RM VITAL SIGNS

YOUR RESOURCE FOR ALL THINGS
HEALTHCARE, DISABILITY, SPECIAL NEEDS & ELDER LAW-RELATED

Vol. 2-1; March 2015

In this Issue:

CONNECTICUT SUPREME COURT RULES STATE CAN REQUIRE A MINOR DIAGNOSED WITH CANCER TO

On January 8, 2015, the Supreme Court of Connecticut unanimously ruled that the State of Connecticut could require a minor, a 17 year-old woman, to continue chemotherapy, against her wishes. In September of 2014, physicians diagnosed a young woman, identified only as Cassandra C., with Hodgkin Lymphoma; the physicians recommended chemotherapy. Physicians notified the Department of Children and Families ("DCF") when Cassandra missed several appointments. Cassandra, with her mother's support, refused chemotherapy; Cassandra claimed that she didn't want to poison her body.

DCF petitioned the court to grant it temporary custody of Cassandra until her 18th birthday. Cassandra's mother stated that her daughter is not going to die; it's her daughter's body and choice. Kristina Stevens, an administrator with DCF stated that experts have informed DCF that without treatment Cassandra will die.

The lawyers representing Cassandra argued that Connecticut should adopt the mature minor doctrine, a legal framework that allows a court to consider whether a teen is mature and competent enough to make his/her own healthcare decisions. Illinois and Maine have adopted this doctrine. This issue was a case of first impression for the highest court of Connecticut.

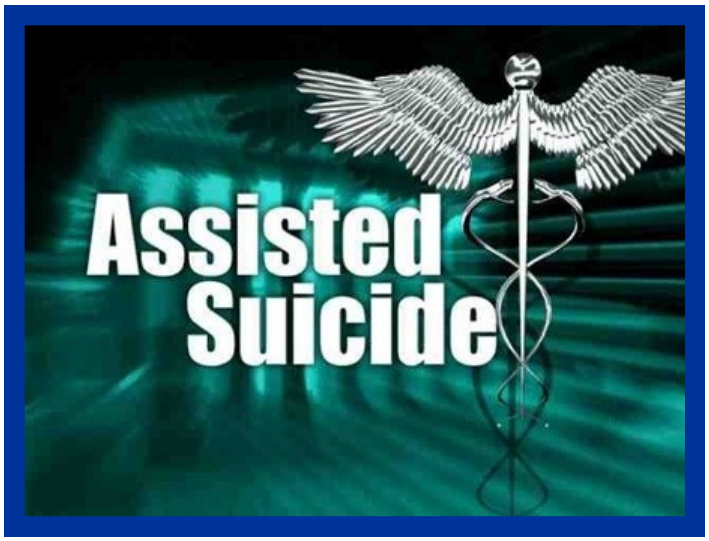
Update March 2015: Cassandra, now in remission, has been residing in a hospital under the temporary custody of DCF. Cassandra and her mother have petitioned for her to return to her mother's custody upon completion of her treatment, but the court has yet to issue a decision in this matter. For more information about this article or the mature minor doctrine, please contact Attorney Erin Canalia, ecanalia@rms-law.com.

SPECIAL LEGISLATIVE REPORT: BILL WOULD PERMIT AID IN DYING FOR TERMINALLY ILL PATIENTS

On March 18, 2015, there was a public hearing before the state's Judiciary Committee regarding Raised House Bill 7015, An Act Concerning Aid in Dying for Terminally Ill Patients. This bill, if enacted into law, allows terminally ill patients to request medication from their attending physicians to self-administer to aid in dying. The history of the bill begins in 2009 when physicians Ronald Levine and Gary Blick filed a request with the Connecticut superior court; they requested that the court permit them to prescribe lethal medication when requested by a terminally ill patient.

This act allows a competent, terminally ill adult patient, who is a resident of Connecticut, to receive aid in dying from their attending physician following two written requests. The bill defines competent as a patient who, in the opinion of her attending physician, has the "capacity to understand and acknowledge the nature and consequences of [healthcare] decisions, including benefits and disadvantages of treatment, to make an informed decision and to communicate such a decision to a [healthcare] provider." A patient is considered terminally ill if in the final stages of an "incurable and irreversible medical condition that an attending physician anticipates, within reasonable medical judgment, will produce a patient's death within six months."

The patient must make two written requests to her attending physician; the second written request cannot be submitted within 15 days of the first request. The bill structures the substance of the written requests. The patient must state she is an adult of sound mind; a resident of Connecticut; suffering from (specifically identify medical condition) which her attending physician has determined to be terminable and this diagnosis has been confirmed by another physician; and that she has been informed of the nature of the requested medication, its potential associated risks, expected results, and the alternatives, including counseling from a licensed medical professional. Additionally,



the patient must state she understands that she retains the right to rescind the request at any time, she understands that her request is voluntary, and she is aware of the period necessary for the medication to take effect, and .

Each request must be witnessed by at least two persons who shall aver in writing that the patient appears to be in sound mind, is acting voluntarily, and not being coerced. Furthermore, the witness shall attest she is not a relative of the patient by blood, marriage, or adoption; entitled to any portion of the patient's estate upon the patient's death; and not an owner, operator, or employee of a healthcare facility where the patient resides or receives treatment.

Following the attending physician's receipt of the first written request from the patient, the physician must determine whether the patient qualifies, is a Connecticut resident, and ensure that the patient is making an informed decision. In order to determine if a patient qualifies, the attending physician shall confirm the patient is a competent adult, has a terminal illness, and has voluntarily requested aid in dying.

Continued on page 3

It is the responsibility of the attending physician to ensure that the patient is making an informed decision. The attending physician must inform the patient of the diagnosis, prognosis, potential risks associated with the medication, the probable result of the medication, feasible alternatives to the medication, and the availability of counseling with a licensed medical professional.

Thereafter, an attending physician must refer the patient to consulting physician to confirm the physician's conclusions, the patient's diagnosis, prognosis, competency, and that the patient's request is voluntary. The bill specifically prohibits any physician providing aid in dying, if the physician believes that the patient might be suffering from a psychiatric or psychological condition, until the patient attends counseling that determines the patient is not suffering from any such condition or impaired judgment. Finally, any healthcare provider or facility may adopt policies prohibiting providing medication permitted under this bill.

In the public hearing, there was support for and against the bill. Currently, Governor Malloy is still conflicted on the bill. For more information on this article, please contact Attorney Mary Alice Moore Leonhardt, mmooreleonhardt@rms-law.com.

EBOLA OUTBREAK AND THE AFTERMATH FOR PROVIDERS

Recent publicized reports of the far-reaching impact of the Ebola outbreak raise critical issues about how to guarantee health workers' safety and best protect patient privacy rights. Legal questions often extend beyond these issues to include how Ebola might affect employers' labor and employment policies, personnel and environmental safety practices, appropriate quarantine measures, risk management, and other business practices aimed at respecting employee rights while ensuring public safety. Employers who wish to be proactive or need advisement on how to respond to Ebola and other health threats as well as more urgent concerns should contact Attorney Dan Csuka, dcsuka@rms-law.com.

WHAT MEDICAL MARIJUANA MEANS FOR PHYSICIANS

On May 31, 2012, Governor Malloy signed Public Act 12-55, An Act Concerning the Palliative Use of Marijuana; this legislation contained a framework of statutes governing qualifying patients, primary caregivers, marijuana producers, and dispensaries. Three years later, medical marijuana is a part of Connecticut's healthcare system; there are 4 producers and ten dispensaries.

The legalization of medical marijuana raises questions for physicians regarding standards of care, prescribing practices, and liability. Connecticut General Statutes § 21a-408c(a) provides a starting point for answering these questions; it provides "A physician may issue a written certification to a qualifying patient that authorizes the palliative use of marijuana by the qualifying patient. Such written certification shall be in the form prescribed by the Department of Consumer Protection and shall include a statement signed and dated by the qualifying patient's physician stating that, in such physician's professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the palliative use of marijuana would likely outweigh the health risks of such use to the qualifying patient."

Physicians do not prescribe medical marijuana; they certify a patient for the palliative use of medical marijuana. The physician must diagnose the patient, who must be at least 18 years old and a Connecticut resident, with one of the following conditions: cancer; glaucoma; HIV or AIDS; Parkinson's Disease; multiple sclerosis; epilepsy; cachexia; wasting syndrome; Crohn's Disease; sickle cell disease; post laminectomy syndrome and chronic radiculopathy; severe psoriasis and psoriatic arthritis; PTSD; and damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity.

The statutes specifically provide that physicians certifying a qualifying patient for medical marijuana will not be subject to criminal or civil prosecution if they abide by specific requirements. For example, the physician must have a bona-fide physician-patient relationship with the patient, perform an assessment of the patient, have a reasonable basis for not prescribing alternative treatment, explain risks and benefits of medical marijuana to the qualifying patient, have no financial interest in any medical marijuana producer or dispensary, and issue a written certification to the qualifying patient. The statutory schema also prohibits certain conduct. The physician cannot solicit, directly or indirectly, anything of value from producer or dispensary in exchange for written certifications. The physician shall not offer a discount or anything of value to a qualifying patient based on the qualifying patient's decision to use a particular producer or dispensary.

These requirements are a small portion of the comprehensive statutes and regulations governing medical marijuana. Physicians, patients, primary caregivers, producers, and dispensaries who want to know more about the legal implications of medical marijuana should contact Attorney Mary Alice Moore Leonhardt, mmooreleonhardt@rms-law.com.

UPDATE ON SEPTEMBER ISSUE ARTICLE: OVERHAUL FOR CONNECTICUT CHILDREN'S MENTAL HEALTH

The Sandy Hook Advisory Committee ("SHAC") delivered a draft of its report to Governor Malloy. In this report SHAC acknowledged that the current access to mental health services is segregated by need, insurability, disability, and poverty, thereby creating a fragmented structure. SHAC advocated for a comprehensive model that would remove the fragmented access. The recommended model would prioritize preventing disease, identifying and mitigating factors that contribute to mental illness, promoting conduct and routines that enable resilience, and creating a developmental model that tackles issues before they become life disrupting problems.

SHAC identified that family-centered care systems are the best strategy to provide care to children; the Committee reported that families should be educated about mental health services and actively engaged in the care system. Schools are the only point of access for many children to receive mental health services; therefore, schools serve as the best access for families and children to community healthcare. Access to healthcare and a healthy lifestyle should be integrated into the academic curriculum. In the report, SHAC recommended that schools develop risk-assessment teams to gather information on and treat children who might be a risk to themselves and others due to trauma or circumstance.

Finally, SHAC's report recommended revisions to private insurance providers' coverage and services. The report proposed: the gradual removal of insurers' use of separate companies to provide behavioral health benefits; insurers should provide comprehensive mental health services, including programs covering housing and job support; the insurer should bear the burden of proof that a treatment is not medically necessary; and require health plans maintain up-to-date lists of participating providers. Please contact Attorney Craigin Howland, chowland@rms-law.com with any questions.

LEGISLATIVE UPDATE

S.B. No. 73 – An Act Concerning Medical Records

Summary: If enacted, this bill would allow a provider to charge a $20.00 research and handling fee when providing medical records; however, the fee cannot be charged when providing a copy to the patient. This act does permit providers to charge the patient for postage when sending the records. Sixty-five cents per page is the maximum a provider can charge per page for the copy of the record.

Leg. History: On March 18, 2015, the bill was referred to the Joint Committee on Public Health.

H.B. No. 5913 – An Act Concerning Persons who Decontaminate Reusable Medical Instruments or Devices

Summary: If enacted, this bill would create the position "central service technician" ("CST"), who would be charged with decontaminating, inspecting, assembling, packaging, and sterilizing medical instruments or devices. A CST may be an employee of a health care facility or provide services pursuant to a service contract. A person would qualify as a CST in one of two qualification processes. In one process, the person would need to pass a nationally accredited central service exam for CSTs and maintain one of the following credentials: (1) a certified registered CST credential administered by the International Association of Healthcare Central Service Material Management ("IAHCSMM"); (2) a certified and distribution technician credential administered by the Certification Board for Sterile Processing and Distribution, Inc.; or (3) a substantially equivalent credential. In the other process, the person would need to obtain CST credentials from IAHCSMM and submit that documentation to the Department of Public Health within two years of hire or contract as a CST. There is a grandfather provision for a person who was employed to perform the services of a CST or provided contract services prior to January 1, 2016. The bill specifically allows for a healthcare provider, or a student or intern performing the functions of a CST under the direct supervision of a health care provider as a part of the student's training or internship, to perform the duties of a CST.

Leg. History: On March 18, 2015, the bill was referred to the Joint Committee on Public Health.

File No. 81 (H.B. No. 6780) – An Act Requiring Certain Healthcare Professionals to Complete Continuing Education Requirements Related to Mental Health Conditions Common to Veterans and Family Members of Veterans.

Summary: If enacted, this legislation would require alcohol and drug counselors, chiropractors, APRNs, psychologists, marriage and family therapists, professional counselors, social workers, physicians, and surgeons to commit at least 2 hours of their continuing education to training or education on mental health conditions common to veterans and their family members.

Leg. History: On March 17, 2015, this bill has been tabled for the House Calendar.

ROME MCGUIGAN, P.C.
Attorneys at Law

Hartford:
1 State Street
Hartford, CT 06103
Phone: 860-549-1000

Stamford:
1100 Summer Street
Stamford, CT 06905
Phone: 203-324-4300