider' in relation to [Nurses Hartigan and Czesnowska]." *Dignoti* v. *Prime Healthcare, P.C.*, Superior Court, judicial district of New Britain, Docket No. CV-17-6039316 S (July 3, 2018, *Morgan, J.*) (66 Conn. L. Rptr. 672, 674).

The author of the first opinion letter satisfies the requirements of § 52-184c (b). First, the author is a registered nurse licensed by the state of Connecticut, thereby demonstrating that the author is "licensed by the appropriate agency of this

state." Section 52-184c (b) (1). Second, as an individual with undergraduate and graduate degrees in nursing, who has practicing nursing for over twenty-five years, and who works currently as a professor of nursing and has taught nursing for over twenty-five years—including the clinical aspects of nursing—the plaintiff has demonstrated that the author "is trained and experienced in the same discipline or school of practice and such training and experience shall be as a result of active involvement in the practice or teaching of medicine within the five-year period before the incident giving rise to the claim." Section § 52-184c (b) (2); see also Complaint, Exhibit B (first opinion letter), p. 1 ("My training and experience is as a result of active involvement in the practice and teaching of nursing within the five-year period before the care at issue in this case which was rendered in 2019").

CONCLUSION

For the foregoing reasons, the defendant's objection (No. 118) to the plaintiff's request for leave to file amended complaint is hereby OVERRULED; the plaintiff's motion to dismiss (No. 102) is DENIED.

PIERSON, J.