



## **Bystander Emotional Distress – A Viable Claim in Medical Malpractice**

The Connecticut Supreme Court recently announced that a bystander may recover damages for emotional distress in the context of a medical malpractice claim under the rule of reasonable foreseeability if the emotional injury is severe and debilitating and is not the result of an abnormal response. Squeo v. The Norwalk Hospital Association, (SC 19283), 2015 LEXIS 100 settles the longstanding split among the Connecticut Superior Courts on this issue and paves the way for these new claims against healthcare providers.

In Squeo, the parents of the decedent sued Norwalk Hospital alleging that it improperly discharged their son and, consequently, failed to prevent his suicide. The plaintiffs alleged that on August 14, 2007, Agnes Squeo (the decedent's mother) called the Norwalk police department because her son was depressed and expressed a desire to harm himself with an electrical cord. Later that evening, the decedent was detained by police and admitted to Norwalk Hospital for emergency psychiatric evaluation. On the following morning, the decedent's parents received notification from Norwalk Hospital that their son was no longer a danger to himself and would be released that day. After walking home alone, the decedent obtained a cord and hung himself from a tree in the front yard. The decedent's father saw the decedent hanging from the tree and both parents then ran to assist their son. The decedent sustained severe brain injuries and was taken off life support and died. In their suit, the decedent's parents asserted a claim of medical malpractice and bystander emotional distress.

While the bystander emotional distress claim asserted by the parents for their son's suicide survived a Motion to Strike at the trial court level, summary judgment was ultimately granted in favor of Norwalk Hospital on the basis that the plaintiffs failed to demonstrate a material issue of fact that their injuries and damages were severe and debilitating. The plaintiffs then appealed to the Appellate Court and the appeal was ultimately transferred to the Supreme Court. The Supreme Court affirmed the trial court's granting of summary judgment, but clarified this unsettled area of law.

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In its decision, the Supreme Court reviewed the century-long case law discussing bystander emotional distress claims and, in particular, the seminal Connecticut cases that disallowed such claims in any negligence case prior to 1996: Maloney v. Conroy, 208 Conn. 392 (1988) and Amodio v. Cunningham, 182 Conn. 80 (1980). However, in 1996, the Supreme Court decided Clohessy v. Bachelor, 237 Conn. 31 (1996) and announced that Connecticut does recognize a cause of action and articulating the four-prong test of reasonable foreseeability that must be met: (1) the bystander is closely related to the primary victim of the accident or injury (the Court declined to enumerate the relationships that would qualify under this general standard, but indicated that siblings, spouses, parents and children fell within the scope); (2) the bystander's emotional distress is caused by the contemporaneous sensory perception of the event or conduct that causes the accident or injury, or by arriving on the scene soon thereafter and before a substantial change has occurred in the primary victim's condition or location; (3) the primary victim dies or sustains serious physical injury; and, (4) the bystander experiences serious emotional distress as a result. The Clohessy Court did not address the bystander emotional distress claim in the context of medical malpractice and it did not specifically overrule Maloney, giving rise to the implication that Maloney was still good law in that limited context. This ambiguity resulted in disparate treatment of this claim at the Superior Court level, which Squeo now settles in favor of allowing the claim to proceed.

What does this mean for you? The Squeo Court recognized that its outcome may attract more bystander emotional distress claims in medical malpractice cases and, as a result, articulated several guiding principles to weed out the unmeritorious claims to complement the four-pronged Clohessy test. First, the claim will only stand in a case where it is claimed that the medical mistake is the result of gross negligence such that it would be readily apparent and independently traumatizing to a lay observer. Two examples cited by the Court as satisfying the "high threshold of egregiousness" necessary to fall within the gross negligence exception include a retained foreign object in a patient's body following surgery or the administration of a medication that is prominently labeled as unsuitable for a particular patient. Second, the injury must be severe and debilitating such that it warrants a psychiatric diagnosis or otherwise substantially impairs the bystander's ability to cope with life's daily routines and demands. The plaintiffs in Squeo were unable to satisfy this fourth prong of the Clohessy test. Despite the protections that Squeo endeavors to provide, health care providers must be prepared to face claims of bystander emotional distress premised on allegations of gross negligence.

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## Contact Us

Please contact Michael D. Neubert or Eric J. Stockman if you have any questions or would like further guidance about any issues raised in this article. Contact us at 203.821.2000 or [www.npmlaw.com](http://www.npmlaw.com).



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