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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.

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LAVERY, C. J., dissenting. I respectfully disagree with the decision of the majority because I believe that the expert disclosure provided by the plaintiffs, Howard Wexler and Judy Wexler, on June 25, 2003, met the requirements of Practice Book § 13-4 (4). Accordingly, I would hold that the court's order of September 4, 2003, which imposed additional stringent requirements that the plaintiffs were unable to meet and ultimately resulted in the dismissal of their case, was an abuse of discretion.

The September 4, 2003 order resulted primarily from what the court deemed inadequate compliance with § 13-4 (4) in the disclosure provided by the plaintiffs on June 25, 2003, in response to the court's June 12, 2003 order. Although the September order was a new one in that it mandated disclosure of further information, namely, transcripts of the named expert's prior testimony, it also served as an articulation of the June order insofar as it elucidated what the court was contemplating when it mandated "a written disclosure fully complying with Practice Book § 13-4 (4) . . . ." Putting aside the question of whether standard disclosure of the detailed information included in the September order would promote desirable litigation policy, the requirements articulated by the court simply have no basis in the plain language of the rule or in the appellate jurisprudence interpreting the rule. Although I do not disagree that a court may order discovery above and beyond that required by our rules of practice, the court's subsequent explanation of what it intended by its June 12, 2003 order leads me to conclude that that order was unclear and, accordingly, the September 4, 2003 order amounted to an unfair surprise.[1] Alternatively, looking to the plain language of the June 12, 2003 order without the benefit of the court's later articulation, I would conclude that the plaintiff's June 25, 2003 response was compliant and that the September 4, 2003 order was unwarranted.

To begin, our rules of practice require, in relevant part, simply that "any plaintiff expecting to call an expert witness at trial shall disclose the name of that expert, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion . . . ." Practice Book § 13-4 (4). The plaintiffs' June 25, 2003 disclosure was a reasonably complete response that addressed each of those elements.[2] The requirement of a "detailed, written report" comprised of the myriad specifics on which the court elaborated; see footnote 6 of the majority opinion; is nowhere to be found in the plain text of § 13-4 (4).

Moreover, neither has our decisional law established the requirement of highly detailed expert disclosure. Many of the appellate cases involving § 13-4 (4) or its predecessor, Practice Book § 220 (D), concern the untimeliness of expert disclosure rather than its content. See, e.g., *Gaudio* v. *Griffin Health Services Corp.*, 249 Conn. 523, 547–48, 733 A.2d 197 (1999); *Pool* v. *Bell*, 209 Conn. 536, 540–41, 551 A.2d 1254 (1989); *Bourquin* v. *B. Braun Melsungen*, 40 Conn. App. 302, 308–309, 670 A.2d 1322, cert. denied, 237 Conn. 909, 675 A.2d 456 (1996); *Pie Plate, Inc.* v. *Texaco, Inc.*, 35 Conn. App. 305, 308–10, 645 A.2d 1044, cert. denied, 231 Conn. 935, 650 A.2d 172 (1994). The few decisions addressing directly the sufficiency of the extent of disclosure have upheld preclusion in circumstances in which the disclosure at issue had substantially less content than that provided by the plaintiffs here.

For example, in *Vitone* v. *Waterbury Hospital*, 88 Conn. App. 347, 869 A.2d 672 (2005), the plaintiff disclosed just her expert's name, that he would testify as to the subject matter of ''[c]are and treatment given to [the decedent] by the Defendants,'' that the substance of his testimony would be ''[s]tandards of care which the Defendants failed to maintain'' and that the underlying grounds were the ''[m]edical records of [the decedent].'' Id., 350 n.3. In *Sullivan* v. *Yale-New Haven Hospital, Inc.*, 64 Conn. App. 750, 785 A.2d 588 (2001), the disclosure stated only that the expert ''is expected to testify [that] the care and treatment provided to [the decedent] in December, 1990, was not within the accepted standard of care and was a serious departure from then prevailing standards of care.'' (Internal quotation marks omitted.) Id., 757–58 n.4. In *Menna* v. *Jaiman*, 80 Conn. App. 131, 832 A.2d 1219 (2003), the plaintiff identified two physicians but indicated merely that they would testify ''according to their expertise'' on their ''diagnosis and treatment of the plaintiff as well as any prognosis for future care and permanent disability.'' (Internal quotation marks omitted.) Id., 134–35.[3]

In contrast, the disclosure here identified physician Peter H. Wiernik as the expert on the subjects of the standard of care in treating a recurrent infectious process and hairy cell leukemia, the deviations therefrom by the defendant physicians John T. DeMaio, John M. DaSilva, Michael J. Tortora and Lynn K. Davis, and Howard Wexler's resultant condition and the need for a risky splenectomy. The pertinent time frame was identified. Regarding the standard of care, the disclosure posited that the three general surgeon defendants, who practiced together and provided similar treatment to Wexler, should have diagnosed him timely and accurately rather than masking his symptoms with antibiotics. As to the fourth defendant, a hematologist, the plaintiffs' disclosure revealed the theory that on making the diagnosis of hairy cell leukemia, he should have

treated Wexler immediately with chemotherapy. According to the disclosure, the aforementioned deviations led to the need for a splenectomy and, further, that performance of the splenectomy was delayed to a point that made it more risky and exposed Wexler to a much higher rate of mortality. The plaintiffs also disclosed fully Wiernik's credentials and that his opinion was grounded in the defendants' office notes, medical records and deposition testimony.[4] See footnote 5 of the majority opinion.

The plaintiffs argue persuasively that the court improperly imported into state court proceedings the more rigorous standard for expert disclosure in federal cases. The current federal rule, in contrast to § 13-4 (4), explicitly contemplates disclosure similar to that ordered by the court, in particular, disclosure of a detailed ''written report prepared and signed by the witness . . . contain[ing] a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.'' Fed. R. Civ. P. 26 (a) (2) (B).

Section § 13-4 (4) in its original form was promulgated in 1986; see *Mulrooney* v. *Wambolt*, 215 Conn. 211, 217–18, 575 A.2d 996 (1990); Practice Book (1978) § 220 (D), as amended June 23, 1986; and borrowed language from the 1970 version of the federal rule that required a party only to ''identify each person [it] expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.'' Fed. R. Civ. P. 26 (b) (4) (A). The federal rule was amended in 1993, deleting that provision and adding Fed. R. Civ. P. 26 (a) (2) (B). When our rule of practice thereafter was amended in 1995 to eliminate specific time deadlines, the general disclosure language was retained. Presumably, if our rules committee had wanted to adopt the newer, more detailed disclosure requirements in use in the federal courts, it would have done so at that time or at some point since. In informing the plaintiffs at the eleventh hour that its prior order requiring compliance with § 13-4 (4) really meant compliance akin to the stricter federal rule, the court effectively blindsided them.

The 1993 addition of the federal provision requiring more detailed expert information was ''intended to elim-

inate or reduce the need for deposing experts.'' J. Koski, ''Mandatory Disclosure,'' 80 A.B.A. J. 85, 86 (February, 1994); see also ''Amendments to the Federal Rules of Civil Procedure and Forms, Communication from the Chief Justice of the United States,'' committee notes, 146 F.R.D. 402, 634 (April 22, 1993); 8 C. Wright, A. Miller & R. Marcus, Federal Practice and Procedure § 2031.1 (1994), p. 443 (''one hope for the disclosure process is that it will obviate, or at least shorten, some expert-witness depositions because the disclosures themselves will provide ample information''). In contrast, our rule of practice, in the context of a medical malpractice action, is intended to ''furnish a defendant with details of a plaintiff's medical claim to assist in the preparation of the defendant's case.'' *Rosenberg* v. *Castaneda*, 38 Conn. App. 628, 632, 662 A.2d 1308 (1995). In Connecticut's courts, it is fully expected that expert witnesses will be deposed.[5] See Practice Book § 13-4 (1) (B). Accordingly, a less complete disclosure typically will suffice, as the basic information provided therein can be more fully developed at the expert's deposition.

In this case, the court in its June 12, 2003 order required that the plaintiffs' expert be available for deposition on specific dates in July, 2003. At the September 4, 2003 hearing, the plaintiffs' counsel confirmed that the expert had been available as directed. Insofar as the court also had ordered that the plaintiffs would bear the costs for any depositions of its experts, any harm that might have flowed from inadequate preparation due to insufficient disclosure presumably would have been mitigated via the ordered cost shifting. In other words, if the depositions took longer than expected, it was the plaintiffs who would pay. Nevertheless, the defendants chose to forgo any attempt to depose Wiernik with the information they had received and moved instead to preclude his testimony altogether.

Under the circumstances, I believe the court's stringent September 4, 2003 order, and the dismissal of the case that ultimately flowed therefrom, was an abuse of discretion.

I would reverse the judgment.

[1] In that regard, the timing of the September 4, 2003 order, i.e., weeks before trial, also is troubling. Although the motions to preclude were filed on July 3 and 7, 2003, by the defendant physicians John T. DeMaio, John M. DaSilva, Michael J. Tortora and Lynn K. Davis, and contested the adequacy of the plaintiffs' June 25, 2003 disclosure, the hearing on those motions was not held until September 4, 2003, leaving little time for the extensive supplementation then ordered by the court. It is unclear on appeal why two months elapsed before a hearing was held on the motions to preclude.

[2] See footnote 5 of the majority opinion.

[3] In *Advanced Financial Services, Inc.* v. *Associated Appraisal Services, Inc.*, 79 Conn. App. 22, 44–45, 830 A.2d 240 (2003), we upheld the court's preclusion of expert testimony where the defendants' disclosure provided somewhat more information than the disclosures in *Vitone, Sullivan* and *Menna*. A significant factor in *Advanced Financial Services, Inc.*, however, was the fact that the disclosure also was inaccurate and that the true topic of the experts' testimony was not revealed until the hearing on a motion to preclude. Id., 45. Consequently, ''the disclosure actually led the plaintiff

astray of what the experts would testify about.'' Id.

[4] The plaintiffs provided a more specific supplemental disclosure with substantial additional detail on September 25, 2003. Because they concededly were unable to comply with the requirements of the September 4, 2003 order, however, the court did not consider the supplemental disclosure.

[5] The federal rules also allow for an expert to be deposed, but provide that ''the deposition shall not be conducted until after the report [required by subsection (a) (2) (B)] is provided.'' Fed. R. Civ. P. 26 (b) (4) (A). Our rules do not include that restriction.