

Legislative History for Connecticut Act

HB 5990 (PA 90-177)	1990
Senate 2619-2621, 2628	(4p)
House 3712, 4857-4865	(10p)
Jud. 1161-1172, 1187-1189	(16p)

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1990

VOL. 33
PART 8
2355-2674

SATURDAY
May 5, 1990

49
pas

2619

Will you remark further. Further remarks. Senator Atkin.

SENATOR ATKIN:

If there's no objection, I'd ask that this be placed on the Consent Calendar.

THE CHAIR:

Without objection, so ordered. Let's turn the Chair over to Senator Hampton.

THE CHAIR: (Senator Hampton of the 33rd in Chair)

Thank you, Mr. President. Clerk, call the next bill, please.

THE CLERK:

Calendar Page 20, Calendar 473, File 499 and 702.
Substitute HB5990, AN ACT CONCERNING THE DISCLOSURE OF PRIVILEGED INFORMATION BETWEEN PHYSICIAN AND PATIENT.
As amended by House Amendment Schedule "A". Favorable Report of the Committee on PUBLIC HEALTH.

SENATOR BLUMENTHAL:

Mr. President.

THE CHAIR:

Senator Blumenthal.

SENATOR BLUMENTHAL:

Thank you, Mr. President. I move adoption of the Joint Committee's Favorable Report and passage of the bill.

SATURDAY
May 5, 1990

50 2620
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THE CHAIR:

Will you remark.

SENATOR BLUMENTHAL:

Thank you, Mr. President. This bill would provide protection against disclosure by a health care provider of records and other communications between the patient and physician or other health care provider without the consent of the individual who is being treated. This kind of protection ordinarily exists at present, but in rare circumstances, where the health care provider is approached by an insurance adjuster or a lawyer, on occasion, the records are provided without the consent of the patients. This bill would prevent that kind of disclosure and would codify what now is and should be the existing practice.

THE CHAIR:

Senator Blumenthal, are you amending this according to the amendment in the House?

SENATOR BLUMENTHAL:

I would move that it be passed with House Amendment Schedule "A".

THE CHAIR:

Any other remarks.

SENATOR GUNTHER:

Mr. President.

SATURDAY
May 5, 1990

51 2621
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THE CHAIR:

Senator Gunther.

SENATOR GUNTHER:

I rise to support the bill. I know that having been in practice, have talked to many lawyer friends of mine who have told me at the time in preparing reports, I should clear it with my patients before I release them, and allow for that to go in with properly without violating the confidence. This is a good bill. I think it makes it quite succinct. I did want, for the record, to actually identify that this covers all licensed health providers, which means that it is not just the medical doctor, the surgeon, it's the psychiatrist, the psychologist, the chiropractor, the osteopath, optometrist, optician, even an R.N. or any other licensed health professional is involved in this process.

THE CHAIR:

Will you comment further.

SENATOR BLUMENTHAL:

If there's no objection, I would move that it be placed on the Consent Calendar.

THE CHAIR:

Hearing no objection, so ordered.

Will the Clerk call the next bill.

SATURDAY
May 5, 1990

58
pas

2628

HB5990. Calendar Page 22, Calendar 484, Substitute

HB5159. Calendar Page 23, Calendar 488, Substitute

HB5460. Calendar 492, Substitute HB5425. Calendar
Page 34, Calendar 317, Substitute SB111.

Mr. President, that completes the First Consent
Calendar.

THE CHAIR:

Are there any corrections? Deletions? Senator
Freedman. Do you wish to be recognized? The machine
is open. Senator Avallone, McLaughlin, Scott. Senator
Scott. The machine is closed. Will the Clerk tally
the vote.

The result of the vote:

35 Yea

0 Nay

The Consent Calendar is approved.

Will the Clerk call the next item.

THE CLERK:

Returning to the Calendar, Calendar 31, Matters
Returned from Committee. Calendar 282, Files 450 and
741, Substitute for SJ32, RESOLUTION MEMORIALIZING
CONGRESS TO RESTORE FUNDING TO ALLEVIATE PRISON
OVERCROWDING. Favorable Report of the Committee on
JUDICIARY.

THE CHAIR:

H-564

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1990

VOL. 33
PART 11
3488-3872

The question is on referral. Is there objection?
Seeing none, it's so ordered.

CLERK:

Calendar 387, Substitute for House Bill 5111. AN
ACT PROVIDING FOR A STUDY OF ALL CONSIDERATIONS RELATED
TO COLLECTION OF TOLLS ON MAJOR HIGHWAYS AT POINTS OF
ENTRY INTO CONNECTICUT AND DEPARTURE THEREFROM.

Favorable Report of the Committee on FINANCE,
REVENUE AND BONDING.

REP. FRANKEL: (121st)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Frankel.

REP. FRANKEL: (121st)

I move this item be referred to the Committee on
Transportation.

SPEAKER BALDUCCI:

The question is on referral. Is there objection?
Seeing none, it's so ordered.

CLERK:

Calendar 391, Substitute for House Bill 5990. AN
ACT CONCERNING THE DISCLOSURE OF PRIVILEGED INFORMATION
BETWEEN PHYSICIAN AND PATIENT.

Favorable Report of the Committee on JUDICIARY.

REP. FRANKEL: (121st)

H-567

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1990

VOL. 33
PART 14
4591-4994

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97

House of Representatives

Wednesday, April 25, 1990

CONCERNING MONEY LAUNDERING. Favorable Report of the
Committee on Judiciary.

REP. FRANKEL: (121st)

Mr. Speaker, Madam Speaker, my apologies.

DEPUTY SPEAKER POLINSKY:

Representative Frankel of the 121st.

REP. FRANKEL: (121st)

Thank you, Madam Speaker, I move that this item be
recommitted.

DEPUTY SPEAKER POLINSKY:

The question is on recommittal. Is there objection?
Seeing no objection, so ordered.

The Clerk please return to the Call of the
Calendar.

CLERK:

Page 21, Calendar 391, Substitute for House Bill
5990, AN ACT CONCERNING THE DISCLOSURE OF PRIVILEGED
INFORMATION BETWEEN PHYSICIAN AND PATIENT. Favorable
Report of the Committee on Public Health.

REP. TULISANO: (29th)

Madam Speaker.

DEPUTY SPEAKER POLINSKY:

The esteemed Chairman of the Judiciary Committee,
Representative Tulisano.

REP. TULISANO: (29th)

I move for acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER POLINSKY:

The question is on acceptance and passage of the bill. Will you remark, Sir?

REP. TULISANO: (29th)

Madam Speaker, the Clerk has an amendment, LCO4501.

DEPUTY SPEAKER POLINSKY:

Will the Chamber stand at ease for a few moments while we locate the amendment.

The House please come to order. Will the Clerk please call LCO4501 which shall be designated House Amendment "A".

CLERK:

LCO4501, House "A" offered by Representative Tulisano.

DEPUTY SPEAKER POLINSKY:

Representative Tulisano has asked leave of the Chamber to summarize. Is there objection? Without objection, please proceed, Sir.

REP. TULISANO: (29th)

Yes, Madam Speaker, it replaces a section of the statute cited in line 2 because it was there as a mispring.

It makes it clear in line 17, we're talking about

House of Representatives Wednesday, April 25, 1990

probate administrative proceedings.

And in the last section of the bill, it insures that it maintains confidentiality that exists, whether or not it was by statute, regulation, or any other matter. I move adoption.

DEPUTY SPEAKER POLINSKY:

Motion is on adoption of House "A". Will you remark further? Will you remark further? If not, let us try your minds. All those in favor please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER POLINSKY:

Opposed, nay. The ayes have it. The amendment is adopted and ruled technical.

House Amendment Schedule "A".

In line 2, delete "52-146d" and insert in lieu thereof "52-146c"

In line 17, after "any" insert "probate,"

In line 21, delete everything after "obtained" and insert the following in lieu thereof: "pursuant to any statute or regulation of any state agency or"

DEPUTY SPEAKER POLINSKY:

Will you remark further on the bill as amended.

REP. TULISANO: (29th)

Yes, Madam Speaker, the bill is designed to insure that a patient/doctor confidentiality is maintained and only disclosed pursuant to particular rules when there is a court case going on and not one person come in and get it.

It's supported by both the medical society, trial lawyers and insurance groups. Amazing, for this General Assembly.

DEPUTY SPEAKER POLINSKY:

Wonderful bill. Will you remark further on the bill as amended? Will you remark further? Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Madam Speaker. A question, through you, to Representative Tulisano.

DEPUTY SPEAKER POLINSKY:

Of course. Will you frame your question, Sir.

REP. KRAWIECKI: (78th)

Thank you. Representative Tulisano, with all those folks thinking that this is such a great idea, what problem is it that we're going to take care of.

DEPUTY SPEAKER POLINSKY:

Representative Tulisano.

REP. TULISANO: (29th)

It is perceived that there are some people when an

inquiry is made, you issue a release in say, a negligence case, the simplest one that comes to my mind, to obtain certain information which may be within the four corners of you indicate, within an accident, that certain agents of an insurance employee, make believe that that gives them permission to seek all kinds of information and maintain ex parte communications with a physician without the other side's lawyer being involved. This is trying to set some parameters.

Frankly, one of the problems we've got to address in the future is that issue to be pretrial, there should be a method of obtaining information without going to court for pretrial disclosure, a presuit disclosure as similar to what they have in the federal rules. We haven't reached that yet.

This sets parameters on how you get information.

REP. KRAWIECKI: (78th)

And, through you, Madam Speaker, I can't right now think of the insurance company I had on a file today, but I had a client come in to see me and he brought in his no fault, early this morning, brought in a very lengthy form and on this form it had a variety of information like, tell me what the accident about and then the next tear off section said, I hereby authorize

the company to collect any medical information they'd like. I hereby authorize you to collect any, I forget what the different sections are now.

Is it, I am assuming that even if we pass this statute, if a client were to sign that document, send it back to the company, saying I hereby authorize my insurance company to get any medical information they'd like, that nothing is going to bar that with that acknowledgment. Is that correct, through you, Madam Speaker?

REP. TULISANO: (29th)

Through you, I believe that limits to disclosure of providing, not necessarily a communication dialogue and sort of an out-of-court inquiry, it's so that they produce a report as we know it. Through you, Madam Speaker, frankly, I saw that as a problem, too, why we have disclosure and that's it, but they say people are going beyond that now.

DEPUTY SPEAKER POLINSKY:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Will you remark further on this bill as amended?
Representative Farr.

REP. FARR: (19th)

Yes. Just through you, to Representative Tulisano. I'm still a little confused. Would this mean that the report from the physician cannot have in it, contain in it a statement about what the patient said concerning his illness, for example, my back hurt, it's been hurting for a long time. Through you, Madam Speaker, to Representative Tulisano.

REP. TULISANO: (29th)

No, Madam Speaker, I think in the normal course of events, we understand someone in the intake in any one incident indicates as history, as part of history, that's part of it, that you can't then go and start making inquiries is intended that the other items is prior operations or treatment for that, which would be subject to some other further disclosure which is not just allow the person making the inquiry, the insurance company, as an example, or a private investigator, begin to make inquiry without the patient's knowledge or understanding that other information is coming out.

I mean, one of the answers as I recall in the Committee, it's my recollection, there was a fear that under disclosure, and we thought you could get all this information that you're suggesting, if you want to make

inquiry, you do it under disclosure, under the parameters set by court and the issues that were being raised were people are seeking what you normally get out of disclosure and out of court, inquiries, and I don't know why doctors are doing it. I wouldn't think they would, but they are making that information available, once one of these authorizations is signed, I guess.

REP. FARR: (19th)

So, through you --

DEPUTY SPEAKER POLINSKY:

Representative Farr.

REP. FARR: (19th)

-- anything that the doctor put in his report that was in a normal medical history of the individual would not be excluded. In addition, the follow-up question is what about the statements that the patients says in the, to the doctor, I fell down my step because I was drunk and, I'm sure people have seen that occasionally, would that statement be somehow excluded under this amendment?

REP. TULISANO: (29th)

I don't believe it is, Madam Speaker.

REP. FARR: (19th)

Thank you.

DEPUTY SPEAKER POLINSKY:

Will you remark further on this bill as amended?
Will you remark further? If not, will all members be
seated. Staff and guests to the well of the House.
The machine will be opened.

CLERK:

The House of Representatives is now voting by roll
call. Members to the Chamber. Members to the Chamber,
please. The House is voting by roll call.

DEPUTY SPEAKER POLINSKY:

Have all members voted and is your vote properly
recorded? Have all members voted? If all members have
voted, the machine will be locked. The Clerk will
take a tally.

The Clerk will announce the tally.

CLERK:

House Bill 5990 as amended by House "A".

Total number voting 145

Necessary for passage 73

Those voting yea 145

Those voting nay 0

Those absent and not voting 6

DEPUTY SPEAKER POLINSKY:

The bill as amended is passed.

Are there any announcements or points of personal

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 4
1090-1355

1990

even in part, causes any death or injury, should be immune from responsibility of the family of those dying and injured.

For years the law has allowed the DOT to have such immunity. If you believe in safety on our roads, they should be accountable.

If you believe in the rights of the victim such as my young daughter, her husband, her son, my family, please pass the bill HB5993. I know my family will not benefit from this, but others may. It's not about money, okay? It's about the safety of our highways. It's about saving a life. Thank you.

SEN. AVALLONE: Thank you very much. Carl Secola.

CARL SECOLA: Good morning, Representatives, Senators, my name is Carl Secola. I'm an attorney from New Haven, Connecticut, associated with the law firm of Lynch, Treib, Keefe and Arrante and I'm here on behalf of the Connecticut Trial Lawyers' Association to speak on behalf of HB5990.

I think essentially, that my task here is relatively simple and I think that simplicity is in large part related to what I perceive as being a very simple bill. I think basically, all we're seeking, or all that this bill seeks, is a very basic protection regarding the privilege between patient and physician communications.

I don't want anyone to make any sort of a mistake here. I don't believe in (inaudible). I don't know how anyone could reasonably argue that this asks for any sort of sweeping or revolutionary changes of any type because it really doesn't.

I think basically the bill asks to remedy, which is probably an oversight at one point in time, and the reason I say it was an oversight is that if you refer to the statutes that you already have and I'm referring to the Connecticut General Statutes, Section 52-146c, 146d and 146e we can easily discern by that that in some point in time members of the Legislature had a very real concern about communications that occurred between psychiatrists and patients, psychologists and patients.

Obviously, these are, as you can see by reviewing the statute, these are communications or records that under certain circumstances in civil actions or other actions, might be discoverable or might be relevant for purposes of trial or adjudication of a dispute.

However, there are things that shouldn't be afforded and are afforded certain protections, mainly, that there's not open gangway in obtaining these records.

With regard to plain, old-fashioned medical records between a regular treating physician and a patient at the present time, under our system as it exists, there is no statutorily codified means of protection. So what happens, essentially, under the present system on a given day, an insurance adjuster or an attorney can contact the doctor of a person who say, for example, has brought an action because as someone pointed out, they fell on a sidewalk and broke an ankle or they were involved in an automobile accident and they broke a leg.

Now this adjuster or this attorney, tells the doctor, gee, Doc, I'd like to come out, I'd like to meet with you, I'd like to review the file, I'd like to see the records, I'd like to talk to you about this patient. If in fact a doctor does that, and it does occur, now suddenly this individual who has this broken ankle or broken leg has an adjuster who they don't know, and an attorney who they don't know, who now has access to some of their most personal things.

Obviously, if there is material in that record that they're entitled to, there's a discovery procedure. We have court. We have motions. We have means for the people to obtain what is relevant material, but I don't think there's any justification for situations where we see that same person with the broken ankle or the broken leg who now an adjuster is sitting in the office and they have their gynecological records for the last 10 years, or they're able to discern that at some point in time there was some sort of marital strife, or there was some sort of psychological problem which is exhibited in the records.

Quite frankly, it's no one's business and has nothing to do with that type of case. I think that basically, that's all we're really looking for.

If anyone tries to argue here today that this is too broad or it's too sweeping, I simply can't accept that and the reason being is that this is something that we've been handling in sort of an ad hoc way and we just want to codify it.

I mean there are instances where adjusters or attorneys have asked for blanket authorizations or who have asked for entire files and the response, at least for some of us has been to fight about that in the courts and to leave it up to the judge to determine what's material and what's relevant and to take it from there.

I think that a very basic tenet of any patient, physician relationship is that there has to be that trust between the patient and the physician so that the patient feels comfortable talking to the physician, telling them whatever's bothering them. It enables the physician to treat the patient properly and I don't think a patient should have to worry about possible consequences later on down the line that someone is going to obtain completely immaterial, irrelevant and most importantly, personal and confidential information that has absolutely nothing to do with that action.

That's all we're asking for. In ending, I don't want to put words in someone else's mouth, but it's my understanding that the majority of physicians around this State have also expressed a concern. They would like some sort of statutory provision so that when the pesky paralegal or the adjuster, whoever it is that's continually calling them and trying to set up a meeting, or trying to obtain those records, he can simply, or she can simply respond to him and say, well, there's a statutory provision on this.

There's a privilege that exists. You're going to have to work this out and you're going to have to get some sort of authorization and it's going to have to be defined and then I'll be happy to turn over whatever is required.

So in closing, I would ask that you act favorably on HB5990 and if you have any questions, I'd be happy to answer them.

SEN. AVALLONE: Questions? Yes.

REP. TULISANO: Why does it say in any civil action, everything you described hasn't been an action yet.

CARL SECOLA: Well --

REP. TULISANO: If it's in the process of deciding whether or not they'll bring an action, are you saying it's okay to have disclosure? I mean, I think this means that a suit has begun.

CARL SECOLA: Well, that's the way it appears. However, I think that basically, even with regard to an adjuster when it hasn't reached the suit stage, certainly provisions can be made where that party can be contacted, or the attorney can be contacted, an authorization can be worked out.

REP. TULISANO: I guess my question really is, you really want a blanket privilege don't you, not just in an action.

CARL SECOLA: I don't think it's a blanket privilege, because I think in actuality or in practicality the way it will work out is that obviously, a company is not going to negotiate with someone if they're acting blindly. They're going to want certain records, and I think at some point it's going to force that party whether they're represented or not, to work out something whereby relevant records are provided.

Maybe the end result is that it will have to result in litigation, and maybe that is true. However, I think that it's, I think that that's going to create a situation where, I just don't think it should continue the way it is right now, where they can get anything they want at any time.

REP. TULISANO: I understand that. I'm just trying to write the bill the way, okay, whatever you want. The bill is on the GAF list the way it is. Thank you. Madam.

77
pat

JUDICIARY

March 17, 1990

REP. BOLSTER: Thank you, Mr. Chairman. The first line in this bill says, in any civil action comma. I would assume, and I'm not a lawyer, that that means that when there has been an action brought, one party against another, then this goes into effect.

If I fell down and broke my ankle and put in a claim to the insurance company for something and the adjuster wants to make sure that I really did and I'm not just fudging it, he can still go to the doctor and get all my medical records.

I'm not sure that's what you meant. Whether you only want this when it's going to be going in a lawsuit, or whether you want it for the nosey insurance investigator who's trying to figure out whether I've got something else wrong with me.

CARL SECOLA: Well, I think obviously, Representative Tulisano has already made that point. I think you've just echoed it and obviously, if there's --

REP. BOLSTER: Well, we're trying to get your answer. I was trying to figure out, you only want this when there's going to be a lawsuit?

CARL SECOLA: No, we would want it in all instances and if anyone would care to make an adjustment on that drafting, obviously, I wouldn't have a problem with that.

REP. BOLSTER: You'd prefer to have in a civil suit deleted, or in a civil action?

CARL SECOLA: Well --

REP. WOLLENBERG: In reality, how do you get it anyway? I call up a surgeon or a physician and say, I'm on the other side of this thing, I want all your, and he's going to say no.

CARL SECOLA: Well, not necessarily. Believe it or not, what we've been experiencing as of late, and I'm sure Mr. Bieder could tell you this as well is that there are certain doctors who just plain flat out that will not cooperate and they will tell them, look, unless you have an authorization I don't want it.

Other doctors will provide it. Other doctors don't know what the status is. There are a number of doctors who have said, there are doctors who have told various attorneys, we wish there was some sort of codification, we wish there was a statutory provision --

REP. WOLLENBERG: Why would you bother with the authorization?

CARL SECOLA: Excuse me?

REP. WOLLENBERG: Why do we bother with the authorization?

CARL SECOLA: Well, because with an authorization, the authorization would have to, would most likely, at least if the person's represented, you're going to have a situation where the other side is going to want this information. The doctor's going to say, sorry, it's statutorily privileged. And they're going to say, well, we'll get an authorization.

The authorization has to be obtained from a person. If the person's represented, that authorization is going to be limited as to what the doctor can disclose. They could limit it to care and treatment arising specifically out of that particular injury.

Whereas normally, what the intent is going to be on the person trying to get those records, because I've seen it --

REP. WOLLENBERG: You're telling me that I can call a doctor and he'll send me the records?

CARL SECOLA: Some doctors will.

REP. WOLLENBERG: Okay.

CARL SECOLA: I know that seems hard to believe and I had difficulty with that, too, until I've had it happen a few times. In addition to that, you have situations where, I'm talking about PI cases, but there are medical malpractice cases where you have a treating physician who is a party defendant in the case and now suddenly, all of the treating

79
pat

JUDICIARY

March 17, 1990

physicians with that, for that particular plaintiff are now cooperating with this defendant doctor's counsel, and they're sending them everything --

REP. WOLLENBERG: (inaudible) but I know when we do a PI you ask a client to sign an authorization for you, his attorney, to get the information.

CARL SECOLA: That's absolutely correct. But there are doctors who have been providing information.

REP. RADCLIFFE: Just a couple of questions to follow up on that. As I understand it right now, the privilege belongs to the patient and not the physician. If the physician is presented with a general release and signed by the patient, would the physician under this bill be able to assert that privilege?

CARL SECOLA: Well, it's my understanding that this would be a privilege accorded to the patient, as you stated, which essentially prevents the physician from disclosing information.

REP. RADCLIFFE: In other words, to follow up on what Representative Wollenberg just said, if I have a doctor who is presented with a general release signed by the patient saying to release all information, as many times is common practice, then that doctor would not have a right to say, no, I'm not going to release it because there's a statute in place.

CARL SECOLA: No, no, I think that's what the statute asks for. That's the only time that that sort of information is going to be released and it's probably going to be released pursuant to the terms of that authorization. That would be my understanding.

REP. RADCLIFFE: Pursuant to the terms of a release or a court order, in terms of discovery. Well, let me ask you this. Let's assume that the patient, or the patient through counsel, contests the release of certain information, and a court then says, I order the release for this information.

80
pat

JUDICIARY

March 17, 1990

The statute as it's written now says without the consent of the patient. Could the physician then be able to assert the privilege in light of that court order?

CARL SECOLA: Well, the only thing I can offer in regard to that is the experience I've had with regard to the other statutory provisions that I mentioned earlier, having to do with psychiatric records where there has been the type of battle that you describe in court and what happens is, my experience has been, once that court order is issued, where the judge rules after the discovery dispute, authorizations are executed by the client.

Now I imagine the client could refuse to execute an authorization. There are cases such as the Pavlinko case where if certain cooperation is not afforded by the client during the course of discovery or during the course of the trial, it's entirely possible that there's a judicial provision or a remedy in that they will non-suit the party and that's the end of this case.

He doesn't have to give up those records, but that may be the end of his suit.

REP. RADCLIFFE: What I want to avoid is the situation of an argument, as you mentioned, saying that this material would probe whatever, at least could lead to prohibit discoverable information, a judge saying give it to him, having a court order and a doctor saying, I'm sorry, I've got a statute here that says without the consent of the patient, a court order doesn't vitiate that, I need the consent of the patient.

You're not looking for that type of protection, I take it. Or are you?

CARL SECOLA: Maybe I didn't make that clear a moment ago, but I think what I'm saying is, I think the privilege rests with the patient in that obviously as you characterized it, the patient has to sign an authorization in order to have that material released.

REP. RADCLIFFE: The patient refuses.

81
pat

JUDICIARY

March 17, 1990

CARL SECOLA: If the court orders it, and the patient refuses it, I think based on past experience with the judge and with the lawyer, is going to tell that particular individual, look, if you want to assert this privilege and you don't want this material released under any circumstances and you refuse to execute and authorization, that's fine. But you're going to be non-suited. I mean, you're going to suffer some detriment in this civil action.

Now, he may still not turn the information over, but that's the end of the civil case. But I don't think the doctor can, at that point, I mean the doctor's going to have to base his decision on whether or not he gets that authorization as I understand, unless there's some sort of superseding order from the court, which, now you're getting into a situation where I don't know what the ultimate resolution of that would be, whether or not that court order would supercede the statute and whether that would be tested further on.

REP. RADCLIFFE: That's what I'm saying. If you take line 17 of the statute right now, without the consent of his patient or upon order of the court, if you had a court order in there where the court can order the release of the information it seems to me you solve that problem.

CARL SECOLA: Well, then, that may take care of it.

REP. RADCLIFFE: Okay. And just a couple of questions about a communication with a patient, if in fact the patient can assert it. Many things would be said to a physician and contained in a report concerning the facts as to what occurred.

A patient may tell a doctor at some point, well, you know, I hurt my knee three years ago, and I think I've reagravated it or something to that effect. If a patient says that I don't want any information released concerning that reagravation, would the doctor have to release it?

CARL SECOLA: Well, I mean, I think we're reading something into this bill that's not the intent. And the reason why I say that is because, based on the

way that the question's posed, my impression is that maybe there's a perception on your part that this bill was designed to prevent defense counsel or the insurance adjusters from obtaining information that they normally would be entitled to, the material (inaudible). That's not the intent of this.

REP. RADCLIFFE: Doctor, did you take a medical history? Did you ask the patient what happened? Doctor, were you given any information about a fall three years ago? Objection, the patient asserts the privilege. Can't I ask the doctor about that?

CARL SECOLA: I don't think that's the way it's going to occur. I think what this bill --

REP. RADCLIFFE: Why couldn't it occur that way under this bill?

CARL SECOLA: Why couldn't it? Because I think what the bill is designed to prevent the situation where someone simply contacts the doctor, or goes in to see the doctor and gets the entire file or receives the entire file without the knowledge of the patient.

REP. RADCLIFFE: This says any communication. Now if I ask a doctor, did the person give you a medical history, did that medical history include anything about pre-existing injuries and the patient says, Doctor I don't want you to answer that. Can the doctor be forced to answer that question? Under this bill, I don't think he can.

Because you're saying any communication that the patient doesn't want. It doesn't say any written report. It doesn't say anything dealing with these particular parts of the body. It says, examined as to any communication made by his patient. That, it seems to me is discoverable information on the basis of how an accident happened or how an incident happened, on the basis of any pre-existing injuries, on the basis of perhaps injuries that are related to something totally unrelated to this particular accident. I can't inquire into that if a patient says no?

CARL SECOLA: Well, I think that you're taking a very strict approach as to your interpretation as to this particular piece of legislation.

REP. RADCLIFFE: I'm reading the words in front of me.

CARL SECOLA: I realize that. However, if that's the case then as I offered earlier, we have a similar type of statute or statutes with regard to the psychological psychiatric records. Somehow, attorneys and courts have been muddling their way through that for as long as that's been on the books and I think it's in the same manner that I described earlier.

Pragmatically, the way this would be applied as I understand it, would be the same way that's been applied and that is, in those types of situations, if someone wants to be that stubborn, it's going to be up to the court to decide what's relevant, what's material and what's not.

If someone wants to get up there and say, I'm just going to assert the privilege and I don't want any of this information disclosed at any point at any time for any reason regardless of what the judge or anyone else says, then fine, there's going to be an adequate judiciary remedy for that and I think you know what it is.

REP. RADCLIFFE: Maybe that's for purposes of impeachment. Maybe she says I never had anything before. Well, Doctor, didn't the patient tell you that she'd had an injury three years before? Objection. Can a court order a doctor to answer that question under those circumstances if this bill passes?

CARL SECOLA: I don't believe that's a proper characterization of this bill.

REP. RADCLIFFE: I'm asking you whether a judge can order, if this bill passes, a judge can order that doctor to answer the question. And this might apply to an independent physician engaged by an insurance carrier as well as a claimant's physician. This could be asserted both ways.

He says, I'm not going to answer that question. It's asked for purposes of impeachment, not even offered for the truth of the matter asserted, it's offered for purposes of impeachment. Well, Doctor, isn't it a fact that the patient said X, Y and Z? I don't want you to answer that question, Doctor. Can a judge order him to answer that question? I don't think so the way this bill is worded.

CARL SECOLA: Well, if that's the case, if there's a change that's necessary, then I would not be opposed, as long as the intent remains the same. And the intent is, as I stated earlier.

What we're concerned about is this blanket means of obtaining information on patients, which is not relevant and not material to the underlying actions. Whether it's for impeachment purposes or any other purpose.

REP. RADCLIFFE: I understand. Then perhaps some clarification of language is in order to prevent the results which I just described which you say are undesired but which logically flow, it seems to me from the plain meaning of the words on the paper.

CARL SECOLA: I'm not sure I agree that's the case, but if that's a concern on the part of the legislators, and there's a means of remedying that and keeping the same basic intent, then obviously I wouldn't have a problem with that.

REP. RADCLIFFE: Thank you.

REP. MINTZ: Any other questions? Thank you. Paul Wallace. Is that Jan?

PAUL WALLACE: Good morning. Acting Chair, RB 6028
Representative Mintz, Representative Caruso. My name is Paul Wallace. I am the lobbyist and staff representative for AFSCME Council 4, AFL-CIO. With me today is Jan Swain, president of Local 749, AFSCME, representing the Judicial Department employees in the Department, as well as Division of Criminal Justice.

DAVID JONES: But if they're flying an American Airlines jet, that's when that type of test would be used, so you don't have a fatal disaster where maybe 300 are killed. Those are the very limited narrow applications for the MMPI, which, by the way

REP. TULISANO: Excuse me, Mr. Luby's talking about people get hired to be the street cleaner, but I guess you get the security guard at the big building down there, a guy out of seventh grade. And you give them the same test. Do you justify that? Yes or no?

DAVID JONES: What I would look at

REP. TULISANO: Yes or no. Do you justify that?

DAVID JONES: Yes.

REP. TULISANO: Okay, thank you. I think that satisfies the Committee. Do you have any more questions?

DAVID JONES: Let me just quickly, one quick point.

REP. TULISANO: No. That's it. These folks have been working very hard to try to get us the right information in what I think is a complicated issue. Patricia Shea.

ATTY. PATRICIA SHEA: Thank you, Representative Tulisano, Members of the Committee. My name is Patricia Shea and I'm counsel to the Insurance Association of Connecticut. I'm going to speak today on two bills which are very important to civil actions in the state.

The first one is HB5990, AN ACT CONCERNING DISCLOSURE OF PRIVILEGED INFORMATION BETWEEN A PHYSICIAN AND PATIENT. We oppose this bill because it would prevent disclosure of any information obtained by a physician from his patient in a civil action, absent a patient's consent. The plaintiff's attorney has complete access to all of the plaintiff's medical information. He can prepare his expert testimony based on this information about the plaintiff's condition, his

injuries, his damages, pain and suffering, permanent or temporary disability. He can review the medical records and have personal discussions with the physician.

If the plaintiff has nothing to hide, why should not the defendant be entitled to that same information? The federal and state court has made it clear that the patient has no proprietary right to the physician's testimony. The language of this bill, however, would prevent the defendant from reviewing the plaintiff's medical records, from having an independent medical examination of the plaintiff, from deposing the plaintiff's position, cross-examining him in the trial, and inquiring as to any prior injuries. Contrary to the prior testimony that I heard, under language of this bill, a court could not order the plaintiff to provide an authorization.

REP. TULISANO: Patricia, can I ask you to meet with Mr. Webber. I think that you're right. It's a blanket provision and there's no way to describe the potential for disclosure and all that. On the other hand, I personally, I don't know if the rest of the Committee feels that, I always thought there was some sort of patient/client privilege, patient/M.D. privilege. In the common law. Isn't there? So, maybe you can work out something reasonable that allows some of this stuff but codifies the current privilege.

ATTY. PATRICIA SHEA: I don't know if it's appropriate at this time, several states are now permitting ex parte communications between the defense counsel and the doctor. There are 12 states now that allow that to happen.

REP. TULISANO: I think this is designed not to allow that to happen, and I think that's what they're probably trying to get to, which, in my humble opinion, I would rather stay in the majority of the states right now.

ATTY. PATRICIA SHEA: Then, I guess what I would say to that is, I think what is happening appropriately right now, is you have to go into court and ask the

judge whether the information that you're seeking is material and relevant to the case. And on a case by case basis. We'll talk about it.

REP. TULISANO: You might also consider when you're in that discussion, we do not have, and someone correct me from Connecticut, free, like under federal rules, you may get certain information before bringing. But you can, in federal rule, as I recall.

REP. RADCLIFFE: There's no pre-action discovery.

REP. TULISANO: There's no pre-action discovery which might be something which would be a great vehicle for you two guys to invent some wonderful stuff.

ATTY. PATRICIA SHEA: How nice. Alright, I'll move on to the next bill, unless there's any other questions.

HB5993, AN ACT CONCERNING ACTIONS FOR DAMAGES FOR INJURIES SUSTAINED ON STATE HIGHWAYS, BRIDGES AND SIDEWALKS. This bill would, in effect, permit the state and municipalities to be brought into virtually every motor vehicle accident that exists on the books and is to come. This would eliminate the sole proximate cause defense for injuries sustained on state highways. Currently, in order for a plaintiff to bring in action against the state for a defective highway, the injury must have been the sole proximate cause of the injury. What that means is if the plaintiff was at any way at fault, or if there was a third party at fault, that the plaintiff's recovery would not be against the state at all, but it would have to be against those other parties.

We believe that this is fair because the plaintiff has a right of recovery; it's just not against the state. I should also add that this is Section 13(a)-144 of the General Statutes. 13(a)-150, in our reading makes this applicable to the municipalities as well. So I think that needs to be also addressed. The original sole approximate cause rule came as early as 1899. It started with the municipalities, and the courts then followed