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TAMMY GERVAIS, ADMINISTRATRIX (ESTATE OF RAYMOND GERVAIS), ET AL. *v.* JACC HEALTHCARE CENTER OF DANIELSON, LLC, ET AL.
(AC 44757)

Moll, Cradle and Harper, Js.

Syllabus

Pursuant to statute (§ 52-190a (a)), a complaint sounding in medical malpractice must be accompanied by a good faith certificate and "a written and signed opinion of a similar health care provider, as defined in section 52-184c . . . that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion."

The plaintiffs sought to recover damages from the defendants, J Co., a nursing facility, and D, a registered nurse, for medical malpractice in connection with the death of the decedent, a resident of J Co. The plaintiffs attached to their complaint an opinion letter authored by "RN, BSN," which the parties construed to mean that the author was a registered nurse with a Bachelor of Science degree in nursing. The defendants filed a motion to dismiss the complaint on the ground that the opinion letter was deficient pursuant to § 52-190a because it failed to state the author's qualifications and, therefore, it could not be determined whether the author was a "similar health care provider" to D under the applicable statute (§ 52-184c (b)). The plaintiffs filed an objection to the motion to dismiss and a request to amend the complaint in order to include further attachments to the opinion letter elucidating the author's qualifications. The trial court granted the defendants' motion to dismiss, concluding that the opinion letter was deficient pursuant to § 52-190a because it failed to sufficiently identify the author's qualifications, thereby depriving the court of the ability to determine whether the author was a "similar health care provider" under § 52-184c (b). The trial court also concluded that it lacked the authority to grant the plaintiffs' request to amend their complaint to supplement their opinion letter because the statute of limitations had expired. From the judgment thereon, the plaintiffs appealed to this court, which affirmed the judgment of the trial court. Our Supreme Court, after granting the plaintiffs certification to appeal, vacated this court's decision and remanded the case to this court with direction to reconsider in light of its recent decision in *Carpenter* v. *Daar* (346 Conn. 80), in which it concluded that the opinion letter requirement of § 52-190a is not jurisdictional, held that a trial court retains the authority to permit the amendment or supplementation of a challenged opinion letter, and established that the sufficiency of an opinion letter is to be determined solely on the basis of a broad, realistic reading of the allegations of the complaint. *Held* that, reconsidering this appeal in light of *Carpenter*, this court concluded that the trial court improperly determined that it lacked the authority to permit the plaintiffs to amend their opinion letter in response to the defendants' motion to dismiss: our Supreme Court in *Carpenter* established, and the defendants' counsel agreed at oral argument before this court on remand, that trial courts retain the authority to permit amendments or supplementation of a challenged opinion letter in response to a motion to dismiss, even after the expiration of the statute of limitations; moreover, contrary to the defendants' argument that the trial court's denial of the request to amend was not an abuse of its discretion because the plaintiffs did not comply with established precedent to provide a sufficient opinion letter, that court never exercised its discretion but, rather, concluded that it lacked the authority to permit the amendment and, therefore, this court could not determine whether the trial court abused its discretion by denying the request to amend.

Argued May 16—officially released August 15, 2023

Procedural History

Action seeking damages for the defendants' alleged

medical malpractice, brought to the Superior Court in the judicial district of Windham, where the defendants filed a motion to dismiss; thereafter, the court, *Lynch*, *J.*, denied the plaintiffs' request to amend their complaint and granted the defendants' motion to dismiss and rendered judgment thereon, from which the plaintiffs appealed to this court, *Moll*, *Cradle* and *Harper*, *Js.*, which affirmed the trial court's judgment; thereafter, on the granting of certification, the plaintiffs appealed to the Supreme Court, which ordered the judgment of this court vacated and remanded the case to this court for reconsideration. *Reversed*; *further proceedings*.

Raymond Trebisacci, for the appellants (plaintiffs).

Cristin E. Sheehan, with whom, on the brief, was *Thomas Anderson*, for the appellees (defendants).

Opinion

HARPER, J. This appeal returns to us on remand from our Supreme Court. *Gervais* v. *JACC Healthcare Center of Danielson, LLC*, 346 Conn. 910, 289 A.3d 596 (2023). The plaintiffs, Tammy Gervais and Cassandra Gervais,[1] appealed to this court from the judgment of the trial court granting the motion to dismiss filed by the defendants, JACC Healthcare Center of Danielson, LLC (JACC), and Beth Davis. The trial court, in its order dismissing the plaintiffs' medical malpractice action, concluded that (1) the opinion letter attached to the plaintiffs' complaint was deficient pursuant to Connecticut's good faith opinion letter statute, General Statutes § 52-190a, because it failed to sufficiently identify the author's qualifications, thereby depriving the court of the ability to determine whether the author was a "similar health care provider," as defined by General Statutes § 52-184c; and (2) it lacked the authority to grant the plaintiffs' request to amend the complaint, filed in response to the defendants' motion to dismiss, that sought to include two new attachments to the opinion letter elucidating the qualifications of the author. This court, by memorandum decision, affirmed the judgment of the trial court. *Gervais* v. *JACC Center of Danielson, LLC*, 212 Conn. App. 902, 273 A.3d 749 (2022). Thereafter, the plaintiffs petitioned our Supreme Court for certification to appeal. Our Supreme Court granted certification, vacated the decision of this court, and remanded the case to this court with direction to reconsider in light of its recent decision in *Carpenter* v. *Daar*, 346 Conn. 80, 287 A.3d 1027 (2023). *Gervais* v. *JACC Center of Danielson, LLC*, supra, 346 Conn. 910. 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.

The following procedural history is relevant to our resolution of this appeal. In November, 2020, the plaintiffs, pursuant to the accidental failure of suit statute, General Statutes § 52-592,[2] commenced the present medical malpractice action against the defendants. In their two count complaint, the plaintiffs alleged that, in March, 2017, the decedent was a resident of a nursing facility "owned, controlled, and/or operated by" JACC "by and through its employees, staff, and other representatives." They further alleged that, on March 10, 2017, the decedent, who was a known fall risk, fell and hit his head while at the nursing facility. They alleged that Davis, a registered nurse, pronounced the decedent dead and that the cause of death was cardiopulmonary arrest. In count one, Tammy Gervais, in her capacity as administratrix of the decedent's estate, claimed that the decedent's death was caused by the negligent con-

duct of the defendants in that they failed to: properly supervise, restrain, assist, and monitor him; continue to resuscitate him; have his injuries properly evaluated; and send him for hospital care. In count two, Tammy Gervais, in her individual capacity as the wife of the decedent, and Cassandra Gervais, as the daughter of the decedent, claim that they suffered emotional distress because: despite being initially informed that the decedent would be transferred to a hospital, they were later told that the decedent was not being brought to the hospital because he had died; when they arrived at the nursing facility, they were told that the decedent had fallen out of bed; and they observed the decedent with a towel against his head that was soaked with blood.

The plaintiffs attached to their complaint an opinion letter, dated November 11, 2020, authored by an "RN, BSN."[3] At the outset of the opinion letter, the author, whose personal identifying information was redacted at all relevant times, stated that they had reviewed the facts surrounding the death of the decedent on March 10, 2017, at the nursing facility owned by JACC. The author then listed the facts supporting their opinion, which essentially mirrored the factual allegations of the plaintiffs' complaint. Next, the author expressed their professional opinion, based on a reasonable degree of certainty, that Davis and the staff at the nursing facility were negligent and breached the standard of care that resulted in the death of the decedent by failing to: properly supervise, restrain, assist, and monitor him; continue to resuscitate him; have his injuries properly evaluated; and send him for hospital care. The author did not expressly identify the state that issued their license, the qualifications required to obtain that license, their training or experience, and whether they were actively involved in the practice or teaching of medicine. Instead, the author is identified through an initialism on the signature line as an "RN, BSN," which the parties construe to mean that the author is a registered nurse with a Bachelor of Science degree in nursing.

On January 26, 2021, the defendants filed a motion to dismiss the complaint on the ground that the opinion letter was deficient pursuant to § 52-190a because it failed to state the author's qualifications and, therefore, it cannot be determined whether the author was a "similar health care provider," as defined by § 52-184c (b). In their memorandum of law in support of their motion to dismiss, the defendants contended that this court's decisions in *Bell* v. *Hospital of Saint Raphael*, 133 Conn. App. 548, 561, 36 A.3d 297 (2012), and *Lucisano* v. *Bisson*, 132 Conn. App. 459, 465–66, 34 A.3d 983 (2011), required that an opinion letter include the qualifying information of the author. The defendants argued that, although the opinion letter was authored by a registered nurse and the allegations of the complaint were directed at Davis, a registered nurse, the opinion letter was deficient because it "include[d] absolutely no reference

whatsoever to the author's qualifications, education, or training."

On March 5, 2021, the plaintiffs filed an objection to the defendants' motion to dismiss and a memorandum of law in support of their objection. Therein, the plaintiffs argued that the opinion letter was not deficient pursuant to § 52-190a because the author adequately indicated their qualifications as a registered nurse with a Bachelor of Science degree in nursing. The plaintiffs further argued that the opinion letter need not express all of the qualifications of the author, and that those details would be provided to the defendants through discovery. On May 14, 2021, the plaintiffs filed a supplemental memorandum of law in opposition to the motion to dismiss in which they argued that the opinion letter was not deficient because "in short, one RN is similar to another RN," and they indicated that, regardless, they were contemporaneously filing a request to amend the complaint to include additional qualifications of the author attached to the opinion letter. Also on May 14, 2021, the plaintiffs filed a request to amend the complaint in which they appended two new attachments to the opinion letter. The first attachment was the resume of the author that demonstrated their education and work history since July, 1998. Specifically, the resume showed that the author received both an associate degree and a Bachelor of Science degree in nursing, and that they have worked at various medical facilities as a staff nurse, certified nursing assistant instructor, certified nursing assistant program director, and nursing supervisor. The second attachment was a screenshot from the website of the Department of Health of the state of Rhode Island that showed the author's nurse license registration, which included details with respect to the license number, type, status, as well as the issuance and expiration dates of the license.

On May 17, 2021, the court, after hearing oral argument from the parties,[4] issued a written order granting the defendants' motion to dismiss. The court determined that the opinion letter was deficient because "the only reference to the qualifications of its author are 'RN, BSN.' There is absolutely no other reference to the author's qualifications, education, or training. Insufficient information was provided for this court to conclude that the author was a 'similar health care provider' as required by statute. The opinion letter is thus legally insufficient under § 52-184c (b)." In the same order, the court denied the plaintiffs' request to amend their complaint to supplement their opinion letter. In particular, the court reasoned that this court's decisions in *Gonzales* v. *Langdon*, 161 Conn. App. 497, 501, 128 A.3d 562 (2015), and *Carpenter* v. *Daar*, 199 Conn. App. 367, 369–70, 236 A.3d 239 (2020), rev'd, 346 Conn. 80, 287 A.3d 1027 (2023), held that a court has the authority to allow an amendment to an opinion letter *only* if a plaintiff seeks to amend within the applicable statute of

limitations. Accordingly, the court concluded that it lacked the authority to permit the amendment because the request to amend was filed "five months after the expiration of time allowed under the accidental failure of suit statute."

The plaintiffs appealed to this court, claiming that the trial court improperly concluded that the opinion letter attached to their complaint was deficient pursuant to § 52-190a because the opinion letter was not authored by a "similar health care provider," as defined by § 52-184c. The defendants responded that the court properly concluded that the opinion letter was deficient because it was devoid of the author's qualifications as required by *Bell* v. *Hospital of Saint Raphael*, supra, 133 Conn. App. 560, and *Lucisano* v. *Bisson*, supra, 132 Conn. App. 465–66. On May 24, 2022, this court affirmed the judgment of the trial court in a memorandum decision, stating in full: "Per Curiam. The judgment is affirmed. See *Bell* v. *Hospital of Saint Raphael*, [supra, 560]; *Lucisano* v. *Bisson*, [supra, 465–66]." *Gervais* v. *JACC Center of Danielson, LLC*, supra, 212 Conn. App. 902.

On June 22, 2022, the plaintiffs filed a petition for certification with our Supreme Court. On February 1, 2023, our Supreme Court officially released its decision in *Carpenter* v. *Daar*, supra, 346 Conn. 83, 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., 87; held that a trial court retains authority to permit the amendment or supplementation of a challenged opinion letter; id., 126; 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. Id., 128. On March 1, 2023, our Supreme Court granted the plaintiffs' petition for certification to appeal in the present case, vacated the judgment of this court, and remanded the case to this court with direction to reconsider in light of *Carpenter* v. *Daar*, supra, 346 Conn. 80. *Gervais* v. *JACC Healthcare Center of Danielson, LLC*, supra, 346 Conn. 910.

On remand, this court, sua sponte, ordered the parties to file supplemental briefs addressing the impact of *Carpenter* v. *Daar*, supra, 346 Conn. 80, on the present appeal. In their supplemental brief, the plaintiffs argued, inter alia, that *Carpenter* now permits trial courts the authority to allow an amendment or supplementation of an opinion letter in response to a motion to dismiss and, thus, "all information provided in the [trial] court in this case, through supplementation, requested amendment, and responses to discovery requests provided sufficient facts to show that the opinion letter submitted with the complaint was authored by a similar health care provider . . . ." Furthermore, during oral

argument before this court on remand, the plaintiffs' counsel maintained that *Carpenter* established that the court improperly denied the plaintiffs' motion to amend.[5] In response, the defendants in their supplemental brief acknowledged that *Carpenter* "makes clear that the trial court may exercise its discretion to consider amendments or a supplement [to the opinion letter in response] to a [challenge by a] motion to dismiss." Nevertheless, the defendants argued that this court should affirm the trial court's decision denying the plaintiffs' request to amend on the ground that it did not constitute an abuse of discretion because the "plaintiffs repeatedly did not comply with established precedent to provide a sufficient opinion letter in accordance with § 52-190a . . . ."[6] Reconsidering the present appeal in light of *Carpenter*, we hold, for the reasons we subsequently explain, that the court improperly denied the plaintiffs' request to amend their complaint to supplement their opinion letter in response to the defendants' motion to dismiss.

We begin our analysis by setting forth the relevant statutory provisions. Section 52-190a (a) provides in relevant part: "To show the existence of . . . good faith, the claimant or the claimant's attorney . . . shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. 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 . . . 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. . . ." Section 52-190a (c) then provides: "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." In turn, § 52-184c contains two definitions applicable to determine whether a defendant is a "similar health care provider."[7]

We next turn to *Carpenter* v. *Daar*, supra, 346 Conn. 87–88, in which our Supreme Court recently addressed the trial court's authority to permit the cure of an opinion letter not in compliance with § 52-190a. Prior to *Carpenter*, our Supreme Court in *Morgan* v. *Hartford Hospital*, 301 Conn. 388, 401, 21 A.3d 451 (2011), held that the opinion letter requirement implicated the court's personal jurisdiction because the failure to comply with § 52-190a constituted insufficient process. In *Carpenter*, our Supreme Court concluded that appellate case law had deviated from the legislature's intention that § 52-190a "prevent frivolous [medical] malpractice actions but not serve as a sword to defeat otherwise facially meritorious claims." (Internal quotation marks

omitted.) *Carpenter* v. *Daar*, supra, 84–85. The court held that the opinion letter requirement of § 52-190a is "a unique, statutory procedural device that does not implicate the court's jurisdiction in any way" and, consequently, the court expressly overruled precedent to the contrary, specifically including its prior decision in *Morgan*. Id., 87. Expanding on this conclusion, the court stated "that *Morgan* is clearly wrong and should be overruled to the extent that it holds that the opinion letter implicates the court's personal jurisdiction. Particularly with respect to the difficulty of *amending flawed opinion letters*, the jurisdictional body of case law spawned by *Morgan* has created roadblocks for otherwise meritorious cases that are squarely at odds with the legislature's limited goal of ensuring an adequate, good faith investigation and eliminating only frivolous cases. Put differently, categorizing the opinion letter in any way as jurisdictional has had the effect of elevating the credential of the authoring health care provider to a jurisdictional prerequisite and turned what the legislature intended to be a simple prelitigation documentation of the plaintiff's good faith inquiry into, in essence, a trap under which even meritorious suits are subject to dismissal. Instead, we conclude that the legislative history and text indicate that dismissal under § 52-190a is a unique statutory remedy intended to strengthen the existing good faith inquiry and to expedite the disposition of obviously frivolous medical malpractice actions." (Emphasis added; footnote omitted.) Id., 124–25.

One of the primary roadblocks that our Supreme Court sought to remove by shifting the nature of the § 52-190a inquiry was the "restricted curative options—beyond resort to the accidental failure of suit statute following dismissal; see General Statutes § 52-592 . . . that are available to plaintiffs given the jurisdictional implications of defective opinion letters under § 52-190a, as interpreted by *Morgan*." (Citation omitted.) *Carpenter* v. *Daar*, supra, 346 Conn. 119. The court highlighted a series of decisions from this court, including "[t]he leading decision of *Gonzales* v. *Langdon*, supra, 161 Conn. App. 518–19 and n.9, [which] holds that the amendment of the complaint and opinion letter . . . is available only when the request for leave to amend—whether discretionary or as of right within thirty days of the return day—is filed prior to the running of the applicable statute of limitations." *Carpenter* v. *Daar*, supra, 346 Conn. 119. Observing that these restrictions "are wholly unjustifiable in light of the legislature's intent in enacting § 52-190a"; id., 115; the court in *Carpenter* abrogated *Gonzales*, and held that, "[b]ecause the opinion letter is not itself process, to the extent that the opinion letter itself is legally insufficient or defective under § 52-190a, *trial courts retain the authority to permit amendments or supplementation of a challenged letter in response to a motion to*

dismiss, as the legislature itself evidently contemplated." (Emphasis added.) Id., 126.

Our Supreme Court recognized that the shift in the inquiry "render[ed] inapplicable to the § 52-190a motion to dismiss the rules of practice and applicable case law governing the pleading and proof of jurisdictional facts," and, accordingly, the court "provide[d] two more points of procedural clarification as to the adjudication of motions to dismiss under § 52-190a . . . ." Id., 125. First, the court clarified that "the inquiry under § 52-190a is squarely and solely framed by the allegations in the complaint, rendering the only question at the motion to dismiss stage whether the author of the opinion letter is a similar health care provider to the defendant as their respective qualifications are pleaded in the complaint and described in the opinion letter. . . . Thus . . . there simply is no place in the § 52-190a inquiry for the consideration of affidavits or other materials intended to inject factual disputes beyond the adequacy of the pleadings and the annexed letter. Because the opinion letter is not itself process, to the extent that the opinion letter itself is legally insufficient or defective under § 52-190a, trial courts retain the authority to permit amendments or supplementation of a challenged letter in response to a motion to dismiss, as the legislature itself evidently contemplated." (Citations omitted.) Id., 125–26. Second, the court emphasized that its "ultimate holding in *Morgan*, namely, that a motion to dismiss for failure to file an opinion letter pursuant to § 52-190a remains waivable, including by inaction, remains good law. . . . [C]onsistent with the legislature's intent of screening out frivolous malpractice actions early in the litigation process, the order of the pleadings provided by Practice Book §§ 10-6 and 10-7 continues to render dismissal under § 52-190a waivable for failure to file a timely motion to dismiss . . . and requires that the motion to dismiss be filed early in the action, as the legislature envisioned in enacting the statute." (Citations omitted; footnote omitted.) Id., 126.

With respect to the standard of review, although we ordinarily review a court's decision on a request to amend a pleading for an abuse of discretion; see *KDM Services, LLC* v. *DRVN Enterprises, Inc.*, 211 Conn. App. 135, 140, 271 A.3d 1103 (2022); in the present case, the issue is whether the court properly concluded that it had the authority in the first instance to permit the amendment, which is a question of law over which we exercise plenary review. See, e.g., *Foisie* v. *Foisie*, 335 Conn. 525, 530, 239 A.3d 1198 (2020); *State* v. *Shawn G.*, 208 Conn. App. 154, 190, 262 A.3d 835, cert. denied, 340 Conn. 907, 263 A.3d 822 (2021).

In the present case, the defendants filed a motion to dismiss challenging the sufficiency of the opinion letter attached to the plaintiffs' complaint pursuant to § 52-190a. In response, the plaintiffs filed memoranda in

opposition arguing that the opinion letter was sufficient and a request to amend the complaint to include two new attachments to the opinion letter to elucidate the qualifications of the author, particularly, the author's resume and nurse license registration.[8] The court denied the plaintiffs' request to amend their opinion letter on the ground that it lacked authority to permit an amendment after the expiration of the statute of limitations pursuant to *Gonzales* v. *Langdon*, supra, 161 Conn. App. 501–502, and *Carpenter* v. *Daar*, supra, 199 Conn. App. 369–70. Subsequently, however, our Supreme Court in *Carpenter* abrogated *Gonzales* and reversed this court's decision in *Carpenter* as inapposite to our legislature's intention in enacting § 52-190a.[9] *Carpenter* v. *Daar*, supra, 346 Conn. 88, 126. In contrast to these decisions, our Supreme Court in *Carpenter* established that trial courts retain the authority to permit amendments or supplementation of a challenged letter in response to a motion to dismiss, even after the expiration of the statute of limitations. Id., 126.

The defendants do not contest this point on appeal. In their supplemental brief, the defendants expressly acknowledge that the Supreme Court's decision in *Carpenter* "makes clear that the trial court may exercise its discretion to consider amendments or a supplement [to the opinion letter in response] to a [challenge by a] motion to dismiss." At oral argument before this court on remand, the defendants' counsel agreed that *Carpenter* now permits trial courts to allow an amendment to an opinion letter after the expiration of the statute of limitations. Consequently, in light of *Carpenter*, we conclude that the court improperly concluded that it did not have the authority to permit the plaintiffs to amend their opinion letter because the statute of limitations had expired.

The defendants nevertheless argue that this court should affirm the trial court's decision on the ground that its denial of the plaintiffs' request to amend did not constitute an abuse of its discretion because the "plaintiffs repeatedly did not comply with established precedent to provide a sufficient opinion letter in accordance with § 52-190a . . . ." The problem with the defendants' argument is that the court never exercised its discretion, rather, it concluded that it lacked the authority to permit the amendment. Indeed, it is possible that the court, if it concluded that it had such authority, would have exercised its discretion to grant the plaintiffs' request to amend. Therefore, we cannot determine whether the trial court abused its discretion by denying the plaintiffs' request to amend. See, e.g., *State* v. *Juan J.*, 344 Conn. 1, 13, 276 A.3d 935 (2022) (appellate courts cannot determine whether trial court abused its discretion in situation where trial court never exercised its discretion); *State* v. *Fernando V.*, 331 Conn. 201, 213, 202 A.3d 350 (2019) ("[w]e cannot determine whether the trial court abused an exercise of discretion

that it neither made nor was asked to make").

The judgment is reversed and the case is remanded for further proceedings consistent with this opinion.

In this opinion the other judges concurred.

[1] Tammy Gervais commenced the present action both as administratrix of the estate of the decedent, Raymond Gervais, and in her individual capacity. We collectively refer to Tammy Gervais, in both capacities, and to Cassandra Gervais as the plaintiffs.

[2] In March, 2019, the plaintiffs commenced a prior medical malpractice action against the defendants. See *Gervais* v. *JACC Center of Danielson, LLC*, Superior Court, judicial district of New London, Docket No. CV-19-6040146-S. The trial court granted the defendants' motion to dismiss that action on the ground that the opinion letter supporting the complaint was not authored by a similar health care provider pursuant to § 52-190a because the allegations of the complaint were against a registered nurse, whereas the opinion letter was authored by a licensed practical nurse. The plaintiffs did not appeal from the trial court's dismissal of their prior action and, instead, commenced the present action pursuant to § 52-592.

[3] The plaintiffs also attached to their complaint a second opinion letter, authored by a licensed practical nurse, that supported their prior action against the defendants, which was found to be deficient by the trial court in the prior action. See footnote 2 of this opinion. The plaintiffs do not address this letter on appeal and, therefore, we do not discuss it further.

[4] Although the defendants did not file a written opposition to the plaintiffs' request to amend, the defendants' counsel, at oral argument before the trial court, contended that the court should deny the request to amend on the ground that it was filed outside of the statute of limitations.

[5] In their principal appellate brief and at the original oral argument before this court on May 16, 2022, the plaintiffs' counsel expressly waived the plaintiffs' claim regarding the court's denial of their request to amend as foreclosed by our appellate case law. On remand, however, the plaintiffs in their supplemental brief, and the plaintiffs' counsel at oral argument before this court, contended that our Supreme Court in *Carpenter*, by and through its reversal of prior precedent, resurrected this claim. Although the plaintiffs' appellate submissions in support of this claim leave much to be desired, we are compelled, in light of our Supreme Court's remand order, to consider this claim in light of *Carpenter*.

[6] The defendants also contend in their supplemental brief that this court should again apply the reasoning set forth in our decisions in *Bell* v. *Hospital of Saint Raphael*, supra, 133 Conn. App. 560, and *Lucisano* v. *Bisson*, supra, 132 Conn. App. 65–66, to hold that the opinion letter was deficient because it failed to elucidate the qualifications of the author. See *Carpenter* v. *Daar*, supra, 346 Conn. 117 n.24 (expressly declining request from Connecticut Trial Lawyers Association to overrule *Bell* and *Lucisano*, stating that "we leave this request for another day in a case in which the issue is squarely presented by the parties"). Our conclusion that the court improperly determined that it lacked the authority to permit the plaintiffs to amend their opinion letter is dispositive of this appeal and, thus, we need not determine whether the original opinion letter complied with § 52-190a. Neither party on appeal advances an argument as to whether the amended opinion letter complied with § 52-190a.

[7] General Statutes § 52-184c (b) provides: "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."

General Statutes § 52-184c (c) provides: "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'."

[8] Although our Supreme Court in *Carpenter* considered the opinion letter in that case in conjunction with a supplemental correspondence by the author; *Carpenter* v. *Daar*, supra, 346 Conn. 89 and n.7; the court also held that "the only question at the motion to dismiss stage [is] whether the author of the opinion letter is a similar health care provider to the defendant as their respective qualifications are pleaded in the complaint *and described in the opinion letter*." (Emphasis added.) Id., 125. Accordingly, to comply with the new test established by *Carpenter*, we emphasize that the best practice for a plaintiff to amend an opinion letter is to revise and/or supplement the actual language of the letter rather than attaching additional documents thereto.

[9] We recognize that the trial court reached its decision without the benefit of our Supreme Court's decision in *Carpenter*, which represented a shift in the law and was not officially released until almost two years after the trial court denied the plaintiffs' request to amend.