DOCKET NO: AANCV246056552S	:	SUPERIOR COURT
WENDY SIRACO	:	J.D. OF ANSONIA-MILFORD
VS.	:	AT MILFORD
RENE HIPONA, M.D., ET. AL	:	JUNE 4, 2025

Memorandum of Decision on Motion to Dismiss (No. 102.00)

INTRODUCTION

The is a medical malpractice case, in which the plaintiff alleges negligence by an emergency room physician (Hipona), as well as by nurses and physician's assistants working under the physician's direction. The five defendants are: Dr. Hipona, Griffin Health Services Corporation, The Griffin Hospital, Griffin Faculty Physicians, Inc., and THVC Services, P.A., P.C. Here, the three Griffin defendants (i.e., not Dr. Hipona and not THCV Services) move to dismiss counts II, III, and IV of the complaint on the grounds that the allegations against "these unnamed and unidentified agents, servants, and/or employees" (the Griffin defendants) are not supported by a written opinion letter authored by a similar health care provider, as required by Conn. Gen. Stat. § 52-190a(a). (Docket Nos. 102.00 and 103.00, respectively). The opinion letter attached to the complaint is as to all defendants and is authored by a board-certified emergency medicine physician. The court heard oral argument on the motion and the objection on May 19, 2025.

The court must first consider whether the instant opinion letter, authored by a board-certified emergency physician, is sufficient to meet the requirements of the statute § 52-190a(a). The Griffin defendants argue that the letter is insufficient to support the allegations of vicarious liability against unnamed agents who were allegedly acting on behalf of Griffin Hospital with respect to the alleged malpractice. The plaintiff in opposition to the motion to dismiss argues that the opinion letter here satisfies the requirements of the statute. (Docket No. 121.00).

The court must also consider whether, as the Griffin defendants urge, it can dismiss part of the plaintiff's action, specifically those parts of Counts Two, Three and Four that allege malpractice against the Griffin Defendants. The plaintiff argues that the court cannot dismiss part of an action.

FACTUAL BACKGROUND

As alleged in the complaint: the plaintiff alleges in Count One that the defendant Dr. Hipona, an emergency medicine physician, board-certified in emergency medicine and a specialist in that field, practiced at Griffin Hospital, where the plaintiff Ms. Siraco was

treated in the emergency department. Ms. Siraco's care team within the emergency department consisted of Dr. Hipona, as well as nurses and physicians assistants who worked under Dr. Hipona's direction as her assigned physician. This care team make up the "Griffin defendants" in this action. The plaintiff alleges she was given an overdose (an excess of medication for a patient of Ms. Siraco's presentation and weight) opiod analgesics upon Dr. Hipona's orders. She alleges that as a result of this negligence and careless treatment, provided by Dr. Hipona and Griffin Hospital, she suffered and continues to suffer a multitude of injuries requiring significant additional medical treatment.

Count Two of the complaint is against **Griffin Health Services Corporation**, which operates Griffin Hospital (and employed Dr. Hipona as well as other physicians, nurses, physicians assistants, other healthcare providers, employees, agents, apparent agents, principals, officers, executives, administrators, medical staff, and/or servants) involved in Ms. Siraco's treatment.

Count Three is against **The Griffin Hospital**, a Connecticut corporation operating with its principal place of business in Derby, Connecticut. The Griffin Hospital is described in the complaint as providing care and treatment of emergency room patients, including the plaintiff, by emergency medicine physicians including Dr. Hipona.

Count Four is against **Griffin Faculty Physicians**, a Connecticut corporation that is a direct subsidiary of The Griffin Hospital and a wholly owned subsidiary of Griffin Health Services Corporation, is described in the complaint as providing medical services and supplied physicians, surgeons, physician assistants and other health care professionals to Griffin Hospital. It is further alleged that Dr. Hipona was an agent, apparent agent, and/or employee of Griffin Faculty Physicians.

Count Five is against **THVC Services, P.A., PC, aka "TeamHealth"** which is a Florida corporation doing business in Connecticut, and which allegedly owned, maintained, managed, controlled, credentialed or staffed a multi-specialty medical group of physicians and other health care providers, including emergency medical physicians that provided health care services to patients of The Griffin Hospital, including the plaintiff. The complaint alleges that the defendant Hipona was employed or otherwise retained by THVC / TeamHealth as an employee, agent, apparent agent, principal, officer, executive, administrator and/or servant of THVC/ TeamHealth, and was acting within the scope of his employment.

Counts Two, Three, Four and Five each incorporate by reference various paragraphs of Count One.

DISCUSSION

1. Legal Standard

a. Motion to Dismiss

"[A] motion to dismiss is the proper procedural vehicle for challenging the sufficiency of an opinion letter and ... an opinion letter must demonstrate that its author meets the qualifications of a similar health care provider." *Bell* v. *Hospital of Saint Raphael*, 133 Conn. App. 548, 561, 36 A.3d 297 (2012). "In deciding a motion to dismiss ... the court must take the facts alleged in the complaint, including facts necessarily implied from the allegations, and construe them in the light most favorable to the pleader." *Kelly* v. *Albertsen*, 114 Conn. App. 600, 605-06, 970 A.2d 787 (2009). "[P]leadings should be read broadly and realistically, rather than narrowly and technically ...." (Citation omitted; internal quotation marks omitted.) *Carpenter* v. *Daar*, supra, 346 Conn. 127.

However, "[w]hile the courts must take as true the facts alleged in the complaint, it cannot be aided by the assumption of any facts not therein alleged." *Bridgeport Garden Apartments, Inc.* v. *Hymans*, Superior Court, judicial district of Fairfield, Docket No. BRSP066198 (July 9, 2008, *Owens, J.T.R.*) (citing *Fraser* v. *Henninger*, 173 Conn. 52, 60, 376 A.2d 406 (1977)). "Although pleadings must be construed broadly and realistically, rather than narrowly and technically ... this does not mean that we may read into the [pleadings] a prayer for relief or factual allegations that simply are not there.... The court should view the facts in a broad fashion ... to include facts that are necessarily implied by and fairly provable by the allegations but ... avoid enlarging the allegations of the complaint by assuming facts that are clearly not alleged." (Citations omitted; internal quotation marks omitted). *Currin* v. *National NAACP*, Superior Court, judicial district of Hartford, Docket No. CV-19-5061244-S (July 19, 2022, *Rosen, J.*).

b. Requirement of the Opinion Letter

"[T]he attachment of the written opinion letter of a similar health care provider is a statutory prerequisite to filing an action for medical malpractice." *Bell v. Hospital of St. Raphael,* supra, at 558. In 2023, the Connecticut Supreme Court held in *Carpenter* v. *Daar*, 346 Conn. 80, 87-88, 287 A.3d 1027 (2023) that, "the opinion letter requirement [as set forth in § 52-190a] is a unique, statutory device that does not implicate the court's jurisdiction in any way .... [F]or 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 ...."

"[T]he 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." *Id.*, at 125.

The term "similar health care provider" as defined in General Statutes § 52-184c[1], which groups defendant health care providers into specialists (subsection b) and specialists (subsection c). Subsection (b) states,

> "[i]f 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.

Subsection (c) states,

> "[i]f 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.' "

"Read in conjunction with one another, §§ 52-190a and 52-184c provide a plain and unambiguous definition of 'similar health care provider.'" *Lucisano v. Bisson*, 132 Conn. App. 459, 465, 34 A.3d 983 (2011).

The Appellate Court has not decided the issue of whether an opinion letter as to one defendant is sufficient as to any defendant alleged to have been involved in the same procedure or course of treatment, and Superior Court decisions are not unanimous on the

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[1] The definition of "similar health care provider" relies in turn on the definition of "health care provider" as found in General Statutes § 52–184b (a): "For the purposes of this section, '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."

issue. "Numerous Superior Courts have previously held that "[a]n opinion letter ... that is sufficient to satisfy § 52-190a as to one defendant is sufficient as to any defendant whose malpractice is alleged to have involved the same procedure or course of treatment." *Kirpas v. Griffin Hosp.*, No. AANCV-21-604-4504-S, 2022 WL 1153987, at *4 (Conn. Super. Ct. Apr. 7, 2022, Jacobs, J.T.R.)(*Kirpas II*); *Durocher* v. *Backus Corp.*, Superior Court, judicial district of New London, Docket No. CV-18-6032912-S, (September 6, 2018, *Calmar. J.*) (67 Conn. L. Rptr. 68) ("A letter is not required for every agent of the institutional defendants who might have been or is alleged to have been negligent."); *Dinkel* v. *Western Connecticut Health Network, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-15-6025924-S (March 18, 2016, *Lee, J.*) (62 Conn. L. Rptr. 2); *Capasso* v. *Yale-New Haven Hospital, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-14-6049445-S (February 4, 2015, *Nazzaro, J.*)." *Sommers v. Yale New Haven Health Servs. Corp.*, No. CV-22-6120866-S, 2022 WL 17818243, at *4 (Conn. Super. Ct. Dec. 16, 2022). *Brown v. Saint Francis Hosp. & Med. Ctr.*, No. HHD CV 23-6167480-S, 2023 WL 6837360, at *2 (Conn. Super. Ct. Oct. 6, 2023).

A number of other courts have taken the other position, i.e., "in order to support a claim of malpractice against the Hospital the plaintiff must have attached to their complaint opinion letters as to its agents or employees the plaintiff is seeking to have the Hospital held vicariously liable for..." *Jansone v. Hartford Hosp.*, No. HHDCV126030589S, 2012 WL 5860260, at *4 (Conn. Super. Ct. Oct. 25, 2012). Similarly, the court in *Puzone v. Biggs*, No. NNH CV22-6126997 S, 2023 WL 4446481, (Conn. Super. Ct. July 3, 2023) held that an opinion letter by a board certified urologist was a similar health care provider to "medical staff," "nursing staff" or a "general surgeon." *Id.* at *4.

"Inasmuch as the legislative history indicates that a motion to dismiss pursuant to § 52–190a(c) is the only proper procedural vehicle for challenging deficiencies with the opinion letter, and that dismissal of a letter that does not comply with § 52–190a(c) is mandatory ... the grant of a motion to dismiss ... is the proper statutory remedy for deficiencies under § 52–190a ..." *Dinkel v. W. Connecticut Health Network, Inc.*, No. FSTCV156025924S, 2016 WL 1443818, at *3 (Conn. Super. Ct. Mar. 18, 2016), quoting *Bennett v. New Milford Hospital, Inc.*, 300 Conn. 1, 29 (2011). (Citations omitted.)

c. Dismissal as to Individual Counts

There is no clear authority from the Connecticut Supreme Court as to whether the court my dismiss individual counts of a complaint. "Our Supreme Court has not yet specifically addressed whether § 52-190a(c) requires dismissal of the entire complaint or allows for dismissal of only certain counts or claims." *Kimberly Manginelli, Conservator of the Est. & Pers. of Darlene Matejek et al. v. Regency House of Wallingford, Inc. Additional Party*

Names: Nat'l Health Care Assocs., Inc., No. NNHCV216110478S, 2022 WL 225633, at *4 (Conn. Super. Ct. Jan. 6, 2022). Other courts, albeit the minority, have seen the issue differently. See, e.g., *Puzone v. Biggs*, No. NNH CV22-6126997 S, 2023 WL 4446481, (Conn. Super. Ct. July 3, 2023) and *Castano v. Hartford Hospital*, supra, Superior Court, judicial district of Hartford, Docket No. CV19-6114198-S (February 24, 2020, *Noble, J.*).

2. Sufficiency of the Opinion Letter

This court follows the reasoning of the majority of superior courts, which hold that the written opinion is sufficient for the medical institution if it is sufficient for at least one agent or employee of the medical institution. "The statute does not require the plaintiff to identify the name of each individual who acted on behalf of the corporate defendant, either in the complaint or in the written opinion. Nor does the statute presuppose that the opinion expressed in writing appended to the complaint would obviate the need for further pleading and discovery by both sides in such a lawsuit. Were there to be either of those requirements, plaintiffs would likely face insurmountable barriers to commencing and maintaining medical malpractice actions. As the new legislation and its history make clear, the legislature intended to place significant, but not insurmountable, obstacles in the path of plaintiff who, the legislature determined, might otherwise institute meritless claims." *Ranney v. New Britain General Hospital,* Superior Court, judicial district of New Britain, Docket No. CV 06 5000954 (September 18, 2006, *Pittman, J.*). See also *Ryan v. Litchfield Hills Orthopedic Associates, LLP,* Superior Court, judicial district of Litchfield, Docket No. CV 085003164 (October 22, 2008, *Pickard, J.*); *DeMaio v. John Dempsey Hospital,* Superior Court, complex litigation docket at Hartford, Docket No. X07 CV 5010472 (August 5, 2008, *Berger, J.*) (46 Conn. L. Rptr. 121); *Guido v. Hughes,* Superior Court, complex litigation docket at Waterbury, Docket No. X10 CV 06 5004889 (October 17, 2007, *Scholl, J.*) (44 Conn. L. Rptr. 347); *Hernandez v. Moss,* Superior Court, judicial district of Waterbury, Docket No. CV 06 5000664 (May 31, 2007, *Gallagher, J.*). See also *Strickland v. Bristol Hosp., Inc.,* No. CV095014599, 2010 WL 4276733, at *2 (Conn. Super. Ct. Sept. 27, 2010).

The opinion letter supporting the plaintiff's complaint is by a physician who is Board-certified in the field of Emergency Medicine. As the opinion letter author states, "because of the failures of Dr. Hipona and the employees, agents, and/or apparent agents of Griffin Health Services Corporation, The Griffin Hospital, Griffin Faculty Physicians, Inc., [the Griffin defendants] and THVC Services, P.A., PC, Ms. Siraco suffered injuries and damages..." (Opinion Letter, p. 2). This aligns with the allegations of the complaint in alleging medical negligence in the context of the provision of emergency medical care. Accordingly, the court finds that letter to be sufficient to support plaintiff's claims of

medical negligence by unnamed agents with regard to Ms. Siraco's care and treatment as described in the complaint.

3. Dismissal of Partial Counts

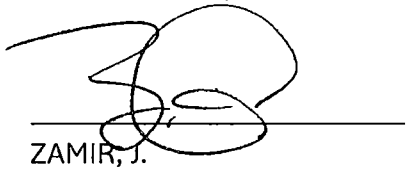
The Griffin defendants urge this court to dismiss the portions of the complaint, arguing that they violate § 52-190a, which states that "[t]he failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action." They cite *Jansone v. Hartford Hospital*, No. HHDCV126030589S, 2012 WL 5860260, (Conn. Super. Ct. Oct. 25, 2012) and *Puzone v. Biggs*, No. NNH CV22-6126997 S, 2023 WL 4446481, (Conn. Super. Ct. July 3, 2023), in which the courts in those respective cases rejected the use of a single opinion letter to support a malpractice claim against a hospital as an institution, medical staff, nursing staff, agents, servants and/or employees who potentially acted on behalf of an institution with respect to malpractice.

This court declines to follow the reasoning of the *Jansone*, *Puzone* or *Castano* courts on this issue. The allegation in this case is that the plaintiff, admitted as she was to an emergency department, received negligent treatment by a physician specializing in emergency medicine and by those other individuals, and the institution of Griffin Hospital, who participated in her care. "As a non-corporeal entity, the Hospital can only act through human agents." *Brown v. Saint Francis Hosp. & Med. Ctr.*, No. HHD CV 23-6167480-S, 2023 WL 6837360, at *2 (Conn. Super. Ct. Oct. 6, 2023). This court finds persuasive the reasoning found in cases such as *Andrade v. St. Vincent's Med. Ctr.*, No. CV116021085, 2012 WL 3518028 (Conn. Super. Ct. July 27, 2012) ("The plain language of § 52–190a does not countenance the piecemeal dismissal sought by the defendant") and *Recinos v. McCarthy*, No. X06UWYCV156028101S, 2016 WL 401930, (Conn. Super. Ct. Jan. 6, 2016).

Having found the opinion letters provided are sufficient to support the vicarious liability actions alleged, this court denies the Griffin defendants' motion to dismiss Counts Two, Three and Four of the complaint.

Accordingly, the motion to dismiss is denied, and the plaintiff's objection is sustained.

BY THE COURT,



ZAMIR, J.