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2025 Edition

Medical Malpractice in Connecticut

A Guide to Resources in the Law Library

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Prepared by Connecticut Judicial Branch, Superior Court Operations, Judge Support Services, Law Library Services Unit

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- "No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, 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 or apportionment complaint 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." Conn. Gen. Stat. § 52-190a(a) (2025). [Emphasis added.]

- Certificate: "The complaint, initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant or for an apportionment complaint against each named apportionment defendant." Conn. Gen. Stat. § 52-190a(a) (2025).

- Written Opinion Letter: "To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant'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." Conn. Gen. Stat. § 52-190a(a) (2025).

- Automatic Ninety-Day Extension: "Upon petition to the clerk of any superior court or any federal district court to recover damages resulting from personal injury or wrongful death, an automatic ninety-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods." Conn. Gen. Stat. § 52-190a(b) (2025).

- Dismissal of Action: "The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action." Conn. Gen. Stat. § 52-190a(c) (2025).

- ". . . the relevant considerations in determining whether a claim sounds in medical malpractice are whether (1) the defendants are sued in their capacities as medical professionals, (2) the alleged negligence is of a specialized medical nature that arises out of the medical professional-patient relationship and (3) the alleged negligence is substantially related to medical diagnosis or treatment and involved the exercise of medical judgment." Trimel v. Lawrence & Memorial Hospital Rehabilitation Center, 61 Conn. App. 353, 358, 764 A.2d 203 (2001).

- "'[T]o prevail in a medical malpractice action, the plaintiff must prove (1) the requisite standard of care for treatment, (2) a deviation from that standard of care, and (3) a causal connection between the deviation and the claimed

injury.... Generally, expert testimony is required to establish both the standard of care to which the defendant is held and the breach of that standard.′ (Internal quotation marks omitted.) *Gold v. Greenwich Hospital Assn.*, 262 Conn. 248, 254−55, 811 A.2d 1266 (2002).″ Doe v. Cochran, 332 Conn. 325, 335, 210 A.3d 469 (2019).

Section 1: Certificate of Good Faith, Reasonable Inquiry or Merit & Written Opinion Letter

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the certificate of good faith, reasonable inquiry or merit, and the written opinion letter required in negligence actions against health care providers in Connecticut.

SEE ALSO: Section 2: Automatic Ninety-Day Extension of Statute of Limitations

DEFINITIONS:

- Good Faith Certificate: "The complaint, initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant or for an apportionment complaint against each named apportionment defendant." Conn. Gen. Stat. § 52-190a(a) (2025).

- Written Opinion of Health Care Provider: "To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant'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. Such written opinion shall not be subject to discovery by any party except for questioning the validity of the certificate. The claimant or the claimant's attorney, and any apportionment complainant or apportionment complainant'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 similar health care provider who provides such written opinion shall not, without a showing of malice, be personally liable for any damages to the defendant health care provider by reason of having provided such written opinion. In addition to such written opinion, the court may consider other factors with regard to the existence of good faith." Conn. Gen. Stat. § 52-190a(a) (2025).

- Health Care Provider: "means any person, corporation, facility or institution licensed by this state to provide health care or professional services, or an officer, employee or agent thereof acting in the course and scope

of his employment." Conn. Gen. Stat. § 52-184b(a) (2025).

- "If the defendant health care provider is not certified by the appropriate American board as being a specialist, is not trained and experienced in a medical specialty, or does not hold himself out as a specialist, a 'similar health care provider' is one who: (1) Is licensed by the appropriate regulatory agency of this state or another state requiring the same or greater qualifications; and (2) is trained and experienced in the same discipline or school of practice and such training and experience shall be as a result of the active involvement in the practice or teaching of medicine within the five-year period before the incident giving rise to the claim." Conn. Gen. Stat. § 52-184c(b) (2025).

- "If the defendant health care provider is certified by the appropriate American board as a specialist, is trained and experienced in a medical specialty, or holds himself out as a specialist, a 'similar health care provider' is one who: (1) Is trained and experienced in the same specialty; and (2) is certified by the appropriate American board in the same specialty; provided if the defendant health care provider is providing treatment or diagnosis for a condition which is not within his specialty, a specialist trained in the treatment or diagnosis for that condition shall be considered a 'similar health care provider.'" Conn. Gen. Stat. § 52-184c(c) (2025).

- Purpose of good faith certificate: "The purpose of this precomplaint inquiry is to discourage would-be plaintiffs from filing unfounded lawsuits against health care providers and to assure the defendant that the plaintiff has a good faith belief in the defendant's negligence. *LeConche v. Elligers*, 215 Conn. 701, 710-11, 579 A.2d 1 (1990)." Yale University School of Medicine v. McCarthy, 26 Conn. App. 497, 501-502, 602 A.2d 1040 (1992).

STATUTES:

You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2025).
  - Chapter 53. Claims Against the State
    - § 4-160(f). Authorization of actions against the state.
  - Chapter 899. Evidence
    - § 52-184c. Standard of care in negligence action against health care provider. Qualifications of expert witness.
  - Chapter 900. Court Practice and Procedure
    - § 52-190a. Prior reasonable inquiry and certificate of good faith required in negligence action against a health care provider. Ninety-day extension of statute of limitations.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted online.

- Conn. Practice Book (2025).
  Chapter 13. Discovery and Depositions
  § 13-2. Scope of discovery; In general

FORMS:

Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 3 Connecticut Practice Series, Connecticut Civil Practice Forms, 5th ed., by Daniel A. Morris et al., 2025 ed., Thomson West (also available on Westlaw).
  § 65.6. Certificate of Reasonable Inquiry—Required attachment to medical malpractice complaint or apportionment

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2025.
  Chapter 16. Professional Malpractice
  Form 16.03.2. Certificate of Good Faith
  Form 16.03.3. Opinion Letter from a Similar Health Care Provider

- *Library of Connecticut Personal Injury Forms*, 3d ed., by Carey B. Reilly, Connecticut Law Tribune, 2022.
  Form 1-012. Medical Malpractice, Attorney's Certificate of Good Faith, General Statutes § 52-190a
  Form 1-013. Medical Malpractice, Physician Opinion Letter, General Statutes § 52-190a

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

Who Can Draft

- Caron v. Connecticut Pathology Group, P.C., 187 Conn. App. 555, 556-557, 202 A.3d 1024 (2019). "This appeal arises out of a medical malpractice action . . . after a false positive cancer diagnosis. The plaintiffs appeal from the judgment of the trial court dismissing their complaint against the defendant for failure to attach to their complaint a legally sufficient opinion letter authored by a similar health care provider as required by General Statutes § 52-190a (a). On appeal, the plaintiffs, who attached to their complaint an opinion letter authored by a board certified clinical pathologist, claim that the court found that anatomic pathology is a medical specialty distinct from clinical pathology and, on the basis of that finding and the allegations in the complaint, improperly determined that the plaintiffs were required to submit an opinion letter authored by a board certified anatomic pathologist. We disagree . . ."

- Doyle v. Aspen Dental of S. CT, PC, 179 Conn. App. 485, 494–495, 179 A.3d 249 (2018). "Despite the defendant's training and experience in oral and maxillofacial surgery,

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the plaintiff maintains that an opinion letter from a general dentist was sufficient in the present case because 'there was no authentic public record by which to determine or verify that [the defendant] had training as an oral and maxillofacial surgeon' and she could verify only that the defendant was a licensed general dentist. More specifically, the plaintiff argues that because the defendant's profile on the website of the Department of Public Health (department) did not indicate that he was a board certified oral and maxillofacial surgeon, she was not required to obtain an opinion letter from a board certified oral and maxillofacial surgeon. In response, the defendant argues that 'there is no statutory requirement that the defendant's specialty training be verifiable on the website of a public health authority.' We agree with the defendant."

- Wilkins v. Connecticut Childbirth and Women's Center, 314 Conn. 709, 727, 104 A.3d 671 (2014). "We conclude that the text of the statute accommodates a circumstance in which two different types of medical professionals are board certified in the same medical specialty. To the extent that the statute is ambiguous as to this question, we agree with the plaintiff that a construction that deems a medical professional who is board certified in the same specialty but has greater training and experience, satisfies the purpose of the requirement of the opinion letter. Under this construction, a board certified obstetrician and gynecologist is a similar health care provider for purposes of § 52-184c (c)."

- Bennett v. New Milford Hospital, 300 Conn 1, 21, 12 A.3d 865 (2011). "Specifically, the text of the related statutes and the legislative history support the Appellate Court's determination that, unlike § 52-184c (d), which allows for some subjectivity as it gives the trial court discretion in determining whether an expert may testify, '§ 52-190a establishes objective criteria, not subject to the exercise of discretion, making the prelitigation requirements more definitive and uniform' and, therefore, not as dependent on an attorney or self-represented party's subjective assessment of an expert's opinion and qualifications . . . Accordingly, we conclude that, in cases of specialists, the author of an opinion letter pursuant to § 52-190a (a) must be a similar health care provider as that term is defined by § 52-184c (c), regardless of his or her potential qualifications to testify at trial pursuant to § 52-184c (d)."

- Plante v. Charlotte Hungerford Hospital, 300 Conn. 33, 46-47, 12 A.3d 885 (2011). "The hospital defendants contend further that the matter of form provision of § 52-592(a) is intended to aid the 'diligent suitor' and excuses

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only 'mistake, inadvertence or excusable neglect.' We agree with the hospital defendants and conclude that, when a medical malpractice action has been dismissed pursuant to § 52-192a(c) for failure to supply an opinion letter by a similar health care provider required by § 52-190a(a), a plaintiff may commence an otherwise time barred new action pursuant to the matter of form provision of § 52-592(a) only if that failure was caused by a simple mistake or omission, rather than egregious conduct or gross negligence attributable to the plaintiff or his attorney."

Content and Sufficiency

- Infelice v. Yale New Haven Health Services Corp., Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FST-CV-25-6070817-S (August 5, 2025) (2025 WL 2318667). "Although the court understands the motion to dismiss cannot be brought on jurisdictional grounds, the Supreme Court preserved the motion as the proper tool for addressing § 52-190a defects. Accordingly, the court finds that a motion to strike is an improper mechanism for challenging the written opinion requirement of § 52-190a. The proper mechanism is a motion to dismiss. "

- Gervais v. JACC Healthcare Ctr. of Danielson, LLC, 221 Conn. App. 148, 300 A.3d 1244 (2023). "Reconsidering this appeal in light of *Carpenter*, we now conclude that the trial court improperly concluded that it lacked authority to permit the plaintiffs to amend the opinion letter in response to the defendants' motion to dismiss. Accordingly, we reverse the judgment of the trial court." (p. 151)

  "On February 1, 2023, our Supreme Court officially released its decision in *Carpenter* v. *Daar*, supra, 346 Conn. at 83, 287 A.3d 1027, which, as we subsequently explain in greater detail: reversed its prior precedent and concluded that the opinion letter requirement of § 52-190a is nonjurisdictional; id., at 87, 287 A.3d 1027; held that a trial court retains authority to permit the amendment or supplementation of a challenged opinion letter; id., at 126, 287 A.3d 1027; and established that the sufficiency of an opinion letter is to be determined solely on basis of a broad and realistic reading of the allegations of the complaint as compared to the opinion letter." (p. 156)

- Carpenter v. Daar, 346 Conn. 80, 87-88, 287 A.3d 1027 (2023). "We now hold that the opinion letter requirement is a unique, statutory procedural device that does not

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implicate the court's jurisdiction in any way. We further conclude that, consistent with this court's decision in *Bennett v. New Milford Hospital, Inc.*, 300 Conn. 1, 12 A.3d 865 (2011), for purposes of the motion to dismiss pursuant to § 52-190a (c), the sufficiency of the opinion letter is to be determined solely on the basis of the allegations in the complaint and on the face of the opinion letter, without resort to the jurisdictional fact-finding process articulated in, for example, *Conboy v. State*, 292 Conn. 642, 651–52, 974 A.2d 669 (2009). Because the opinion letter in the present case established that Solomon was a similar health care provider to Daar under the broadly and realistically read allegations in the complaint, we conclude that the plaintiff's action should not have been dismissed."

- Wilcox v. Schwartz, 303 Conn. 630, 648, 37 A.3d 133 (2012). "We therefore disagree with the defendants . . . that a written opinion always must identify the precise manner in which the standard of care was breached to satisfy the requirements of § 52-190a(a)."

When Required

- Mansur v. CT Fertility, P.C., Superior Court, Judicial District of Fairfield at Bridgeport, No. FBTCV186076746S (April 22, 2019) (68 Conn. L. Rptr. 403, 407) (2019 Conn. Super. LEXIS 1048) (2019 WL 2317138). "*Witt* and *Gunter*, both causes of action raising questions of negligence regarding family planning, provide instructive analysis applicable to the present case. In the present case, the plaintiff does not allege that the defendant's negligence involved medical judgment. As discussed previously, the plaintiff's allegations concern whether the defendant adhered to the clear terms of the contract that were entered into by Doyle on the defendant's behalf and memorialized in the plaintiff's medical record and whether the defendant reviewed the medical file, sent notice to the plaintiff and received the plaintiff's consent prior to allowing Thornton to perform the procedure. Similar to *Witt*, where this court determined that discarding ovarian tissue that was supposed to remain stored for future fertility purposes was a result of poor record keeping and sounded in ordinary negligence, the allegations made in the present case similarly amount to poor record keeping and do not implicate the defendant's medical judgment. Fertilizing all of the viable eggs, rather than performing a 'hold and freeze' of some of the viable eggs pursuant to the contract between the parties, did not involve the exercise of medical judgment. Instead, the defendant's alleged failure to adhere to the terms of the contract presents an issue of ordinary negligence. Accordingly, §

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52-190a is inapplicable to the present case, and the plaintiff was not required to submit an opinion letter from a similar health care provider."

- Perry v. Valerio, 167 Conn. App. 734, 744, 143 A.3d 1202 (2016). "On the basis of our consideration of the three prongs of the *Trimel* test to determine whether a claim sounds in medical malpractice, we conclude that the trial court properly characterized the plaintiff's complaint as a medical malpractice claim. We therefore reach the additional conclusion that the plaintiff was required to satisfy the requirements of § 52−190a (a) by filing a good faith certificate and an opinion by a similar health care provider when she initiated her action. Because she failed to comply with those requirements, we ultimately conclude that the court properly granted the defendants' motion to dismiss pursuant to § 52−190a (c)."

- Austin v. Connecticut CVS Pharmacy, LLC, Superior Court, Judicial District of Hartford at Hartford, No. CV136037871S (June 6, 2013) (56 Conn. L. Rptr. 242) (2013 Conn. Super. LEXIS 1284) (2013 WL 3306639). "The plaintiff claims that her complaint alleges ordinary acts of negligence, where no medical judgment is required, and therefore the requirements of General Statutes § 52−190a do not apply. As Judge Licari noted in *Burke v. CVS Pharmacy, Inc.*, Superior Court, judicial district of New Haven at New Haven, Docket No. CV0850247395 (2/9/09), there is a split of authority as to whether or not a pharmacist's misfilling of a prescription is medical malpractice or simple negligence." (p. 1)

  "Applying the *Trimel* criteria to this case it is clear that the complaint alleges medical negligence, not ordinary negligence." (p. 2)

- Nichols v. Milford Pediatric Group, P.C., 141 Conn App. 707, 715, 64 A.3d 770 (2013). "Further, whether the defendant acted unreasonably by allowing a medical assistant to collect blood samples unsupervised and in the manner utilized and whether it sufficiently trained its employee to ensure that any blood collection was completed in a safe manner, including imparting the knowledge necessary to recognize a 'syncopic reaction to blood sampling,' clearly involves the exercise of medical knowledge and judgment. Accordingly, we disagree with the plaintiff's assertion that any medical opinion would be unnecessary or superfluous."

WEST KEY NUMBERS:

- *Health*
  - V. Malpractice, Negligence, or Breach of Duty
    - G. Actions and Proceedings
      - 804. Affidavits of merit or meritorious defense; expert affidavits.
      - 805. Sanctions for failing to file affidavits; dismissal with or without prejudice.

TEXTS & TREATISES:

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- 3 Connecticut Practice Series, Connecticut Civil Practice Forms, 5th ed., by Daniel A. Morris et al., 2025 ed., Thomson West (also available on Westlaw).
  - § 65:5. Good faith certificate requirement—Commentary.
  - § 65.6. Certificate of Reasonable Inquiry—Required attachment to medical malpractice complaint or apportionment

- 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2025 ed., Thomson West (also available on Westlaw).
  - Chapter 16. Medical Malpractice
    - § 16:2. Authority; good faith certificate

- *Connecticut Medical Malpractice: A Manual of Practice and Procedure,* 8th ed., by Joyce A. Lagnese et al., Connecticut Law Tribune, 2025.
  - Chapter 4. Certificate of Good Faith and Opinion Letter
    - § 4-3. The Certificate of Good Faith
    - § 4-4. The 90-Day Extension
    - § 4-5. The Opinion Letter
      - § 4-5:1. Whether the Action Requires an Opinion Letter
      - § 4-5:1.1. Actions Not Sounding in Medical Malpractice
      - § 4-5:1.2. Informed Consent Cases
      - § 4-5:2. Remedy for Non-Compliance with the Opinion Letter Requirement
      - § 4-5:3. The "Detailed Basis" Requirement
      - § 4-5:4. Causation
      - § 4-5:5. Whether the Letter Should Indicate That the Author Is a Similar Health Care Provider
      - § 4-5:6. The Author Must Be a "Similar Health Care Provider"
      - § 4-5:7. Hospitals as Defendants
      - § 4-5:8. Multiple Defendants
      - § 4-5:9. Revival of Dismissed Claims Under the Accidental Failure of Suit Statute

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2025.
  - Chapter 16. Professional Malpractice
    - § 16.03. Bringing a Medical Malpractice Claim

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[7] Obtaining a Good-Faith Certificate
[a] Overview of Conn. Gen. Stat. § 52-190a
[b] What Is a "Similar Health Care Provider?"
[c] What Must the Opinion Letter State?
[d] Failure to Obtain and File Written Opinion is Grounds for Dismissal of Medical Malpractice Action
[e] Strict Compliance with Conn. Gen. Stat. § 52-190a Is Required
[f] Conn. Gen. Stat. § 52-190a Does Not Apply to Informed Consent Claims
[g] Curing a Defective Opinion Letter

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, Margaret Penny Mason, editor, 2024 ed., LexisNexis.
  Chapter 7. Pleadings
  § 7.16. Amending and Supplementing the Complaint
  [5] Amendment of Opinion Letter in Medical Malpractice Action

- *Tort Remedies in Connecticut*, by Richard L. Newman and Jeffrey S. Wildstein, Michie, 1996, with 2014 supplement.
  Chapter 16. Professional Malpractice
  § 16-3. Medical Malpractice
  § 16-3(d). Good Faith Certificate

Section 2: Automatic Ninety-Day Extension of Statute of Limitations

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the automatic ninety-day extension of statute of limitations granted to allow reasonable inquiry in negligence actions against health care providers in Connecticut.

SEE ALSO:

Section 1: Certificate of Good Faith, Reasonable Inquiry or Merit & Written Opinion Letter

DEFINITIONS:

- Ninety-day extension of statute of limitations: "Upon petition to the clerk of any superior court or any federal district court to recover damages resulting from personal injury or wrongful death, an automatic ninety-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods." Conn. Gen. Stat. § 52-190a(b) (2025).

- Statute of Limitations: "No action to recover damages for injury to the person, or to real or personal property, caused by negligence, or by reckless or wanton misconduct, or by malpractice of a physician, surgeon, dentist, podiatrist, chiropractor, advanced practice registered nurse, hospital or sanatorium, shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained of, except that a counterclaim may be interposed in any such action any time before the pleadings in such action are finally closed." Conn. Gen. Stat. § 52-584 (2025). [Emphasis added.]

STATUTES:

You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2025).
  - Chapter 898. Pleading
    - § 52-102b. Addition of person as defendant for apportionment of liability purposes.
  - Chapter 900. Court Practice and Procedure
    - § 52-190a. Prior reasonable inquiry and certificate of good faith required in negligence action against a health care provider. Ninety-day extension of statute of limitations.
  - Chapter 925. Statutory Rights of Action and Defenses
    - § 52-555. Actions for injuries resulting in death.
  - Chapter 926. Statute of Limitations

§ 52-584. Limitation of action for injury to person or property caused by negligence, misconduct or malpractice.

FORMS:

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- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2025.
  Form 16.03.1. Petition for Automatic 90-Day Extension of Limitations Period − Conn. Gen. Stat. § 52-190A

- *Library of Connecticut Personal Injury Forms*, 3d ed., by Carey B. Reilly, Connecticut Law Tribune, 2022.
  Form 1-011. Medical Malpractice, 90-Day Extension of Statute of Limitations, General Statutes § 52-190a

RECORDS & BRIEFS:

- Conn. Supreme Court Records and Briefs, Barrett v. Montesano (Term of April 2004), Petition to Clerk for Automatic Ninety Day Extension. (Figure 1)

CASES:

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- Green v. St. Francis Hospital and Medical Center, Superior Court, Judicial District of Hartford at Hartford, No. HHD-CV22-6161010-S (August 14, 2024) (2024 WL 3873675). "§ 52-190a(a) was amended by the legislature after *Lostritto* to include several references to apportionment, which at least three Superior Court judges have interpreted as allowing apportionment litigants to request and receive the ninety-day extension provided for in § 52-190a(b). See *Burns* v. *Stamford Health System, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-14-6021550-S (June 30, 2015, *Lee, J.*) (60 Conn. L. Rptr. 578) ('in the year following the *Lostritto* decision, the ... General Assembly amended [s]ection 52-190a via P.A. 05-275 to make it clear that apportionment complaints were included within its scope and the 90-day extension of the statute of limitations provision therein to permit the reasonable inquiry required applied to apportionment complaints'); *Post* v. *Brennan*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-07-5003039-S (July 16, 2008, *Adams, J.*) (concluding 'the amended [s]ection 52-190a renders obsolete the holding of *Lostritto* that the 90-day extension of time provision in that statute does not apply to extend the 120 days allowed by [s]ection 52-102b for filing an apportionment complaint alleging medical negligence'); *Mills* v. *Solution, LLC*, Superior Court, judicial district of Fairfield, Docket No. CV-07-5009361-S (September 18, 2008, *Arnold, J.*) (46 Conn. L. Rptr. 434) (same). This court adopts the sound reasoning of these judges and finds that the plain language of § 52-190a allows for a ninety-day extension of the statute of limitations to bring an apportionment action."

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- Ligouri v. Sabbarese, Superior Court, Judicial District of Danbury at Danbury, No. DBDCV186026710S (October 1, 2020) (70 Conn. L. Rptr. 356, 361-362) (2020 Conn. Super. LEXIS 1113) (2020 WL 6338218). "The plaintiff cites *Pafka v. Gibson*, 2008 WL 3307297, as providing a guiding principle in a court's dealing with informed consent and potential statute of limitations issues. In *Pafka*, the defendants alleged that the ninety-day extension of the statute of limitations to allow for a reasonable inquiry into a claim of medical malpractice did not apply to the plaintiff's count alleging lack of informed consent . . . 'The purpose of the subsection providing for a ninety-day extension, by its very words, is to allow a reasonable inquiry into whether there has been medical negligence. The ninety-day extension is automatically *granted* ... based *upon a factual scenario that potentially may result in a claim of medical negligence*. To foreclose a plaintiff who makes such an inquiry during the ninety-day period from filing a claim based upon lack of informed consent rather than medical negligence after conducting the inquiry would contradict the whole purpose of that subsection providing for the extension. The defendants have cited no authority that indicates that a court may retroactively revoke an automatic extension of the statute of limitations when the action that is ultimately filed within the ninety-day extension period does not contain a medical negligence claim. To interpret the extension provision to require a plaintiff to file an action based upon any theory other than medical negligence within two years and then allow a plaintiff an extra ninety days only to file a medical negligence claim not only negates the purpose of providing the extension but potentially results in multiple, piecemeal filings of actions based upon the same set of factual circumstances. The defendants are not entitled to summary judgment on the ground that the plaintiff's claim is barred by the statute of limitations, as her claim, regardless of its nature, was filed within the ninety-day extension period provided in General Statutes § 52-190a(b).' *Pafka* at *2. Here the plaintiff did file a claim for medical malpractice, which was dismissed based on an insufficient opinion letter, but it did meet the *Pafka* determination that the 'ninety-day extension is automatically granted ... based upon a factual scenario that potentially may result in a claim of medical negligence,' as it actually did result in a medical negligence claim, that was dismissed for other reasons."

- Riccio v. Bristol Hospital, Inc., Superior Court, Judicial District of New Britain at New Britain, No. CV186048099S (October 4, 2019) (69 Conn. L. Rptr. 303, 306) (2019 Conn. Super. LEXIS 2693) (2019 WL 5543036). "On the evidence before it, the court cannot find that the dismissal of *Riccio I* was the result of mistake, inadvertence, or

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excusable neglect, rather than egregious conduct or gross negligence on the part of the plaintiff or her attorneys. Having failed to meet her burden of demonstrating that the dismissal of *Riccio I* was a matter of form, the plaintiff cannot avail herself of the accidental failure of suit statute. *Riccio II* was commenced five months after the statute of limitations expired. Thus, the action is time barred by § 52-555, and the court lacks subject matter jurisdiction over the plaintiff's medical malpractice claim. The defendant's motion to dismiss is therefore GRANTED."

- Burns v. Stamford Health System, Inc., Superior Court, Judicial District of Stamford/Norwalk at Stamford, No. 2015 WL 4571307 (June 30, 2015) (60 Conn. L. Rptr. 578, 581) (2015 Conn. Super. LEXIS 1741) (2015 WL 4571307). "From the language of the relevant statutes then, it is plain that it was the intention of the legislature to extend the 120−day period [52-102b] by an extra 90 days where the reasonable inquiry of a malpractice complaint, direct or apportionment, is required."

- Rockwell v. Quintner, 96 Conn. App. 221, 232, 899 A.2d 738 (2006). "To demonstrate his entitlement to summary judgment on timeliness grounds, the defendant, through his affidavit, needed to establish that there was no viable question of fact concerning the plaintiff's obligation to have brought her action within two years and ninety days of discovering the injuries allegedly caused by the defendant's treatment or, in any event, no later than three years and ninety days from the negligent treatment itself. See General Statutes §§ 52-584, 52-190a (b); *Barrett v. Montesano*, 269 Conn. 787, 796, 849 A.2d 839 (2004) (holding automatic ninety day extension provided by § 52-190a [b] applicable to both two year discovery and three year repose provisions of § 52-584)."

- Barrett v. Montesano, 269 Conn. 787, 790-791, 849 A.2d 839 (2004). "On appeal, the plaintiffs claim that the trial court improperly held that the ninety day extension provided by § 52-190a(b) did not apply to the repose section of § 52-584, but, rather, applied only to the two year discovery provision of the statute. They contend that the three year repose section is part of the statute of limitations and is therefore extended by § 52-190a. The defendants argue in response that the exception provided by § 52-190a should be strictly construed in favor of protecting defendants from stale claims and that the term 'statute of limitations' excludes the statute of repose contained in § 52-584. We agree with the plaintiffs."

- Girard v. Weiss, 43 Conn. App. 397, 418, 682 A.2d 1078 (1996). "Section 52-190a(b) grants an automatic ninety

day extension of the statute, making it clear that the ninety days is in addition to other tolling periods."

WEST KEY NUMBERS:

- *Limitation of Actions*
  - II. Computation of Period of Limitation
    - F. Ignorance, Mistake, Trust, Fraud, and Concealment of Discovery of Cause of Action
      - 95 (10) (12). Ignorance of cause of action – Professional negligence or malpractice – Health care professionals in general

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 3 Connecticut Practice Series, Connecticut Civil Practice Forms, 5th ed., by Daniel A. Morris et al., 2025 ed., Thomson West (also available on Westlaw).
  - § 65:2. Limitation of action for medical malpractice—Commentary.

- 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2025 ed., Thomson West (also available on Westlaw).
  - Chapter 16. Medical Malpractice
    - § 16:9. Limitation of actions: Statute of limitations

- *Connecticut Medical Malpractice: A Manual of Practice and Procedure,* 8th ed., by Joyce A. Lagnese et al., Connecticut Law Tribune, 2025.
  - Chapter 4. Certificate of Good Faith and Opinion Letter
    - § 4-4. The 90-Day Extension

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2025.
  - Chapter 16. Professional Malpractice
    - § 16.03. Bringing a Medical Malpractice Claim
      - [10] Defending a Medical Malpractice Claim
        - [d] Petitioning for a 90-Day Toll to Comply With Conn. Gen. Stat. § 52-190a(a)

- *Tort Remedies in Connecticut*, by Richard L. Newman and Jeffrey S. Wildstein, Michie, 1996, with 2014 supplement.
  - Chapter 16. Professional Malpractice
    - § 16-3. Medical Malpractice
    - § 16-3(d). Good Faith Certificate
    - § 16-3(g)(1)(iii). Tolling by Good Faith Certificate
  - Chapter 24. Statute of Limitations
    - § 24-4(c). Medical Malpractice Claims

Figure 1: Petition to Clerk for Automatic Ninety Day Extension

PETITION TO THE CLERK

Pursuant to Connecticut General Statutes Section 52-190a(b), the undersigned hereby petitions for the AUTOMATIC ninety (90) day extension of the Statute of Limitations regarding the course of treatment given to _____ and affecting _____ and any other plaintiffs yet to be identified on or about _____; to allow reasonable inquiry to determine that there was negligence in the care and treatment of _____ by _____ Hospital and/or its servants, agents, and/or employees ; PHYSICIANS _____ and/or their servants, agents and/or employees ; _____ , M.D. and/or her servants, agents and/or employees and other health care providers and other professional corporations of health care providers, and their servants, agents and/or employees as yet to be determined.

_____
Signed

Section 3: Elements of a Medical Malpractice Action

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the elements of a medical malpractice action in Connecticut.

DEFINITIONS:

- Medical Malpractice v. Ordinary Negligence: "The classification of a negligence claim as either medical malpractice or ordinary negligence requires a court to review closely the circumstances under which the alleged negligence occurred. '[P]rofessional negligence or malpractice ... [is] defined as the *failure of one rendering professional services* to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss, or damage to the recipient of those services.' (Emphasis added; internal quotation marks omitted.) *Santopietro v. New Haven*, 239 Conn. 207, 226, 682 A.2d 106 (1996). Furthermore, malpractice 'presupposes some *improper conduct in the treatment or operative skill* [or] ... the failure to exercise requisite medical skill....' (Citations omitted; emphasis added.) *Camposano v. Claiborn*, 2 Conn. Cir. Ct. 135, 136-37, 196 A.2d 129 (1963). From those definitions, we conclude that the relevant considerations in determining whether a claim sounds in medical malpractice are whether (1) the defendants are sued in their capacities as medical professionals, (2) the alleged negligence is of a specialized medical nature that arises out of the medical professional-patient relationship and (3) the alleged negligence is substantially related to medical diagnosis or treatment and involved the exercise of medical judgment. See *Spatafora v. St. John's Episcopal Hospital*, 209 App.Div.2d 608, 609, 619 N.Y.S.2d 118 (1994)." Trimel v. Lawrence & Memorial Hospital Rehabilitation Center, 61 Conn. App. 353, 357-358, 764 A.2d 203 (2001).

- "'[T]o prevail in a medical malpractice action, the plaintiff must prove (1) the requisite standard of care for treatment, (2) a deviation from that standard of care, and (3) a causal connection between the deviation and the claimed injury.... Generally, expert testimony is required to establish both the standard of care to which the defendant is held and the breach of that standard.' (Internal quotation marks omitted.) *Gold v. Greenwich Hospital Assn.*, 262 Conn. 248, 254–55, 811 A.2d 1266 (2002)." Doe v. Cochran, 332 Conn. 325, 335, 210 A.3d 469 (2019).

- Agency for purposes of imposing vicarious liability in tort claims. "... we adopt the following alternative standards for establishing apparent agency in tort cases ... Specifically, the plaintiff may prevail by establishing that: (1) the principal held the apparent agent or employee out to the public as possessing the authority to engage in the conduct at issue, or knowingly permitted the apparent agent or employee to act as having such authority; (2) the plaintiff knew of these acts by the principal, and actually and reasonably believed that the agent or employee or apparent agent or employee possessed the necessary authority; see *Fireman's Fund Indemnity Co. v. Longshore Beach & Country Club, Inc.*, supra, 127 Conn. at 496–97, 18 A.2d 347; and (3) the plaintiff detrimentally relied on the principal's acts, i.e., the plaintiff would not have dealt with the tortfeasor if the plaintiff had known that the tortfeasor was not the principal's agent or employee. We emphasize that this standard is narrow, and we anticipate that it will be only in the rare tort action that the plaintiff will be able to establish the elements of apparent agency by proving detrimental reliance." Cefaratti v. Aranow, 321 Conn. 593, 624-625, 141 A.3d 752 (2016).

- Alleged Negligence of Health Care Provider: "In the case of any action 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, an offer of compromise pursuant to Section 17-14 may be filed not earlier than 365 days after service of process is made on the defendant in such action and, if the offer of compromise is not accepted within sixty days and prior to the rendering of a verdict by the jury or an award by the court, the offer of compromise shall be considered rejected and not subject to acceptance unless refiled." Connecticut Practice Book § 17-14A (2025).

STATUTES:

You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2025).
  - Chapter 53. Claims Against the State
    - § 4-160(f). Authorization of actions against the state.
  - Chapter 899. Evidence
    - § 52-184b. Failure to bill and advance payments inadmissible in malpractice cases.
    - § 52-184d. Inadmissibility of apology made by health care provider to alleged victim of unanticipated outcome of medical care.
    - § 52-184e. Admissibility of amount of damages awarded to plaintiff in separate action against different health care provider.
  - Chapter 900. Court Practice and Procedure

§ 52-190a. Prior reasonable inquiry and certificate of good faith required in negligence action against a health care provider. Ninety-day extension of statute of limitations.
§ 52-190b. Designation of negligence action against health care provider as complex litigation case.
§ 52-190c. Mandatory mediation for negligence action against health care provider. Stipulation by mediator and parties. Rules.
§ 52-192a(b). Offer of compromise by plaintiff. Acceptance by defendant. Amount and computation of interest.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted online.

- Conn. Practice Book (2025).
  Chapter 17. Judgments
  § 17-14A. —Alleged negligence of health care provider

LEGISLATIVE:

Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- *Medical Spas*, James Orlando, Connecticut General Assembly, Office of Legislative Research Report, 2025-R-0159 (September 29, 2025).
- *Standard of Care in Medical Malpractice Cases*, Christopher Reinhart, Connecticut General Assembly, Office of Legislative Research Report, 2003-R-0486 (July 3, 2003).

FORMS:

Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 19B *Am Jur Pleading & Practice Forms* Physicians, Surgeons, and Other Healers, Thomson West, 2018 (also available on Westlaw).
  VII. Care of Patients; Liability for Malpractice
  § 82. Checklist – Drafting a complaint in action for damages against a physician, dentist, or other healer for injuries caused by defendant's malpractice
  § 88. Complaint, petition, or declaration – For malpractice – General form
  § 89. Complaint, petition, or declaration – For malpractice – Specification of items of negligence
  § 90. Complaint, petition, or declaration – For negligence in permitting fall of aged patient – Wrongful death
  § 91. Complaint, petition, or declaration – Failure to warn patient against driving – Loss of control of car due to diabetic attack – Action for personal injuries by plaintiff struck by patient's car

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§ 93. Complaint, petition, or declaration—Allegation—For medical malpractice—Failure of general practitioner to exercise or possess required degree of skill, care, and learning—National standard

- 3 Connecticut Practice Series, Connecticut Civil Practice Forms, 5th ed., by Daniel A. Morris et al., 2025 ed., Thomson West (also available on Westlaw).
  - § 65:4. Physician and professional corporation malpractice—Complaint.
  - § 65:7. Hospital malpractice—Complaint.
  - § 65:13. Interrogatories and requests for production to defendant doctor--Additional form
  - § 65:14. Plaintiff's interrogatories and requests for production to defendant hospital--Additional form

- 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2025 ed., Thomson West (also available on Westlaw).
  - Chapter 16. Medical Malpractice
    - § 16:12. Sample trial court documents − Sample complaint

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2025.
  - Form 8.07.1. Complaint − Wrongful Death − Medical Malpractice
  - Form 16.03.4. Complaint − Medical Malpractice − Wrongful Death

- *Library of Connecticut Personal Injury Forms*, 3d ed., by Carey B. Reilly, Connecticut Law Tribune, 2022.
  - Form 5-020. Complaint − Medical Malpractice, Individual Health Care Provider and Practice Group
  - Form 5-021. Complaint − Medical Malpractice, Lack of Informed Consent
  - Form 5-022. Complaint − Medical Malpractice, Hospital

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Lynch v. State, 348 Conn. 478, 505−06, 308 A.3d 1 (2024). "'[T]o prevail in a medical malpractice action, the plaintiff must prove (1) the requisite standard of care for treatment, (2) a deviation from that standard of care, and (3) a causal connection between the deviation and the claimed injury.' (Internal quotation marks omitted.) *Jarmie* v. *Troncale*, supra, 306 Conn. at 588, 50 A.3d 802. 'A]s in any other negligence action, the medical malpractice plaintiff must establish proximate cause and damages, as well as breach of the professional duty of care.' *Escobar-Santana* v. *State*, supra, 347 Conn. at 614, 298 A.3d 1222. 'Proof of damages should be established with reasonable certainty and not speculatively and problematically. ... Damages may not be calculated based

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on a contingency or conjecture.' (Internal quotation marks omitted.) *Carrano* v. *Yale-New Haven Hospital*, 279 Conn. 622, 650, 904 A.2d 149 (2006)."

- Escobar-Santana v. State, 347 Conn. 601, 610–11, 298 A.3d 1222 (2023). "The state further contends that, even if the plaintiffs did allege a medical malpractice claim in count two, insofar as count two incorporates by reference the allegations of count one, which relate solely to Emmett, it does not state a colorable medical malpractice claim as to Escobar-Santana specifically. This is true, the state argues, because there is no allegation that Escobar-Santana suffered *physical* injuries as a result of the state's malpractice,[8] and she cannot recover in medical malpractice for purely emotional distress in the absence of physical harm. We disagree.

  Consistent with the modern trend and the rule that has been adopted by a majority of our sister states and Superior Court judges who have considered the issue, we hold that, when a fetus or infant suffers physical injuries as a result of medical malpractice during the labor and delivery process, the birthing mother is a joint victim of the malpractice and can recover for emotional distress arising therefrom. We further conclude that count two of the complaint properly stated a cause of action for medical malpractice."

- Cockayne v. Bristol Hospital, Inc., 210 Conn. App. 450, 461-462, 270 A.3d 713 (2022). "The defendant's appeal focuses on causation. 'All medical malpractice claims, whether involving acts or inactions of a defendant ... require that a [defendant's] ... conduct proximately cause the plaintiff's injuries. *The question is whether the conduct of the defendant was a substantial factor in causing the plaintiff's injury*.... This causal connection must rest upon more than surmise or conjecture. ... *A trier is not concerned with possibilities but with reasonable probabilities. ... The causal relation between an injury and its later physical effects may be established by the direct opinion of a physician, by his deduction by the process of eliminating causes other than the traumatic agency, or by his opinion based upon a hypothetical question*....'

  '[I]t is the plaintiff who bears the burden to prove an unbroken sequence of events that tied his injuries to the [defendant's conduct]. ... *A plaintiff, however, is not required to disprove all other possible explanations for the accident but, rather, must demonstrate that it is more likely than not that the defendant's negligence was the cause of the accident*.' (Citations omitted; emphasis altered; internal quotation marks omitted.) *Procaccini v.*

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Lawrence + Memorial Hospital, Inc., supra, 175 Conn. App. at 718–19, 168 A.3d 538; see also *Sargis v. Donahue*, 142 Conn. App. 505, 513, 65 A.3d 20, cert. denied, 309 Conn. 914, 70 A.3d 38 (2013)."

- Briere v. Greater Hartford Orthopedic Group, P.C., 325 Conn. 198, 210-211, 147 A.3d 70 (2017). "We acknowledge that in our prior cases applying the relation back doctrine we perhaps have not provided as much clarity as necessary for the trial court to apply the doctrine consistently. After a careful review of our case law, it 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, which is the *transaction or occurrence* underpinning the plaintiff's legal claim against the defendant. Determination of what the original cause of action is requires a case-by-case inquiry by the trial court. In making such a determination, the trial court must not view the allegations so narrowly that any amendment changing or enhancing the original allegations would be deemed to constitute a different cause of action. But the trial court also must not generalize so far from the specific allegations that the cause of action ceases to pertain to a specific transaction or occurrence between the parties that was identified in the original complaint. While these guidelines are still broad, a bright line rule would not serve the purpose of promoting substantial justice for the parties.

  If new allegations state a set of facts that contradict the original cause of action, which is the transaction or occurrence underpinning the plaintiff's legal claim against the defendant, then it is clear that the new allegations do not fall within the scope of the original cause of action and, therefore, do not relate back to the original pleading. But an absence of a direct contradiction must not end the trial court's inquiry. The trial court must still determine whether the new allegations support and amplify the original cause of action or state a new cause of action entirely. Relevant factors for this inquiry include, but are not limited to, whether the original and the new allegations involve the same actor or actors, allege events that occurred during the same period of time, occurred at the same location, resulted in the same injury, allege substantially similar types of behavior, and require the same types of evidence and experts."

- Dzialo v. Hospital of Saint Raphael, Superior Court, Judicial District of New Haven at New Haven, No. CV106014703 (June 21, 2011) (2011 Conn. Super. LEXIS 1524) (2011 WL 2739638). "The Appellate Court in *Trimel*, *Votre* and *Selimoglu* resolved this issue by

applying a three-part test to determine whether a claim sounds in medical malpractice or ordinary negligence . . . If all of the factors are met, the cause of action properly sounds in medical malpractice and a written opinion letter is required pursuant to § 52-190a. *Votre v. County Obstetrics & Gynecology Group, P.C.*, *supra*, 585."

WEST KEY NUMBERS:

- *Health*
  - V. Malpractice, Negligence, or Breach of Duty
    - B. Duties and Liabilities in General
      - 610. In general.
      - 611. Elements of malpractice or negligence in general.
      - 612. Duty.
      - 617. Standard of care.
      - 622. Breach of duty.
      - 630. Proximate cause.

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 61 *Am Jur 2d* Physicians, Surgeons, and Other Healers, Thomson West, 2024 (Also available on Westlaw).
  - XIII. Malpractice Actions and Procedure
    - A. In General
      - § 280. Claim for medical malpractice, generally; distinction from ordinary negligence claim

- 70 *CJS* Physicians, Surgeons, and Other Health-Care Providers, Thomson West, 2018 (Also available on Westlaw).
  - VIII. Actions and Proceedings
    - A. In General
      - § 163. Conditions precedent to filing of action

- 49 *COA2d* 573, Cause of Action Against Physician for Failure to Obtain Patient's Informed Consent, Thomson West, 2011 (Also available on Westlaw).

- 26 *POF3d* 185, Discovery Date in Medical Malpractice Litigation, Thomson West, 1994 (Also available on Westlaw).

TEXTS & TREATISES:

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- 3 Connecticut Practice Series, Connecticut Civil Practice Forms, 5th ed., by Daniel A. Morris et al., 2025 ed., Thomson West (also available on Westlaw).
  - § 65:1. Physician and professional corporation malpractice—Commentary.

- 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2025 ed., Thomson West (also available on Westlaw).
  - Chapter 16. Medical Malpractice
    - § 16:1. Elements of action
    - § 16:2. Authority; good faith certificate
    - § 16:4. Remedies − Compensatory damages

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§ 16:5. Remedies – Noneconomic damages
§ 16:6. Remedies – Punitive or exemplary damages

- *Connecticut Medical Malpractice: A Manual of Practice and Procedure,* 8th ed., by Joyce A. Lagnese et al., Connecticut Law Tribune, 2025.
  - Chapter 1. General Duty of Health Care Providers
    - § 1-2. Duty in General
    - § 1-3. Standard of Care
    - § 1-4. Duty to Nonpatients
    - § 1-5. Fiduciary Duty
    - § 1-6. Sexual Exploitation Cases
    - § 1-7. Recklessness
    - § 1-8. Vicarious Liability
    - § 1-9. Contributory Negligence
    - § 1-10. The Wrongful Conduct Rule
    - § 1-11. Prenatal Duty of Care
  - Chapter 2. Causation
    - § 2-2. Cause in Fact
    - § 2-3. Proximate Cause
      - § 2-3:1. Substantial Factor Test
      - § 2-3:2. Case-by-Case
        - § 2-3:2.1. Emotional Distress
        - § 2-3:2.2. Risks of Psychiatric Medication
        - § 2-3:2.3. Removal of Life Support
        - § 2-3:2.4. Statistical or Epidemiological Evidence
    - § 2-4. Multiple Causation
    - § 2-5. Sole Proximate Cause
    - § 2-6. Intervening/Superseding Cause
    - § 2-7. Subsequent Medical Treatment
  - Chapter 13. Claims Distinct From But Related to Medical Malpractice
    - § 13-1. Contract Theory
    - § 13-2. Ordinary Negligence
    - § 13-3. Products Liability
    - § 13-4. Constitutional Claims

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2025.
  - Chapter 16. Professional Malpractice
    - § 16.03. Bringing a Medical Malpractice Claim
      - [1] Recognizing a Medical Malpractice Claim
      - [2] Proving the Elements of a Medical Malpractice Claim
      - [3] Establishing the Existence of a Physician-Patient Relationship
      - [4] Defining the Physician's Standard of Care
      - [5] Proving Causation in a Medical Malpractice Case
      - [6] Including an Informed Consent Claim
      - [8] Recovering Damages in Medical Malpractice Actions

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References to online databases refer to in-library use of these databases.

[11] Medical Malpractice Checklist

- *Encyclopedia of Connecticut Causes of Action*, by Daniel J. Krisch and Michael Taylor, Connecticut Law Tribune, 2024.
  - 1M-2. Medical Negligence (Informed Consent)
  - 1M-3. Medical Malpractice (Loss of Chance)
  - 1M-4. Medical Malpractice (Standard)
  - 1W-4. Wrongful Birth

- *Tort Remedies in Connecticut*, by Richard L. Newman and Jeffrey S. Wildstein, Michie, 1996, with 2014 supplement.
  - Chapter 16. Professional Malpractice
    - § 16-3(b). Elements of Claim

JURY INSTRUCTIONS:

- State of Connecticut, Judicial Branch, Civil Jury Instructions
  - 3.8-3. Medical Malpractice
  - https://www.jud.ct.gov/JI/Civil/Civil.pdf

- 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2025 ed., Thomson West (also available on Westlaw).
  - Chapter 16. Medical Malpractice
    - § 16:14. Sample trial court documents – Plaintiff's proposed jury instructions
    - § 16:15. Sample trial court documents – Defendant's proposed jury instructions

- 1 *Connecticut Jury Instructions (Civil),* 4th ed., by Douglass B. Wright and William L. Ankerman, Atlantic Law Book Co., 1993, with 2023 supplement.
  - Chapter 9. Charitable Immunity – Medical Malpractice
    - § 120. Malpractice of Physicians and Surgeons
    - § 121. Care Required of Nurse
    - § 122. Breach of Contract by Physician .. Misrepresentation
    - § 123. Unauthorized Operation .. Assault and Battery
    - § 123a. Malpractice against a Dentist
    - § 124. Informed Consent
    - § 125. "Captain of the Ship"
    - § 126. Wrongful Birth ... Wrongful Life

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Alysun Bulver, *Should Doctors Be Allowed to Apologize? : A Closer Look at Medical Malpractice Laws*, 69 Drake L. Rev. Discourse 101 (2020).

Section 4: Defenses

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to defenses in medical malpractice lawsuits in Connecticut.

DEFINITIONS:

- Pleading of contributory negligence. "In any action to recover damages for negligently causing the death of a person, or for negligently causing personal injury or property damage, it shall be presumed that such person whose death was caused or who was injured or who suffered property damage was, at the time of the commission of the alleged negligent act or acts, in the exercise of reasonable care. If contributory negligence is relied upon as a defense, it shall be affirmatively pleaded by the defendant or defendants, and the burden of proving such contributory negligence shall rest upon the defendant or defendants." Conn. Gen. Stat. § 52-114 (2025).

- "Our Appellate Court has recognized comparative negligence as a viable defense '[i]n situations where the claim of malpractice sounds in negligence.' *Somma v. Gracey*, 15 Conn.App. 371, 378, 544 A.2d 668 (1988) (recognizing that other jurisdictions have long sanctioned this defense in medical malpractice actions); see also *Juchniewicz v. Bridgeport Hospital*, 281 Conn. 29, 34, 914 A.2d 511 (2007); *Bradford v. Herzig*, 33 Conn.App. 714, 716, 638 A.2d 608, cert. denied, 229 Conn. 920, 642 A.2d 1212 (1994). Where the comparative negligence of the plaintiff is alleged by the defendant, '[i]t shall be affirmatively pleaded by the defendant or defendants, and the burden of proving such [comparative] negligence shall rest upon the defendant or defendants.' General Statutes § 52-114; see *Bradford v. Herzig*, supra, 722, 638 A.2d 608; See also Practice Book § 10-53 (requiring the defense of contributory negligence to be specially pled)." Teixeira v. Yale New Haven Hospital, Superior Court, Judicial District of New Haven at New Haven, No. CV09503067S (March 5, 2010) (49 Conn. L. Rptr. 443, 444) (2010 Conn. Super. LEXIS 566) (2010 WL1375412).

STATUTES:

- Conn. Gen. Stat. (2025).
  - Chapter 898. Pleading
    - § 52-114. Pleading of contributory negligence.
  - Chapter 925. Statutory Rights of Action and Defenses
    - § 52-557b. "Good Samaritan law". Immunity from liability for emergency medical assistance, first aid or medication by injection. Immunity from liability re automatic external defibrillators. School

You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website.

personnel not required to render emergency first aid or administer medication by injection.
§ 52-572h (b). Negligence actions. Doctrines applicable. Liability of multiple tortfeasors for damages.

FORMS:

You can contact us or visit our catalog to determine which of our law libraries own the treatises cited.

References to online databases refer to in-library use of these databases.

- 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2025 ed., Thomson West (also available on Westlaw).
  Chapter 16. Medical Malpractice
  § 16.13. Sample trial court documents – Sample answer containing affirmative defenses

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Carpenter v. Daar, DDS, MS, Superior Court, Judicial District of Middlesex at Middletown, No. MMX-CV-18-6020234-S (May 21, 2025) (2025 WL 1502733). "In the present case, the court finds that the plaintiff knew of the potential claim and that he had a duty to disclose it. The bankruptcy discharge had not occurred until September 2015, and the plaintiff never disclosed the potential cause of action as an asset at any time during the pendency of the bankruptcy case. Accordingly, the court cannot find that the plaintiff has standing and must dismiss the matter."

- McKeever v. Hartford Hospital, Superior Court, Judicial District of Hartford at Hartford, No. HHD-CV-17-6082922-S (July 10, 2018) (66 Conn. L. Rptr. 629) (2018 Conn. Super. LEXIS 1393) (2018 WL 3577476). "The Institute claims that Saunders' injuries and damages were the result of his own negligence . . . The plaintiff filed a motion to strike the special defense. In his view Saunders, as a custodial patient of the Institute, accepted into its service for the treatment and care of his suicidal ideations, and had no legal duty of care to exercise reasonable self-care to prevent injuries suffered as a consequence of acting on those impulses. The court agrees."

- Mulcahy v. Hartell, 140 Conn. App. 444, 450, 59 A.3d 313 (2013). "The decisive issue is the distinction between cases in which the defendant asserts that the plaintiff has been comparatively negligent, and thus the defendant's conduct could also be a proximate cause, and those cases in which the defendant claims that his conduct did not cause the plaintiff's injuries at all. An assertion of comparative negligence is consistent with the plaintiff's rendition of the facts, and therefore must be raised as a special defense. On the other hand, the claim that an

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actor other than the defendant caused the plaintiff's injuries is inconsistent with a prima facie negligence case, and, thus, can be pursued under a general denial. The essence of the defense at issue in the present case was that the plaintiff was entirely responsible for her injuries; therefore, the court correctly admitted it without the assertion of a special defense."

- Dziadowicz v. American Medical Response of Connecticut, Inc., Superior Court, Judicial District of New Britain at New Britain, No. CV116010944 (January 23, 2012) (53 Conn. L. Rptr. 445, 446) (2012 Conn. Super. LEXIS 264) (2012 WL 527651). "With these principles in mind, in enacting § 52-557b, the legislature appears to have intended emergency medical personnel to be immune from suit in ordinary negligence. This was only intended to provide partial immunity because suit could still be maintained for conduct constituting 'gross, wilful or wanton negligence.'"

- Preston v. Keith, 217 Conn. 12, 584 A.2d 439 (1991). "We have long adhered to the rule that 'one who has been injured by the negligence of another must use reasonable care to promote recovery and prevent any aggravation or increase of the injuries.' *Morro v. Brockett,* 109 Conn. 87, 92, 145 A. 659 (1929); *Sette v. Dakis,* 133 Conn. 55, 60, 48 A.2d 271 (1946); *Lange v. Hoyt,* 114 Conn. 590, 595, 159 A. 575 (1932). It is also settled law that when, as in this case, there 'are facts in evidence which indicate that a plaintiff may have failed to promote [her] recovery and do what a reasonably prudent person would be expected to do under the same circumstances, the court, when requested to do so, is obliged to charge on the duty to mitigate damages.' *Jancura v. Szwed,* 176 Conn. 285, 288, 407 A.2d 961 (1978)." (p. 15-16)

  "To claim successfully that the plaintiff failed to mitigate damages, the defendant 'must show that the injured party failed to take reasonable action to lessen the damages; that the damages were in fact enhanced by such failure; and that the damages which could have been avoided can be measured with reasonable certainty.' 2 M. Minzer, supra, § 16.10, p. 16-18." (p. 22)

WEST KEY NUMBERS:

- *Health*
  - V. Malpractice, Negligence, or Breach of Duty
    - E. Defenses
      - 765. In general.
      - 766. Contributory and comparative negligence.
      - 767. Assumption of risk.
      - 768. Immunity in general.
      - 769. Good Samaritan doctrine.
      - 770. Official or governmental immunity.

771. Immunity or liability limitation granted to charities.

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 108 *A.L.R.5th* 385, *Contributory Negligence, Comparative Negligence, or Assumption of Risk, Other than Failing to Reveal Medical History or Follow Instructions, as Defense in Action Against Physician or Surgeon for Medical Malpractice*, by Kurtis A. Kemper, Thomson West, 2003 (Also available on Westlaw).

- 16 *Am Jur Trials* 471, Defense of Medical Malpractice Cases, Thomson West, 1969 (Also available on Westlaw).

- 61 *Am Jur 2d* Physicians, Surgeons, and Other Healers, Thomson West, 2024 (Also available on Westlaw).
  §§ 273-278. Special Defenses

- 70 *CJS* Physicians, Surgeons, and Other Health-Care Providers, Thomson West, 2018 (Also available on Westlaw).
  VIII. Actions and Proceedings
  § 156. Defenses

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 3 Connecticut Practice Series, Connecticut Civil Practice Forms, 5th ed., by Daniel A. Morris et al., 2025 ed., Thomson West (also available on Westlaw).
  § 65:1. Physician and professional corporation malpractice—Commentary.
  § 65:2. Limitation of action for medical malpractice—Commentary.

- 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2025 ed., Thomson West (also available on Westlaw).
  Chapter 16. Medical Malpractice
  § 16.9. Limitation of actions: Statute of Limitations
  § 16:10. Defenses: Limitations

- *Connecticut Medical Malpractice: A Manual of Practice and Procedure,* 8th ed., by Joyce A. Lagnese et al., Connecticut Law Tribune, 2025.
  Chapter 1. General Duty of Health Care Providers
  § 1-9. Contributory Negligence
  Chapter 5. Statute of Limitations
  § 5-2. Medical Malpractice Not Resulting in Death
  § 5-2:1. The Two-Year Limitations Period
  § 5-2:2. The Three-Year Repose Period
  § 5-3. Medical Malpractice Resulting in Wrongful Death
  § 5-4. Tolling Doctrines
  § 5-4:1. Continuing Treatment
  § 5-4:2. Continuing Course of Conduct
  § 5-4.3. Fraudulent Concealment

§ 5-4.4. Equitable Tolling
§ 5-5. Breach of Contract Theory
§ 5-6. Relation Back
§ 5-7. Accidental Failure of Suit
Chapter 14. Privileges and Immunities
§ 14-2. Privileges Belonging to Patients
§ 14-3. Privileges Belonging to Health Care Providers
§ 14-5. Immunities of Health Care Providers

- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2025.
Chapter 16. Professional Malpractice
§ 16.03. Bringing a Medical Malpractice Claim
[10] Defending a Medical Malpractice Claim
[a] Ascertaining the Applicable Statute of Limitations
[b] Applying Conn. Gen. Stat. § 52-584's Statutory Discovery Rule
[c] Does the "Continuous Treatment" or "Continuing Course of Conduct" Exception Save an Otherwise-Untimely Medical Malpractice Case?
[d] Petitioning for a 90-Day Toll to Comply with Conn. Gen. Stat. § 52-190a(a)
[e] Plaintiff's Duty to Mitigate Medical Malpractice Damages
[f] Asserting Immunity under the "Good Samaritan" Statute
[g] Asserting Comparative Negligence in Medical Malpractice Cases

Section 5: Evidence

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to evidence in medical malpractice lawsuits in Connecticut.

DEFINITIONS:

- Scope of Discovery; In General: "Written opinions of health care providers concerning evidence of medical negligence, as provided by General Statutes § 52-190a, shall not be subject to discovery except as provided in that section." Conn. Practice Book § 13-2 (2025).

- Experts: "If the witness to be disclosed hereunder is a health care provider who rendered care or treatment to the plaintiff, and the opinions to be offered hereunder are based upon that provider's care or treatment, then the disclosure obligations under this section may be satisfied by disclosure to the parties of the medical records and reports of such care or treatment." Conn. Practice Book § 13-4 (b)(2) (2025).

- Standard of care in negligence action against health care provider. Qualifications of expert witness. "In any civil action to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, in which it is alleged that such injury or death resulted from the negligence of a health care provider, as defined in section 52-184b, the claimant shall have the burden of proving by the preponderance of the evidence that the alleged actions of the health care provider represented a breach of the prevailing professional standard of care for that health care provider. *The prevailing professional standard of care for a given health care provider shall be that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers."* (Emphasis added.) Conn. Gen. Stat. § 52-184c(a) (2025).

STATUTES:

You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2025).
  Chapter 899. Evidence
  § 52-184a. Evidence obtained illegally by electronic device inadmissible
  § 52-184b. Failure to bill and advance payments inadmissible in malpractice cases.
  § 52-184c. Standard of care in negligence action against health care provider. Qualifications of expert witness.
  § 52-184d. Inadmissibility of apology made by

health care provider to alleged victim of unanticipated outcome of medical care.
§ 52-184e. Admissibility of amount of damages awarded to plaintiff in separate action against different health care provider.

Chapter 900. Court Practice and Procedure
§ 52-190a. Prior reasonable inquiry and certificate of good faith required in negligence action against a health care provider. Ninety-day extension of statute of limitations.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted online.

- Conn. Practice Book (2025).
  Chapter 13. Discovery and Depositions
  § 13-2. Scope of discovery; In general
  § 13-4. —Experts

- Conn. Code of Evidence (2023 edition).
  § 4-3. Exclusion of evidence on grounds of prejudice, confusion or waste of time
  § 4-9. Payment of medical and similar expenses
  § 4-10. Liability insurance
  § 7-2. Testimony by experts
  § 8-3. Hearsay exceptions: Availability of declarant immaterial

CASES:

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- Ferry v. Yale New Haven Hospital, Inc. Et Al., Superior Court, Judicial District of New London at Norwich, No. KNL-CV19-6040390-S (September 16, 2025) (2025 WL 2707862). "There is also a statute setting forth the burden of proof for the plaintiff in a medical malpractice case when it comes to the standard of care. General Statutes § 52-184c provides that the burden is on the claimant to prove by a *preponderance of the evidence* that the alleged actions of the health care provider breached the prevailing professional standard of care for that health care provider. The standard of care itself has been codified in General Statutes § 52-184c (a), as '[t]hat level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.' 'Similar health care provider' is defined in § 52-184c (b) and (c) and varies depending upon whether the defendant is a board-certified specialist."

- Williams v. Lawrence + Memorial Hospital, Inc., 211 Conn. App. 610, 626-628, 273 A.3d 235 (2022). "Although, Connecticut *permits* the admission of learned treatises, our Supreme Court in *Filippelli* explicitly held that § 8-3 (8) of the Connecticut Code of Evidence neither mandates admission nor limits the trial court's discretion to exclude evidence that 'carries the danger of

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misunderstanding or misapplication by the jury ....' (Internal quotation marks omitted.) *Filippelli v. Saint Mary's Hospital*, supra, 319 Conn. at 140, 124 A.3d 501. Rather, in upholding the trial court's decision to restrict the plaintiff's use of a learned treatise on cross-examination, the court in *Filippelli* clarified that 'the mere fact that [a] trial court found that the article met the requirements for admissibility under the learned treatise exception does not mean that the court was *required* to allow the plaintiff unfettered use of the article. *Section 8-3 (8) merely provides that materials which meet the foundational requirements of the learned treatise exception are not excluded by the hearsay rule, and does not mandate the admission of such materials or otherwise purport to circumscribe the discretion generally afforded to a trial court to deter mine the admissibility of evidence in light of the facts of record*.... [W]e have long recognized that this state's approach to the learned treatise exception, which allows materials admitted under the rule to be treated as full exhibits and taken into the jury room during deliberations, carries the danger of misunderstanding or misapplication by the jury that other jurisdictions seek to avoid by precluding the admission of such materials as full exhibits. ... We therefore have explained that trial courts may minimize the risks posed by the rule by use of the judicious exercise of discretion ... in deciding which items ought to be admitted as full exhibits.' (Citations omitted; emphasis added; internal quotation marks omitted.) Id., at 139–40, 124 A.3d 501.

Applying the foregoing legal principles to the present case, we conclude that it was well within the court's discretion to preclude admission of the ATLS excerpts. Even assuming that the excerpts met the requirements for admissibility under the learned treatise exception, we cannot conclude that the court abused its discretion in excluding them on the ground that they may have confused the jury. Throughout trial and in his posttrial motion, the plaintiff repeatedly and erroneously contended that the ATLS guidelines actually set forth the relevant standard of care in the present action. These assertions required the court to continuously clarify that the proper standard of care is 'that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.' General Statutes § 52-184c (a). Accordingly, the court correctly determined that, had the excerpts been admitted, the jury may mistakenly have assessed the defendant's conduct only in light of the ATLS guidelines, rather than determining whether the defendant deviated from the standard of care."

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- Kos v. Lawrence + Memorial Hospital, 334 Conn. 832, 840-841, 225 A.3d 261 (2020). "It is the nature of medical malpractice cases that there often will be conflicting expert testimony regarding the standard of care. *Wasfi* makes clear that, similar to the schools of thought doctrine, the acceptable alternatives doctrine does not apply in every medical malpractice case but, rather, applies only when there is evidence of more than one acceptable method of inspection, diagnosis, or treatment. See *Wasfi v. Chaddha*, 218 Conn. 200 at 211, 588 A.2d 204 (1991) ('the defendant physician who claims that he employed one of several alternative methods accepted within his profession has no less a task than any defendant physician: to offer credible expert evidence that his conduct was accepted within the profession, and to persuade the jury to believe that evidence' (emphasis omitted)).

  Consequently, as with the schools of thought doctrine, competing expert testimony by itself is not sufficient to support the acceptable alternatives charge. For example, if expert A testifies that the standard of care requires diagnosis to be made using the X method, and expert B testifies that the standard of care requires diagnosis to be made using the Y method, the jury must decide between the two alternatives, with only one option satisfying the standard of care. There would be no evidence that both methods were acceptable alternatives because both experts testified that only one method would satisfy the standard of care. Rather, to justify the charge, a qualified expert must testify that there is more than one acceptable method of inspection, treatment, or diagnosis.

  The evidence in the present case played out like the hypothetical just described . . ."

- Barnes v. Connecticut Podiatry Group, P.C., 195 Conn. App. 212, 224 A.3d 916 (2020). "Judge Lager then concluded that, in light of Dr. Gorman's testimony during his deposition that he did not know the standard of care in Connecticut, the 'conclusory statements in [the August 8, 2016 affidavit]' failed to provide the 'requisite foundation for establishing [Dr.] Gorman's knowledge of the prevailing professional standard of care in this case' and '[t]here is an inadequate factual basis before the court to find [Dr.] Gorman qualified to testify as to the standard of care.'" (p. 238)

  "Concluding that '[Dr.] Gorman is insufficiently qualified to offer an opinion as to the actual and proximate cause of Barnes' amputations, that his opinions admittedly exceed the scope of his expertise and that his opinions are speculative,' Judge Lager precluded Dr. Gorman's

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causation opinion." (p. 242-243)

- Laskowski v. Cherry Brook Health Care Center, Superior Court, Judicial District of Hartford at Hartford, No. HHDCV146053483S (July 11, 2017) (64 Conn. L. Rptr. 755) (2017 Conn. Super. LEXIS 3942) (2017 WL 3470696). "The present issue is whether this court should order the plaintiff's expert witness to answer all questions that relate to prior reports she has prepared in connection with this case, including questions related to the opinion letter attached to the complaint." (p. 756)

  "[T]his court agrees with the *Batista* and *D'Uva* courts that the Practice Book § 13–4 requirement, which is applicable to all expert witnesses, is superseded by the statutory prohibition of information concerning the author of the opinion letter accompanying a malpractice complaint. Therefore, the expert witness may not be questioned nor documents provided which would lead to the discovery of whether Nurse Frederick is the author of the written opinion. Consistent with *Batista* and *D'Uva*, however, counsel may inquire as to the documents in the expert's file, as well as ask about the substance of the opinion letter so long as it does not lead to the disclosure of the author." (p. 757)

- Hanes v. Solgar, Inc., Superior Court, Judicial District of New Haven at New Haven, No. NHCV156054626S (January 13, 2017) (63 Conn. L. Rptr. 728, 731) (2017 Conn. Super. LEXIS 117) (2017 WL 1238417). "The elements of a viable claim of lack of informed consent derive from the fact that the patient's decision-making rights can be exercised meaningfully only if the patient is adequately informed regarding the material risks and benefits of the treatment and the alternatives to it. Thus: We repeatedly have set forth the four elements that must be addressed in the physician's disclosure to the patient in order to obtain valid informed consent. [I]nformed consent involves four specific factors: (1) the nature of the procedure; (2) the risks and hazards of the procedure; (3) the alternatives to the procedure; and (4) the anticipated benefits of the procedure. *Levesque v. Bristol Hospital, Inc.* (citations omitted; internal quotation marks omitted); see, e.g., *Duffy v. Flag*; *Logan v. Greenwich Hospital Assn.* supra, 191 conn. 282 at 292-93.

  Materiality and causation are also essential elements of the cause of action. 'In order to prevail on a cause of action for lack of informed consent, a plaintiff must prove both that there was a failure to disclose a known material risk of a proposed procedure and that such failure was a proximate cause of his injury. Unlike a medical malpractice claim, a claim for lack of informed consent is

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determined by a lay standard of materiality, rather than an expert medical standard of care which guides the trier of fact in its determination.' Shortell v. Cavanagh, supra, 300 Conn. 383 at 388. Under this 'lay standard of disclosure,' a physician is obligated 'to provide the patient with that information which a reasonable patient would have found material for making a decision whether to embark upon a contemplated course of therapy.' *Curran v. Kroll*, 303 Conn. 845, 858, 37 A.3d 700 (2012), quoting *Logan v. Greenwich Hospital Assn.* supra, 191 Conn. at 292-93."

- Weaver v. McKnight, 313 Conn. 393, 405-406, 97 A.3d 920 (2014). "We also note our standards for admitting expert testimony. 'Expert testimony should be admitted when: (1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury in considering the issues.... [T]o render an expert opinion the witness must be qualified to do so and there must be a factual basis for the opinion.' (Citations omitted; footnote omitted; internal quotation marks omitted.) Id. [*Sullivan v. Metro–North Commuter Railroad Co.*, supra, at 158, 971 A.2d 676]."

- Contillo v. Doherty, Superior Court, Judicial District of New London at New London, No. 106006138 (March 17, 2011) (51 Conn. L. Rptr. 583) (2011 Conn. Super. LEXIS 686) (2011 WL 1367076). "This is a medical malpractice action where the plaintiffs served notices of deposition on the defendant doctors at the time they filed their complaint. The defendants seek a protective order to prevent the depositions from occurring before they can complete discovery and depose the plaintiff." (p. 583)

  "In order to provide for an orderly and efficient progression of discovery, it is appropriate that the defendants have the opportunity to discover the factual foundation of the plaintiffs' claims, as opposed to the expert foundation, prior to having their depositions taken." (p. 584)

- Boone v. William W. Backus Hospital, 272 Conn. 551, 567, 864 A.2d 1 (2005). "Generally, the plaintiff must present expert testimony in support of a medical malpractice claim because the requirements for proper medical diagnosis and treatment are not within the common knowledge of laypersons."

- State v. Porter, 241 Conn 57, 58-59, 698 A.2d 739 (1997). "The issues in this certified appeal are: (1) whether Connecticut should adopt as the standard for the

admissibility of scientific evidence the standard set forth by the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993); and (2) whether Connecticut should abandon its traditional per se rule that polygraph evidence is inadmissible at trial . . . We conclude that *Daubert* provides the proper threshold standard for the admissibility of scientific evidence in Connecticut. We also conclude, however, on the basis of our own independent examination of the extensive literature and case law regarding polygraph evidence, that polygraph evidence should remain per se inadmissible in Connecticut trials, and consequently that an evidentiary hearing was not necessary to evaluate the reliability of such evidence."

WEST KEY NUMBERS:

- *Evidence*
  - XIV. Expert Evidence
    - C. Qualifications of Expert; Competency
      - 2425. Due care and proper conduct in general—Health care; medical malpractice

- *Health*
  - V. Malpractice, Negligence, or Breach of Duty
    - G. Actions and Proceedings
      - 815. Evidence.
      - 816. –In general.
      - 817. –Presumptions.
      - 818. –Res ipsa loquitur.
      - 819. – Burden of proof.
      - 820. –Admissibility.
      - 821. – Necessity of expert testimony.
      - 822. – Weight and sufficiency in general.
      - 823. –Weight and sufficiency, particular cases.

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 81 *A.L.R.2d* 597, *Necessity of Expert Evidence to Support an Action for Malpractice Against a Physician or Surgeon*, by H.H. Henry, Thomson West, 1962 (Also available on Westlaw).

- 61 *Am Jur 2d* Physicians, Surgeons, and Other Healers, Thomson West, 2024 (Also available on Westlaw).
  - XIII. Malpractice Actions and Procedure
    - G. Expert Testimony
      - § 315. Generally
    - H. Weight and Sufficiency of Evidence
      - § 326. Generally
      - § 327. Expert testimony
      - § 328. Proof of proximate causation

- 70 *CJS* Physicians, Surgeons, and Other Health-Care Providers, Thomson West, 2018 (Also available on Westlaw).

VIII. Actions and Proceedings
C. Pleading and Evidence
§ 176. Weight and sufficiency—Expert testimony

- 33 *POF2d* 179, Qualification of Medical Expert Witness, Thomson West, 1983 (Also available on Westlaw).

TEXTS & TREATISES:

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- 3 Connecticut Practice Series, Connecticut Civil Practice Forms, 5th ed., by Daniel A. Morris et al., 2025 ed., Thomson West (also available on Westlaw).
  § 65:3. Standard of care and burden of proof: Expert testimony requirement—Commentary.

- *Connecticut Medical Malpractice: A Manual of Practice and Procedure,* 8th ed., by Joyce A. Lagnese et al., Connecticut Law Tribune, 2025.
  Chapter 8. Expert Testimony
  § 8-1. Expert Testimony Requirement
  § 8-2. The Permissible Bases For an Expert's Opinion
  § 8-3. Exceptions to the Expert Testimony Requirement
  § 8-4. Similar Health Care Provider
  § 8-5. Res Ipsa Loquitur
  § 8-6. Expert Witness Disclosure Requirements
  § 8-7. Medical Literature
  § 8-8. Scientific Evidence – *Porter* Hearings
  § 8-9. Circumstances Under Which a Treating Physician's Medical Records May Be Admitted As Expert Evidence of Causation
  § 8-10. Scope of Cross Examination of Expert
  Chapter 9. Evidentiary Issues
  § 9-2. Expert Testimony
  § 9-3. Similar Health Care Provider
  § 9-4. Medical Literature
  § 9-5. *Daubert/Porter* Issues
  § 9-6. The Dead Man's Statute
  § 9-7. Informed Consent Issues
  § 9-8. Statements of Apology
  § 9-9. Insurance-Related Evidence
  § 9-10. Day in the Life Film
  § 9-11. Spoliation of Evidence
  § 9-12. Testimony of Economists
  § 9-13. Failure to Bill and Advance Payments
  § 9-14. Cumulative Testimony
  § 9-15. The Non-Compliant Patient
  § 9-16. Admissibility of Social Media
  § 9-17. Habit and Practice Evidence
  § 9-18. The Reptile Theory

Table 1: Settlements and Verdicts in Connecticut Medical Malpractice Actions

STATUTES AND REGULATIONS:	
You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.	• Remittitur when noneconomic damages in negligence action against health care provider determined to be excessive. "Whenever in a civil action 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, the jury renders a verdict specifying noneconomic damages, as defined in section 52-572h, in an amount exceeding one million dollars, the court shall review the evidence presented to the jury to determine if the amount of noneconomic damages specified in the verdict is excessive as a matter of law in that it so shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake or corruption. If the court so concludes, it shall order a remittitur and, upon failure of the party so ordered to remit the amount ordered by the court, it shall set aside the verdict and order a new trial. For the purposes of this section, 'health care provider' means a provider, as defined in subsection (b) of section 20-7b, or an institution, as defined in section 19a-490." Conn. Gen. Stat. § 52-228c (2025). • Review of medical malpractice awards and certain settlements. "Upon entry of any medical malpractice award or upon entering a settlement of a malpractice claim against an individual licensed pursuant to chapter 370 to 373, inclusive, 379 or 383, the entity making payment on behalf of a party or, if no such entity exists, the party, shall notify the Department of Public Health of the terms of the award or settlement and shall provide to the department a copy of the award or settlement and the underlying complaint and answer, if any. The department shall review all medical malpractice awards and all settlements to determine whether further investigation or disciplinary action against the providers involved is warranted. Any document received pursuant to this section shall not be considered a petition and shall not be subject to the provisions of section 1-210 unless the department determines, following completion of its review, that further investigation or disciplinary action is warranted." Conn. Gen. Stat. § 19a-17a (2025).

	• National Practitioner Databank, Subpart B – Reporting of Information – Reporting medical malpractice payments – Interpretation of information. "A payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred." 45 C.F.R. § 60.7(d) (2025).
CASES: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.	• Ashmore v. Hartford Hospital, 331 Conn. 777, 779-780, 208 A.3d 256 (2019). "In this wrongful death action alleging medical malpractice, the named defendant, Hartford Hospital, appeals from the judgment of the trial court, which denied a motion for remittitur after a jury awarded $ 1.2 million in noneconomic damages to the named plaintiff, Marjorie Ashmore, as the administratrix of the estate of the decedent, her late husband William Ashmore, and $ 4.5 million to the plaintiff for her own loss of spousal consortium. The defendant contends that, in the absence of exceptional or unusual circumstances that are not applicable in this case, a loss of consortium award ordinarily should not substantially exceed the corresponding wrongful death award to the directly injured spouse. We agree and, accordingly, reverse the judgment of the trial court."
TEXTS & TREATISES: Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises. References to online databases refer to in-library use of these databases. Remote access is not available.	• *Art of Advocacy: Settlement*, by Henry G. Miller, Matthew Bender, 2025. Chapter 9A. Settlement of a Medical Malpractice Case § 9A.02. Preparation for Settlement Negotiations: Evaluating Damages § 9A.03. Assignment of Damage Values § 9A.04. Assessing Liability § 9A.05. Limitations on Liability § 9A.06. Client Discussions and Consent § 9A.07. Medical Malpractice Review Panels § 9A.08. Timing Settlement Negotiations § 9A.09. Settlement Conference § 9A.10. Types of Settlements • 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2025 ed., Thomson West (also available on Westlaw). Chapter 16. Medical Malpractice § 16:16. Jury verdict, bench trial, and settlement summaries • *Connecticut Medical Malpractice: A Manual of Practice and Procedure,* 8th ed., by Joyce A. Lagnese et al., Connecticut Law Tribune, 2025.

Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

Chapter 3. Damages
§ 3-8. Additur and Remittitur
Chapter 11. Apportionment
§ 11-3:5. Pre-Trial Settlements
Chapter 12. Areas of Special Statutory Regulation
§ 12-2. Offers of Compromise
§ 12-9. National Practitioner Data Bank
§ 12-9:2. Reporting Medical Malpractice Payments
Chapter 19. Insurance Issues
§ 19-3. Consent to Settle Clause
§ 19-3:1. Consent to Settle: Insurer
§ 19-3:2. Consent to Settle: Physician
§ 19-3:3. Hammer Clause

- 1 *Medical Malpractice*, by David W. Louisell and Harold Williams, Matthew Bender, 1960, with 2025 supplement (also available on Lexis).
  Chapter 10. Settling the Medical Malpractice Case
  § 10.02. Preparation for Settlement Negotiations: Evaluating Damages
  § 10.03. Assignment of Damage Values
  § 10.04. Assessing Liability
  § 10.05. Limitations on Liability
  § 10.06. Client Discussions and Consent
  § 10.07. Medical Malpractice Panel Hearings
  § 10.08. Timing Settlement Negotiations
  § 10.09. Settlement Conference
  § 10.10. Lump Sum Settlements
  § 10.11. Structured Settlements
  § 10.12. Formalizing the Settlement
  § 10.13. Reporting Medical Malpractice Payments
  § 10.14. Evidence of Settlement in Litigation Against Codefendants

- 5 *Personal Injury Valuation Handbook*, Thomson Reuters, 2012, with 2023 supplement (also available on Westlaw).
  No. 5.90.9 Basic injury values for claims of suffering resulting from medical malpractice