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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

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LANDAU, J., concurring in part and dissenting in part.

I

For reasons of public policy, I respectfully dissent from the majority's opinion that the defendants here are provided with only qualified immunity in quasi-judicial proceedings involving health care providers.

I agree with the reasoning of the Texas Court of Appeals in *Attaya* v. *Shoukfeh*, 962 S.W.2d 237 (Tex. App. 1998), in which the court stated that "the qualified immunity provisions of the [Texas] Medical Practice Act [do] not repeal, destroy, diminish or supercede common law absolute immunity. Qualified immunity alone, whether by statute or common law, does not adequately protect the party informant's interest or promote the board's government function. In this connection, absolute immunity is necessary to encourage parties to fully utilize the governmental grievance process without fear or reprisal. Likewise, the mere threat of retaliatory lawsuits, however meritless, is sufficient to discourage physicians from complying with [the statute]." Id., 239–40.

As demonstrated by the procedural history of this case, qualified immunity comes too late in the day to ward off the chilling effect the threat of a lawsuit can have in the peer review process or on those who complain about physicians who are not or may not be able to provide competent medical care. If in time qualified immunity saves the day for the defendants and they are indemnified for their legal defense, it will come after years of litigation, involving time and stress on the parties and many judicial resources. Here, qualified immunity is as good as no immunity.

The position taken by the majority is a paradox in the face of absolute immunity afforded in other contexts where the courts of this state continue to recognize the protection it affords in quasi-judicial proceedings. See *Petyan* v. *Ellis*, 200 Conn. 243, 247–48, 510 A.2d 1337 (1986) (information supplied by employer on fact-finding supplement form of employment security division of state labor department entitled to absolute immunity); *Preston* v. *O'Rourke*, 74 Conn. App. 301, 309–15, 811 A.2d 753 (2002) (arbitration is quasi-judicial proceeding and testimony entitled to absolute immunity); *Field* v. *Kearns*, 43 Conn. App. 265, 273, 682 A.2d 148 ("bar grievants are absolutely immune from liability for the content of any relevant statements made during a bar grievance proceeding"), cert. denied, 239 Conn. 942, 684 A.2d 711 (1996).

Since *Petyan*, our Supreme Court and this court have held that witnesses, complainants and grievants enjoy absolute immunity in labor arbitrations and grievances filed against members of the bar. While I acknowledge

that labor arbitrations and bar grievances generally involve matters of real and personal property, employment opportunity and large sums of money, to me, those matters pale by comparison with the life and death issues with which physicians and other health care professionals are concerned. It defies common sense that our law will protect a bar grievant or a witness in a labor dispute to prevent the chill of future litigation in the quest for the truth, but it will not provide the same degree of protection for health care providers during the course of a peer review or individuals filing complaints with the department of public health. By relying, in part, on the reasoning in *Nurse Midwifery Associates* v. *Hibbett*, 918 F.2d 605, 614 (6th Cir. 1990), modified on other grounds, 927 F.2d 904, cert. denied, 502 U.S. 952, 112 S. Ct. 406, 116 L. Ed. 2d 355 (1991), that physicians and health care providers who serve on peer review committees are often in competition with those being reviewed, does the majority assume that labor grievants, lawyers and others who submit their disputes to arbitration are not in competition with one another?

For the foregoing reasons, I respectfully dissent.

II

Although I believe that the defendants' first claim is controlling of this appeal, I agree with the majority's conclusion regarding the defendants' claim that the court improperly denied their motion for summary judgment because the burden was on the plaintiff to demonstrate a genuine issue of material fact as to malice. I agree that the basis of this claim is not a final judgment and that the claim is not properly before this court. See *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983).