ALLISON DOWNS ET AL. *v.* ORLITO A. TRIAS ET AL.
(SC 18755)

Rogers, C. J., and Norcott, Zarella, McLachlan, Harper and Vertefeuille, Js.*

Argued April 19—officially released August 21, 2012

David J. Robertson, with whom was *Madonna A. Sacco*, for the appellants (defendants).

Peter M. Dreyer, with whom were *Richard A. Silver* and, on the brief, *Jonathan M. Levine* and *Amanda R. Whitman*, for the appellees (plaintiffs).

Opinion

HARPER, J. The defendant, Orlito A. Trias,[1] an obstetrician and gynecologist, appeals[2] from the judgment of the trial court, after a jury trial, in favor of the plaintiff, Allison Downs,[3] with respect to the allegations that the defendant's negligence resulted in the plaintiff developing ovarian cancer. The defendant contends that, because the plaintiff's complaint turned on the defendant's failure to advise her that she should have her ovaries removed due to a family history of cancer, the trial court improperly construed the plaintiff's complaint as arising out of medical negligence rather than a failure to obtain informed consent and that the court consequently improperly admitted certain expert testimony and improperly instructed the jury. The defendant also raises claims with respect to the adequacy of the plaintiff's proof and the propriety of various rulings by the trial court. We conclude that the judgment of the trial court should be affirmed in all respects.

The record reveals the following facts that the jury reasonably could have found. The plaintiff has an extensive family history of breast cancer; prior to 1981, her mother, maternal grandmother and two maternal aunts all had died from that disease. In 1981, although she had not been diagnosed with breast cancer, the plaintiff, who was then twenty-two, acted to reduce her cancer risk by undergoing a bilateral mastectomy. In 2005, the plaintiff underwent an elective partial hysterectomy to remedy a uterine fibroid condition caused by painful, but ordinarily noncancerous, tumors. The defendant, who had treated the plaintiff for the prior twenty years, performed the surgery, which entailed removing the plaintiff's uterus but not her cervix or ovaries. At a preoperative consultation, the defendant explained to the plaintiff that, although she had a significant family history of breast cancer, that history, unless supplemented by genetic testing, which the plaintiff had not undergone,[4] did not point to an increased risk of ovarian cancer. The defendant further indicated that the plaintiff's ovaries were healthy, that there was no reason to remove them and that removal would result in unpleasant side effects including early menopause and interference with sexual intercourse. No complications resulted from the hysterectomy that followed this consultation. Approximately one year after the surgery, however, the plaintiff was diagnosed with late stage, terminal, ovarian cancer, which had spread to her abdomen. At the time of her hysterectomy, the plaintiff did not have ovarian cancer, and, had her ovaries been prophylacticly removed at that time, she would not have developed the cancer.

The record reveals the following procedural history. The plaintiff brought the present action alleging that her cancer and related injuries were caused by the defendant's negligence. Specifically, the plaintiff

alleged that the defendant negligently had: failed to provide proper gynecological care; failed to properly treat her; failed to strongly advise her to have her ovaries removed during the hysterectomy; failed to remove her ovaries; and failed to instruct her that her family history of cancer greatly increased her risk of developing ovarian cancer. Before trial, the defendant moved to exclude expert testimony regarding the professional standards governing the defendant's duty to inform the plaintiff of her cancer risk and to give related advice, contending that such expert testimony was inadmissible because the case solely involved the duty to obtain informed consent, which is governed by a lay standard of care. The trial court denied the motion and subsequently permitted the plaintiff's experts to testify that the defendant had failed to adhere to the applicable medical professional standard of care, which required him to appreciate the plaintiff's elevated risk of ovarian cancer, to warn her of this risk and to recommend that she have her ovaries removed to mitigate this risk, and to document that he had done so. At the close of evidence, the trial court instructed the jury, inter alia, that "the plaintiff has the burden of proving by a fair preponderance of the evidence that [the defendant's] conduct represented a breach of the prevailing professional standard of care." The jury returned a verdict in favor of the plaintiff, awarding her $4 million in damages. This appeal followed.

On appeal, the defendant has marshaled a host of grievances into a list of no less than seven separate issues. We begin, therefore, with what appears to be the primary dispute in this case, which turns on the proper characterization of the plaintiff's cause of action, and we address the defendant's additional claims in turn.

I

The defendant contends that the trial court improperly permitted expert testimony and instructed the jury in a manner consistent with a claim of traditional medical negligence. Both claims arise from the defendant's foundational assertion that the plaintiff's complaint necessarily sounded exclusively in informed consent, rather than in medical malpractice. The plaintiff responds that the trial court's decisions were proper because her complaint properly alleged medical negligence. We agree with the plaintiff.

We begin by addressing the standard of our review. Although the defendant's specific complaints concern the admission of expert testimony and instructions to the jury, the propriety of the trial court's actions depends upon the proper interpretation of the case as pleaded by the plaintiff. "[T]he interpretation of pleadings is always a question of law for the court . . . . Our review of the trial court's interpretation of the pleadings therefore is plenary." (Internal quotation

marks omitted.) *Boone* v. *William W. Backus Hospital*, 272 Conn. 551, 559, 864 A.2d 1 (2005).

For purposes of this case, the chief salient distinction between a claim based on lack of informed consent and one based on medical negligence may be summarized as follows: "In order to prevail on a cause of action for lack of informed consent, a plaintiff must prove both that there was a failure to disclose a known material risk of a proposed procedure and that such failure was a proximate cause of his injury. Unlike a medical malpractice claim, a claim for lack of informed consent is determined by a lay standard of materiality, rather than an expert medical standard of care which guides the trier of fact in its determination." *Shortell* v. *Cavanagh*, 300 Conn. 383, 388, 15 A.3d 1042 (2011). Under this lay standard, "material" information that must be disclosed refers to "that information which a reasonable patient would have found material for making a decision whether to embark upon a contemplated course of therapy." (Internal quotation marks omitted.) *Duffy* v. *Flagg*, 279 Conn. 682, 692, 905 A.2d 15 (2006). By contrast, to find for the plaintiff in a medical negligence claim, the jury must determine that the defendant fell short of the prevailing professional standard of care. *Boone* v. *William W. Backus Hospital*, supra, 272 Conn. 567; see General Statutes § 52-184c (a). As a result of these differing standards, expert testimony establishing the professional standard of care is ordinarily required to prove medical negligence, but such testimony regarding professional norms is not relevant to the question of whether a physician's disclosure satisfies the lay "materiality" test.[5] *Shortell* v. *Cavanagh*, supra, 390–91.

As recitation of these two potential sources of liability indicates, a physician has both a duty to exercise medical care in accordance with prevailing professional standards and a duty to provide patients with material information concerning a proposed course of treatment. The issue in the present case concerns the relationship between these two obligations. Specifically, may a physician, in failing to provide a patient with information, incur liability for falling short of the professional standard of care? The answer to this question plainly is yes. In such a case, a physician has a professional duty to possess or obtain certain medical knowledge as well as an additional "lay" duty to communicate a subset of that information to the patient. A physician who fails to apprise a patient of a certain fact may therefore, in appropriate circumstances, be held liable for failing to know the fact in the first place (medical negligence) *and* for failing to convey the fact to the patient for his or her consideration in making medical treatment decisions (lack of informed consent).[6]

A review of this court's prior cases illustrates the fact that although medical negligence and lack of informed consent are clearly distinct causes of action with differ-

ent elements that must be proven; see *Shortell* v. *Cavanagh*, supra, 300 Conn. 388; the same set of facts may give rise to both causes of action. In *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, 297 Conn. 105, 998 A.2d 730 (2010), for example, we recently rejected a contention that medical negligence and informed consent were necessarily mutually exclusive causes of action.[7] In *DiLieto*, testimony supported a conclusion that "but for [the defendant physician's] negligent failure to obtain the [Yale] tumor board's findings with respect to the results of the analysis of [the plaintiff's] tissue specimens, [the physician] would have learned that [the plaintiff] may not have had cancer, and, upon so informing [the plaintiff], who would have opted against surgery, [the physician] would have pursued a treatment plan that did not include surgery." Id., 128–29. Under these facts—when a physician's failure to diligently inquire into the patient's medical condition caused the physician to fail to provide information to that patient—we observed that either or both causes of action could have been pursued. Id., 129 n.30.

Similarly, in *Viera* v. *Cohen*, 283 Conn. 412, 927 A.2d 843 (2007), in which the plaintiff pursued a medical negligence claim but not a claim of lack of informed consent, we held that testimony regarding a physician's failure to inform a patient about the risks of giving birth vaginally after previously undergoing a cesarean section "undoubtedly would bear on informed consent if that were an issue in the case," but that such testimony was also relevant to the claim of medical negligence the plaintiff actually pursued. Id., 453. Specifically, we held that "[i]f, as the plaintiff's experts had testified, the standard of care would have obligated the defendant to discuss the risks of vaginal delivery with [the patient], his failure to do so would provide evidence that he had not in fact recognized that those risks were present." Id. Notably, in *Viera* we recognized not only that medical negligence and lack of informed consent may provide complementary causes of action, but also that our adoption of a lay standard in claims alleging lack of informed consent does not mean that a physician's obligation to live up to the professional standard of care is suspended for the duration of a conversation dedicated to informing a patient of medical risks. See id. Thus, although a physician's failure to adhere to the standard of medical care with respect to communicating risks to a patient does not ordinarily give rise to liability in isolation,[8] that professional failure may be relevant to an underlying claim of medical negligence.

Consistent with a physician's distinct but complementary responsibilities to act in accordance with the professional standard of care and to provide material information to patients, we have held that lack of informed consent provides the sole theory of liability only in a single circumstance, namely, where the plaintiff has failed to allege *any* deficiency of medical skill

or care. For example, in *Sherwood* v. *Danbury Hospital*, 278 Conn. 163, 169, 896 A.2d 777 (2006), in which the plaintiff had contracted HIV after receiving a blood transfusion during a medical procedure at the defendant hospital, the court held that the plaintiff's claim of negligence sounded exclusively in informed consent because the claim was "not founded on the defendant's alleged lack of skill or proficiency in its screening, handling and dispensing of the blood in its blood bank but, rather . . . [was] predicated entirely on the defendant's alleged failure to convey information to the plaintiff so that she could make an informed decision with respect to whether to proceed with the surgery as scheduled . . . ." Id., 181.

In the present case, the plaintiff alleged not only that the defendant had failed to inform her of her risk of ovarian cancer, but also that he failed more generally to properly treat her and to provide her with proper gynecological care. Recognizing that "[t]he complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory upon which it proceeded, and do substantial justice between the parties"; (internal quotation marks omitted) *Boone* v. *William W. Backus Hospital*, supra, 272 Conn. 560; and that pleadings are to be construed "broadly and realistically, rather than narrowly and technically"; (internal quotation marks omitted) id.; it seems clear that in light of the entire complaint, the plaintiff's allegations concerning the defendant's failure to provide information and recommendations concerning ovarian cancer could properly be construed as describing specific instances of a broader theory that the defendant had failed to provide proper medical treatment. The evidence offered at trial, in turn, was consistent with an underlying claim of medical negligence. The plaintiff elicited testimony from the defendant indicating his limited understanding of her cancer risk. She also presented expert testimony opining that the defendant fell short of the medical standard of care in failing to appreciate the heightened risk of ovarian cancer associated with her family history of breast cancer and in subsequently failing to provide her with information and advice as would have been appropriate had the defendant appreciated the risk. Under the circumstances of the present case, we therefore conclude that the trial court properly admitted testimony concerning the professional medical standard of care applicable to the defendant and properly instructed the jury on a theory of medical negligence.

II

The defendant next asserts claims concerning the admission of certain testimony by the plaintiff regarding the connection between her development of ovarian cancer and her failure to have her ovaries removed, and the exclusion of testimony the defendant offered

in rebuttal. For the reasons that follow, we reject both of these claims.

The following additional procedural history is relevant to these claims. At trial, the plaintiff testified, over the defendant's hearsay objection, regarding the details of a conversation she had had with another physician's assistant approximately one year after her hysterectomy. Specifically, the plaintiff testified that the physician's assistant had told her that she had late stage ovarian cancer and that, if she had had her ovaries removed the previous year, she would not have developed cancer. Subsequently, the defendant sought to call the physician's assistant as a witness to testify regarding this conversation, but, upon the plaintiff's objection that the physician's assistant had not been named on the defendant's witness list, the trial court precluded her from testifying on the ground that any probative value of the testimony would be outweighed by the unfair prejudice or surprise to the plaintiff that the late witness addition would cause. The trial court similarly precluded an expert witness for the defendant from offering a previously undisclosed opinion as to whether the physician's assistant would have been able to determine that the plaintiff's cancer could have been avoided by removing her ovaries the previous year.

The defendant contends that the trial court's rulings effectively allowed the plaintiff to covertly introduce expert testimony regarding the causal relationship between her ovaries not being removed in 2005 and her subsequent development of ovarian cancer. He also asserts that the trial court's preclusion of rebuttal testimony regarding what the physician's assistant had said prevented him from challenging the plaintiff's credibility. Upon a review of the record, we conclude that whatever the propriety of the trial court's various evidentiary rulings on these issues, the defendant has failed to demonstrate that the rulings, even if improper, were harmful. It is well established that "before a party is entitled to a new trial because of an erroneous evidentiary ruling, he or she has the burden of demonstrating that the error was harmful. . . . The harmless error standard in a civil case is whether the improper ruling would likely affect the result." (Internal quotation marks omitted.) *Urich* v. *Fish*, 261 Conn. 575, 580–81, 804 A.2d 795 (2002).

The following facts demonstrate that the defendant has not met this burden. First, with respect to the admission of the plaintiff's account of what she had been told by the physician's assistant, it is abundantly clear that the information conveyed—that the plaintiff had late stage ovarian cancer and that it had developed in the period following her hysterectomy—was merely cumulative of the far more detailed and authoritative testimony provided by the plaintiff's expert witnesses regarding the development of her cancer, testimony

that the defendant did not contest. Second, with respect to the plaintiff's credibility, although the defendant has pointed cursorily to discrepancies in the plaintiff's and the defendant's account of what was said during the preoperative consultation at issue, his own testimony supports the plaintiff's claim that he did not inform her of the heightened risk of ovarian cancer associated with her family history of breast cancer. In sum, the defendant has failed to show that the trial court's rulings, even if improper, likely affected the outcome of the case.

III

The defendant next claims that the trial court improperly permitted the plaintiff to testify that she would have had her ovaries removed had she been informed of her risk of developing ovarian cancer, asserting that such testimony was speculative. The defendant further contends that he was entitled to a directed verdict because the plaintiff's lay testimony was insufficient to meet the requirement that causation be proven through expert testimony in medical malpractice cases. The defendant's claims in this regard are wholly without merit.

This court has clearly held that, in the context of a medical negligence claim, a lay witness may testify, on the basis of personal knowledge and life experiences, regarding the choices he or she would have made under hypothetical circumstances. In *Burns* v. *Hanson*, 249 Conn. 809, 826, 734 A.2d 964 (1999), for example, the court held that "the plaintiff's testimony as to what she would have done had the defendant [gynecologist] advised her that she was pregnant was not speculative but, rather, was based on her personal knowledge. The plaintiff was not coming to the issue afresh on the witness stand. She had personal experience with deciding to terminate a pregnancy, having undergone an abortion many years earlier when she was an unmarried teenager. . . . The plaintiff's life experiences made her an appropriate witness to inform the jury about her choices." See also *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, 265 Conn. 79, 105–108, 828 A.2d 31 (2003) (concluding that trial court improperly excluded as speculative plaintiff's proposed testimony regarding different course of treatment she would have pursued in lieu of hysterectomy had she been told that her condition possibly was benign rather than rare uterine malignancy). Under this standard, the plaintiff in the present case, who had elected at the age of twenty-two to take the radical prophylactic measure of undergoing a bilateral mastectomy in light of her family history of breast cancer, was clearly qualified to testify. There is no doubt that she possessed sufficient life experience to meaningfully testify as to what other prophylactic measures she would have taken had she been apprised of her risk of developing ovarian cancer. The

defendant's passing effort to distinguish our prior case law solely on the basis that "this case was not a misdiagnosis case" is unsupported by further argument and borders on the frivolous.

This court's holding in *Burns* further bears on the defendant's claim regarding the trial court's denial of his motion for a directed verdict, predicated on critical evidence of causation coming solely from the plaintiff's own testimony. Although ordinarily a claim of medical negligence cannot be proven without expert testimony because issues of medical treatment are generally beyond the common knowledge of laypersons, this rule does not apply to matters of common experience. *Boone* v. *William W. Backus Hospital*, supra, 272 Conn. 567. In *Burns* v. *Hanson*, supra, 249 Conn. 827–28, we held that a new trial was required to allow the plaintiff to testify as to what decision regarding the termination of her pregnancy she would have made if she had been given appropriate information precisely *because* such relevant lay testimony was the sole available evidence on a critical aspect of causation. The situation is much the same in the present case. Although the plaintiff was required to—and did—provide expert medical testimony establishing that if she had had her ovaries removed at the time of her hysterectomy she would not have developed cancer, the court properly permitted the plaintiff to rely on well-informed and nonspeculative lay testimony regarding the likely judgment that a layperson (the plaintiff) would have made in a particular context. The defendant has offered no reason why expert testimony would provide indispensible insight into this quintessentially lay decision.

IV

We turn next to the defendant's claim that the trial court made inconsistent rulings with respect to the admissibility of testimony concerning a screening test to detect a genetic mutation associated with ovarian cancer that was never administered to the plaintiff. The core of the defendant's complaint is that the trial court permitted the plaintiff to elicit testimony from the defendant concerning his knowledge, or lack thereof, with respect to information that could be obtained from the screening test but subsequently precluded the defendant from eliciting testimony showing that, had the test been conducted on the plaintiff in 2005, the results of that test would not have shown that she had a genetic mutation that predisposed her to ovarian cancer. We conclude that the trial court acted within the bounds of its discretion in precluding this line of questioning.

"We have held generally that [t]he trial court has broad discretion in ruling on the admissibility [and relevancy] of evidence. . . . The trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion."

(Internal quotation marks omitted.) *Urich* v. *Fish*, supra, 261 Conn. 580. Upon a review of the record, we are not able to say that the trial court clearly abused its discretion in precluding the defendant from eliciting testimony regarding the probable results of a genetic test that was never performed. Information regarding genetic testing was relevant to this case only to the extent that it provided a piece of background information bearing on the defendant's judgments regarding the plaintiff's risk of developing ovarian cancer and the appropriate course of action in light of that risk. Because the defendant in fact made these judgments without knowing what the results of the genetic screening test might be, the medical reasonableness of his judgments in the face of such uncertainty is the fundamental issue disputed in this case. A counterfactual, retrospective analysis of what information actually would have been obtained had the genetic test been conducted thus would have had no bearing on whether the defendant complied with the standard of care. Moreover, because the plaintiff did not allege that the defendant negligently failed to recommend the genetic test, the probable outcome of the unperformed test does not bear on whether the defendant's negligence was the proximate cause of the plaintiff's cancer.

V

The defendant finally alleges that he was deprived of a fair trial "in multiple ways . . . ." Specifically, the defendant claims that the trial court improperly permitted the plaintiff to make a late amendment to the complaint, improperly prevented both parties' counsel from stating the particular legal bases for their objections to trial rulings, improperly denied the defendant an opportunity to make an offer of proof, and improperly displayed a bias against defense counsel. None of these claims is availing.

The defendant first claims that the trial court improperly permitted the plaintiff to make a late amendment to the complaint by changing references to "gynecological cancer" to "breast cancer" the day the trial was scheduled to begin. This modification was prompted by the defendant's announced intention to object to any reference to the plaintiff's family history of breast cancer on the ground that breast cancer is not a "gynecological cancer" as referenced in the complaint. The defendant has pointed to no evidence that any family history of cancer other than breast cancer was at issue in this case, and it is abundantly clear from the complaint that the term gynecological cancer was intended to include breast cancer.[9] The defendant's effort to characterize the amendment as a shift in the plaintiff's theory of the case is therefore wholly unsupportable, and the trial court properly permitted the amendment.

We turn next to the defendant's claim that the trial court improperly refused to allow the parties to state the

legal basis for their evidentiary objections. The record reveals the following facts. The trial protocols established at the beginning of this case, consistent with Practice Book § 5-5,[10] called for counsel to "succinctly state the legal basis for any objection" and "not argue objections unless requested to do so by the court . . . ." During the first two and one-half days of testimony, following various objections, the trial court repeatedly admonished the defendant's counsel, in particular, for commenting on evidence to which an objection had been made and for arguing objections without a request from the court. See Practice Book § 5-5 ("[a]rgument upon such objection . . . shall not be made by either party unless the judicial authority requests it"). The court also unsuccessfully attempted to maintain order by requiring counsel to support objections by reference to a specific section of the rules of evidence underlying the objection.[11] On the afternoon of the third day of testimony, the trial court issued the order at issue, which required both counsel to state only the word "objection" and not to further articulate an argument or basis for the objection. The next morning, the court modified the order to permit citations to the relevant section of the Code of Evidence.

The trial court possesses "inherent discretionary powers to control proceedings, exclude evidence, and prevent occurrences that might unnecessarily prejudice the right of any party to a fair trial." (Internal quotation marks omitted.) *Connecticut Light & Power Co.* v. *Gilmore*, 289 Conn. 88, 128, 956 A.2d 1145 (2008). In the present case, the court employed an escalating series of restrictions in order to prevent counsel, particularly defense counsel, from disrupting the course of the trial and giving unwarranted commentary in the presence of the jury. The measure at issue—precluding counsel from articulating any basis for their objections—was taken only after more moderate measures failed to achieve order and was modified the following day. Nonetheless, recognizing that preventing parties from expressing the specific legal basis for their objections can significantly impair the parties' ability to provide the court with a sufficient understanding of the nature of each objection, we hesitate to place our imprimatur on the unusual limitation briefly imposed by the trial court in this case. That said, we cannot conclude that the court's decision likely affected the outcome of the case, and the defendant is therefore not entitled to a new trial on this ground. See *Urich* v. *Fish*, supra, 261 Conn. 580–81. The defendant has asserted only a generalized claim of harm and has failed to provide us with any specific examples of improper evidentiary rulings that the trial court allegedly made during the one afternoon of testimony while the order at issue was in effect, and he has not indicated any other way in which the trial court's ruling allegedly impaired his right to a fair trial.[12]

In his penultimate claim, the defendant asserts that the trial court improperly precluded him from making an offer of proof with respect to testimony he wanted to elicit regarding a hypothetical negative result from a genetic screening test the plaintiff did not undergo. Even if the trial court's decision in this respect were improper, however, the defendant would not be able to show that the error was harmful. Id. As we previously have discussed in part IV of this opinion, testimony concerning the counterfactual "results" of the unadministered test was properly excluded irrespective of the specific content of the results, and the defendant has not shown how testimony concerning a hypothetical negative result could have influenced the determination of admissibility. Moreover, although the defendant claims that the trial court's decision in this matter deprived him of a fair trial, we note that portions of the record the defendant has neglected to identify make clear that he was permitted the same scope of questioning as the plaintiff on this topic.

Finally, the defendant claims that the trial court treated defense counsel rudely and with disrespect, thus evidencing bias. Our review of the record has revealed this claim to be utterly unfounded. We are, indeed, impressed by the equanimity displayed by the trial court in the present case, and we caution that counsel so willing to push the limits of acceptable attorney conduct should be aware that appellate review of the record is a double-edged sword.[13]

The judgment is affirmed.

In this opinion ROGERS, C. J., and NORCOTT and VERTEFEUILLE, Js., concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] Both Orlito A. Trias, individually, and his medical practice, Orlito A. Trias, M.D., P.C., were named as defendants in this case. For convenience, we refer to Trias as the defendant.

[2] The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[3] Allison Downs' husband, Michael Downs, also was a plaintiff in the present action, prevailing on a claim of loss of consortium. Because the loss of consortium claim is not directly at issue in this appeal and is derivative of the negligence claim that is at issue, for convenience we refer to Allison Downs as the plaintiff.

[4] The parties dispute whether the defendant previously had recommended that the plaintiff undergo genetic testing.

[5] This is not to say that expert testimony must be excluded from informed consent cases. As the seminal case adopting and elucidating the lay standard of care for informed consent makes clear, "[t]here are obviously important roles for medical testimony in such cases, and some roles which only medical evidence can fill. Experts are ordinarily indispensable to identify and elucidate for the factfinder the risks of therapy and the consequences of leaving existing maladies untreated. They are normally needed on issues as to the cause of any injury or disability suffered by the patient and, where privileges are asserted, as to the existence of any emergency claimed and the nature and seriousness of any impact upon the patient from risk-disclosure. Save for relative infrequent instances where questions of this type are resolvable wholly within the realm of ordinary human knowledge and experience, the need for the expert is clear." *Canterbury* v. *Spence*, 464 F.2d 772, 791–92

(D.C. Cir.), cert. denied, 409 U.S. 1064, 93 S. Ct. 560, 34 L. Ed. 2d 518 (1972); see also *Logan* v. *Greenwich Hospital Assn.*, 191 Conn. 282, 293, 465 A.2d 294 (1983) (adopting reasoning of *Canterbury*).

[6] We note that the question of whether the facts of the present case could properly support a claim sounding in informed consent is not before the court, and we therefore have no reason to express an opinion on that issue.

[7] Although the defendant physician in *DiLieto* had raised this claim for the first time in his reply brief and therefore was not entitled to review of the claim, we nonetheless rejected the claim on its merits. *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, supra, 297 Conn. 129 n.30.

[8] But see *Canterbury* v. *Spence*, supra, 464 F.2d 783–84 (leaving open possibility of liability for deviating from professional custom under certain circumstances); id., 788–89 (articulating exceptions to lay standard of care in emergency circumstances when patient is unconscious or otherwise incapable of consenting and in cases when physician makes medical judgment that disclosure would be harmful to patient's mental or physical health).

[9] Paragraph 8 of count one of the amended complaint, for example, alleged that the defendant "was aware that [the plaintiff] was so concerned about her genetic predisposition to gynecological cancers that she had undergone prophylactic bilateral mastectomies in an attempt to avoid cancer."

[10] Practice Book § 5-5 provides: "Whenever an objection to the admission of evidence is made, counsel shall state the grounds upon which it is claimed or upon which objection is made, succinctly and in such form as he or she desires it to go upon the record, before any discussion or argument is had. Argument upon such objection or upon any interlocutory question arising during the trial of a case shall not be made by either party unless the judicial authority requests it and, if made, must be brief and to the point."

[11] The following excerpts from the first two and one-half days of testimony, between the defendant's counsel, Madonna Sacco, the plaintiff's counsel, Richard Silver, and the trial court informs our conclusion:

Day One

"[Sacco]: Your Honor, if there's going to be argument in front of the jury this is a very sensitive area, I'm sorry, but I can't have Mr. Silver speaking in front of the jury about something that you've already ruled on. . . .

[The court dismisses the jury.]

"The Court: All right. Let me—let me set some ground rules here. If I haven't made this clear I'll try one more time. If there is an objection I need to have the legal basis of the objection stated, if counsel wishes to have the jury excused from the courtroom I need to have that statement made without any additional commentary.

"[Sacco]: And, Your Honor—

"The Court: Is that clear?

"[Sacco]: Your Honor, I can't be—you can't continue to give me a difficult time on this issue when Mr. Silver, in front of the jury, Your Honor, violated your rule. . . . [T]his was never on [the] plaintiff's—

"The Court: Counsel, all right, listen—

"[Sacco]: You don't—Your Honor—you just don't want me to make an argument for the appellate record. And it's important that I do this.

* * *

"[Sacco]: I'm going to object.

"The Court: Okay. I think at this point the question has been asked, and the witness' answer is the witness' answer. So let's move on.

"[Silver]: All right.

"[Sacco]: Your Honor, just—

"[Silver]: Thank you, Your Honor.

"[Sacco]: —one other basis quickly, for the record.

"[Silver]: I—

"[Sacco]: A different basis.

"The Court: Well, I've sustained—

"[Sacco]: This whole line—

"The Court: I've sustained your objection.

"[Sacco]: I understand.

"The Court: So—

"[Sacco]: This whole line of questioning is an informed consent discussion versus a standard of care discussion.

"[Silver]: May we approach . . . .

[The jury subsequently is excused.]

"The Court: The second part of your comment, Attorney Sacco, was not, in my opinion, a legal objection. It was commentary on the question.

"[Sacco]: No, no, no, no, Your Honor. Then I didn't make myself clear. I

object to the use of the term, standard of care, at any point in time in this case because this is not a standard of care case, in my opinion. It's my position this is an informed consent case, which does not require standard-of-care-type questions.

"The Court: Okay, well—

"[Sacco]: That's my—and so it—if I may, Your Honor?

"The Court: Let me interrupt, if I might. That is not a legal objection.

"[Sacco]: Of course it is, Your Honor. Absolutely it is."

Day Two

"[Sacco]: Objection.

"The Court: Basis?

"[Sacco]: Improper use of a deposition.

"The Court: Overruled.

"[Sacco]: Would you like to see the deposition, Your Honor, to see what Mr. Silver incorrectly is using the deposition for?

"The Court: I've overruled the objection.

* * *

"[Sacco]: Objection. . . .

"The Court: I'm sorry. Basis?

"[Sacco]: Harassing. And—should she do self-breast examinations? Objection. To the form. To it being argumentative. To it be[ing] ridiculous.

"The Court: Okay. Ladies and gentlemen, again, I'm going to have to ask you to step out.

[The jurors exit.]

"The Court: Counsel, where is the last comment a legal objection?

"[Sacco]: Um, I objected to the form. I objected—I forget what I said.

"The Court: The last comment—let's play back the objection.

[The objection is played back.]

"The Court: Let's go back on the record. Is ridiculous a legal basis?

"[Sacco]: Redundant. Ridiculous. Duplicative. Common sense. Form. They're all legal objections.

"The Court: Okay.

"[Sacco]: All of them. And here I am—again, it's—Your Honor, just for the purposes of the Appellate Court, I am being reprimanded when an officer of the court misrepresented a document to the court.

"The Court: This is the way we are going to proceed. I realize this is not common, but I see no other way to proceed based on the court's authority under [Practice Book §] 23-14, which I believe overrides [Practice Book §] 5-5. Objections need to refer specifically to a particular section of the Code of Evidence that is being—that is the basis of the objection."

Day Three

"[Sacco]: Objection. That specific question, Your Honor sustained my objection. That's number [ten]. The exact question. And I would ask that the jury be excused and that Mr. Silver be commented on for asking a question that has already been ruled on by the court and my objection was sustained.

"The Court: Ladies and gentlemen, I'm going to ask you to step out.

"[Sacco]: I don't know why we did an offer of proof outside the presence of the jury if prejudicial information—

"The Court: Counsel, no more comments, please.

"[Sacco]: What's good for the goose is good for the gander."

"[The jury exits.]"

[12] We also note that, contrary to the defendant's suggestion, we would not treat the trial court's evidentiary rulings during the duration of this order as unreviewable on the ground that counsel failed to state a basis for their objections as required by Practice Book § 5-5. Quite the opposite: under this extraordinary limit on counsels' ability to articulate the reasons for objections, we would review the trial court's allegedly improper rulings for inconsistency with *any* of the rules of evidence. In the present case, however, the defendant has not pointed to any allegedly improper rulings while this order was in force and such an inquiry therefore is not warranted.

[13] The following exchange between the defendant's counsel, Madonna Sacco, and one of the plaintiff's expert witnesses presents merely one example reflected in the record of a circumstance in which the trial court felt compelled to address an improper comment by Attorney Sacco:

"Q. And if a patient doesn't carry the gene, they don't have the gene, their risk returns to that of the general population, correct?

"A. Not correct, because you have to look at the total family history. You cannot—you can have a test on a—on a test just out of here, like if your mom had breast cancer—

"Q. My mom didn't—
"A. No, no, I'm just making it up.
"Q. Well—
"A. Okay, I don't know.
"Q. I did, but my mom didn't.
"A. Okay.
"The Court: Ladies and gentlemen, I'd ask you to step out, please."