

DOCKET NO. LLI CV-15-6013124S : SUPERIOR COURT
RICHARD BLITZ, TRUSTEE OF THE
RICHARD BLITZ DEFINED BENEFIT
PENSION PLAN AND TRUST : J.D. OF LITCHFIELD
VS. : AT LITCHFIELD
GLEN LOVEJOY AND
KATHLEEN RIISKA-LOVEJOY : NOVEMBER 4, 2016

REPLY TO PLAINTIFF’S MEMORANDUM IN OPPOSITION
MOTION FOR SUMMARY JUDGMENT

Defendants hereby reply to the Plaintiff’s Memorandum of Opposition to Motion for Summary Judgment (Docket No.: 118.00) dated November 2, 2016 (the “Objection”).

In their Motion for Partial Summary Judgment (the “Motion”), Defendants provided the Court with evidence regarding their son’s mental healthcare prior to March 8, 2014 which established that there is no evidence that Defendants’ son had a propensity to set fires. Because the propensity is a necessary element to Plaintiff’s negligence claim, Defendants could not have breached any duty of care to control their son and prevent him from setting fire in Plaintiff’s dilapidated cabin. In response, Plaintiff’s Objection fails to supply the Court with any evidentiary foundation or legal authority that would put the

element of duty into issue as required in order to prevent Defendants from obtaining Summary Judgment. Accordingly, Defendants remain entitled to Summary Judgment on the Second Count of the Complaint as a matter of law.

I. WHETHER DEFENDANTS' SON "INTENTIONALLY BURNED DOWN" THE PREMISES IS NOT A MATERIAL FACT FOR THE PURPOSES OF SUMMARY JUDGMENT.

Plaintiff's Objection begins with a flawed discussion regarding Defendants' Answer. Plaintiff contends that Defendants' Motion should be denied because "Defendants deny that their son committed the arson in question, which is the most material fact at issue in this case." See Objection at 2. Plaintiff cites Paragraph 4 of the Second Count¹ which contains Plaintiff's allegations regarding Owen Lovejoy's conduct on March 8, 2014. The allegation reads as follows:

"4. On or about March 8, 2014, the Defendants' son, Owen Lovejoy, having a date of birth of August 20, 1996 and then a minor, intentionally burned down the residential dwelling on the Plaintiff's property, said property being generally known as 102 Simons Pond Road, Colebrook, Connecticut (the "property")."

¹ Paragraph 4 of the Second Count is incorporated by reference to Paragraph 4 of the First Count.

Defendants' response is:

"As to so much of this paragraph that alleges that the minor child 'intentionally burned down the residential dwelling' denied. As to the remaining allegations in this paragraph, admitted."

Plaintiff's Objection misconstrues the response. Defendants do not deny that Owen Lovejoy set a fire in the dwelling, they simply deny that he *intended to burn it down*. Plaintiff's confusion is the product of the drafting of its own Complaint. Had Plaintiff narrowly tailored the allegations directed at Defendants' son's conduct to include plain and concise material facts, *e.g.*, that Owen intended to set a fire in the dwelling, Defendants would have readily admitted Paragraph 4. See Practice Book § 10-1. Given the nature of Plaintiff's allegations, Defendants properly complied with Practice Book § 10-46.

Additionally, whether Owen Lovejoy "intentionally burned down" the premises is not a material fact. "A material fact is a fact that will make a difference in the result of the case." *Barasso v. Rear Still Hill Road, LLC*, 81 Conn. App. 798, 803, 842 A.2d 1134 (2004). The only grounds for Defendants' Motion was that there is not a triable issue of fact with respect the duty of care owed by Defendants with respect to Plaintiff's negligent supervision count. Duty is, of course, a necessary element to a negligence claim. *Considine v.*

Waterbury, 279 Conn. 830, 858 (2006) (Internal quotation marks omitted). Whether Owen Lovejoy intended to burn down the structure on the premises has no bearing whatsoever on the nature and scope of the duty Defendants owed to Plaintiff.

II. PLAINTIFF'S NEGLIGENT SUPERVISION CLAIM:

A. Propensity and Notice:

In their Motion, Defendants provided documentary proof of the following facts: (i) that none of Owen Lovejoy's medical records prior to March 8, 2014 evidenced fire-related conduct; (ii) that none of none of Owen Lovejoy's medical records prior to March 8, 2014 contained entries or opinions regarding a propensity to engage in fire-related conduct; and (iii) that Defendants lacked any knowledge of whether their son had a propensity to engage in fire-related conduct. As our Supreme Court has made clear, liability in negligent parental supervision cases will not extend, "unless [the parents] themselves were independently negligent, as where they had . . . failed to restrain their children *who they knew possessed dangerous tendencies.*" *LaBonte v. Federal Mutual Ins. Co.*, 159 Conn. 252, 256 (1970) (emphasis added).

In addition to the factual evidence described above, Defendants provided the Court with myriad citations to relevant legal authority addressing the nature of the scope of the duty that parents owe to third persons regarding the supervision of their children. Defendants cited cases from Connecticut courts, cases with analogous fact patterns, including fire cases, that were decided by appellate courts of other states, and prominent secondary sources including the Restatement (Second) of Torts. The prevailing law in this state and elsewhere supports Defendants' assertion that they did not owe Plaintiff a duty as a matter of law.

Conversely, Plaintiff's entire Objection fails to provide the Court guidance with a single case that supports its position. Instead, Plaintiff contends that the following facts should have caused Defendants to anticipate harm of a general nature similar to that which Plaintiff sustained:

1. That Owen Lovejoy presented to the Institute of Living with suicidal ideation to crash his car (*see* Objection at 10);
2. That Owen Lovejoy was involved in a car accident in 2014 prior to the date of loss and that he fled the scene (*see* Objection at 10);
3. That prior to March 8, 2014 Owen Lovejoy made "racial and sexual" remarks at school (*see* Objection at 10-11); and that

4. That prior to March 8, 2014 Owen Lovejoy stole candy from a teacher's desk and lied about it (*see* Objection at 10-11).
5. That in 2013 Defendants were experiencing symptoms of mental health conditions and taking appropriate medication (*see* Objection at 10-11).

The facts above obviously do not evidence that Owen Lovejoy had the specific propensity to engage in fire-related conduct specifically, as the Restatement and a majority of the Connecticut parental supervision cases would require,² or more importantly, that Defendants had notice of such propensity. Because Plaintiff has not a scintilla of evidence of a relevant propensity it effectively argues that Defendants were on notice of their son's propensity to engage in *any* improper act. Plaintiff's argument should be disregarded as a matter of law. Owen Lovejoy's prior conduct does not make the resulting injury in this case foreseeable. There is no relation between the conduct and the harm.

² *See Forse v. Hebb*, Judicial District of Hartford, Docket No.: HHD-CV-07011581-S (March 22, 2010, Sheldon, *J.*) (citing Restatement (Second) of Torts § 316 (1965)); *Latronica v. Powers*, Judicial District of Waterbury, Docket No.: CV-06-5000699 (July 16, 2007, McWeeny, *J.*) (same) ("In recognizing a cause of action for negligent supervision of a minor child by the child's parents, Connecticut trial courts follow the" Restatement); *Robyn v. Palmer-Smith*, Judicial District of Stamford-Norwalk, Docket No.: CV-99-0174453 (February 5, 2003, Lewis, *J.*) (same).

Plaintiff's attempt to bolster its "general nature" argument by misstating the holding of *Smith* reveals the desperation of its claim. In reality, the holding in *Smith* directly contradicts the point Plaintiff attempts to make. *Smith* involved a mother who was sued for the personal injuries that her son caused to the plaintiff while swinging a samurai sword. The defendant mother witnessed her son destroy personal property prior to the incident during a familial disagreement, but there was no evidence that the defendant knew about the sword. The *Smith* Court held:

"The possibility that the defendants' alleged failure to act in response to the former incident led to the decedent's injury during the latter incident is too remote for the court to conclude that the injury was reasonably foreseeable to the defendants. The fact that the defendants were wholly unaware of their son's whereabouts at and around the time of the August 7, 2008 incident further counsels against coming to this conclusion. Thus, the defendants have met their burden on summary judgment of establishing with evidence that no genuine issues of material fact exist about whether they were able to foresee the incident, such that they owed a duty of care to the decedent, and they are entitled to a judgment as a matter of law because the nonmovants have not met their burden in turn."

Smith v. Sunbury, Judicial District of New Haven, Docket No.: NNH-CV-106010501 (July 22, 2011, Burke, J.). Far from supporting Plaintiff's

argument, *Smith* is instructive of the fact that prior conduct that is dissimilar to the resulting harm will not support the finding of a duty of care.

B. Defendants' Realistic Ability and Opportunity to Restrain Their Son:

As stated in Defendants' Motion, the "duty of a parent is only to exercise such ability to control his child as he in fact has at the time when he has the opportunity to exercise it and knows of the necessity of doing so." See comment b. of § 316 of the Restatement (Second) of Torts. As set forth above, Plaintiff's Objection does not provide any facts suggesting that Defendants knew of the necessity of exercising restraint over their son. Moreover, Plaintiff offers no evidence from which a jury could conclude that Defendants had a realistic ability to restrain their seventeen and a half year-old son.

While Plaintiff scoffs at the idea of keeping Owen Lovejoy under "lock and key," its Objection espouses a standard of care that would support such measures. See Objection at 14 ("Certainly, the Defendants had institutionalized their son before so they knew how to restrain his comings and goings and how to get him help. Instead, these Defendants ignored their son's behavior . . ."). Although Plaintiff has the benefit of 20/20 vision in hindsight,

it does not produce any evidence that Defendants could have institutionalized their son, let alone should have. As evidenced in Plaintiff's Exhibit 3, Owen Lovejoy was discharged from the Institute of Living on September 3, 2013. Certainly, if the professionals at the Institute of Living that were treating Owen Lovejoy thought it was appropriate for him to be institutionalized they had an obligation to not discharge him. Defendants had the right to rely upon the medical opinions of those providers. Further, in the months preceding the incident Owen was leaving Defendants' home to attend necessary activities such as high school where he was allowed to freely interact with other students, faculty, etc. See Plaintiff's Exhibit 4. Plaintiff fails to offer evidence that Owen Lovejoy was provided any limitation relating to his freedom of movement by any professional.

Defendants would have likely preferred to institutionalize their son forever as he might be alive today, but such measures are not reasonable and certainly not the standard of care. See comment b. of § 316 of the Restatement (Second) of Torts ("The parent is not under a duty so to discipline his child as to make it amenable to parental control when its exercise becomes necessary to the safety of others.").

III. STATEMENT REGARDING DEFENDANTS' MEDICAL HISTORY:

Defendants purposefully and conspicuously redacted Owen Lovejoy's medical records to delete reference to the medical history of any individual other than the decedent. See Privilege Log, Defendants' Exhibit F, hereto. Despite these efforts, due to an obvious oversight, the voluminous records provided to Plaintiff's counsel contained a single reference to Defendants' medical history. Plaintiff's counsel then referenced Defendants' own mental health conditions in both Plaintiff's Objection and its Exhibit 5. Plaintiff's arguments regarding Defendants' mental health are irrelevant, offensive to the administration of justice and a direct violation of the Connecticut Rules of Professional Conduct.

C.R.P.C. 4.4 states:

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

See also Defendants' Motion to Seal the Record.

Plaintiff directs the Court to the overlooked statements contained in Owen Lovejoy's medical records describing the defendants' mental health condition and asserts that such conditions "might have compromised [Defendants'] ability to appropriately react to their son's deteriorating condition." Plaintiff fails to offer any expert medical evidence that such alleged "compromised ability" was a known symptom of the conditions described in Plaintiff's Objection. Similarly, Plaintiff fails to offer any expert medical evidence that Defendants' conduct in such a "compromised" state would constitute negligence. It also demonstrates the weakness in Plaintiffs case that Plaintiff would engage in such desperate measures as to point to the information that was obviously intended to be redacted.

IV. CONCLUSION:

Wherefore, for the foregoing reasons Defendants respectfully request the Court grant their Motion for Partial Summary Judgment.

**THE DEFENDANTS,
GLEN LOVEJOY AND
KATHLEEN RIISKA-LOVEJOY**

By: _____

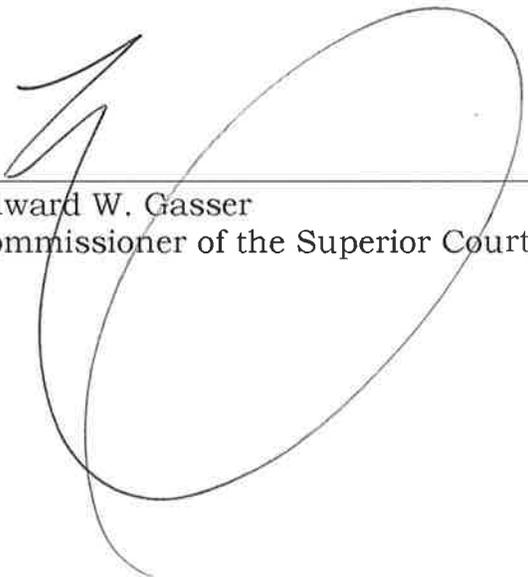
**Edward W. Gasser, Esq.
Gasser Law Firm, LLC
20 East Main Street
Avon, CT 06001-3823
Juris No. 421213
Telephone: 860-674-8342
Facsimile: 860-676-8912
egasser@gasserlaw.com**

CERTIFICATION

I hereby certify that a copy of the foregoing has been sent this date via electronic delivery to the following counsel of record accepting electronic delivery:

Zisca St. Clair, Esq.
Rome McGuigan PC
1 State Street
Hartford, CT 06103
zstclair@rms-law.com

Thomas G. Benneche, Esq.
885 Hopmeadow Street
Simsbury, CT 06070
tom@benneche.com



Edward W. Gasser
Commissioner of the Superior Court

Exhibit F

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RICHARD BLITZ DEFINED BENEFIT
PENSION PLAN AND TRUST : J.D. OF LITCHFIELD

VS. : AT LITCHFIELD

GLEN LOVEJOY AND
KATHLEEN RIISKA-LOVEJOY : AUGUST 12, 2016

PRIVILEGE LOG

Pursuant to Practice Book § 13-3, Defendants assert privilege with regard to the following documents that were produced to Plaintiff with appropriate redaction:

General Subject Matter	Document Type	Document Date	Author	Recipient	Privilege
PHP/IOP Adolescent Comprehensive Assessment - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Charlotte Hungerford Hospital	09/04/13	Charlotte Hungerford Hospital	N/A	The redacted portion relates to Defendant Glen Lovejoy's medical history which is immaterial, irrelevant, and not reasonably calculated to

					lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
Intensive Service Program - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Charlotte Hungerford Hospital	09/06/13	Charlotte Hungerford Hospital	N/A	The redacted portion relates to Defendant Glen Lovejoy's medical history which is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.

Intensive Service Program - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Charlotte Hungerford Hospital	09/19/13	Charlotte Hungerford Hospital	N/A	The redacted portion relates to Defendant Glen Lovejoy's medical history which is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
Suicide Assessment - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Charlotte Hungerford Hospital	08/24/13	Hartford Hospital	Charlotte Hungerford Hospital	The redacted portion relates to the medical history of Defendant Glen Lovejoy as well as one of Owen Lovejoy's cousins. Such information is immaterial,

					irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
Psychosocial Assessment - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Charlotte Hungerford Hospital	03/16/14	Natchaug Hospital	Charlotte Hungerford Hospital	The redacted portion relates to the medical history of several of Owen Lovejoy's maternal and paternal family members. Such information is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

					Disclosure may also violate HIPPA.
Psychosocial Assessment (Formulation) - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Charlotte Hungerford Hospital	03/16/14	Natchaug Hospital	Charlotte Hungerford Hospital	The redacted portion relates to the medical history of Plaintiff's family members. Such information is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.

Psychosocial Assessment - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Charlotte Hungerford Hospital	03/16/14	Natchaug Hospital	Charlotte Hungerford Hospital	The redacted portion relates to the medical history of Owen Lovejoy's maternal and paternal family members. Such information is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
Suicide Assessment - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Hartford Hospital	08/24/13	Institute of Living	N/A	The redacted portion relates to the medical history of Defendant Glen Lovejoy as well as one of Owen

					Lovejoy's cousins. Such information is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
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Admission Database - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Hartford Hospital	08/25/13	Institute of Living	N/A	The redacted portion relates to the medical history of Owen Lovejoy's maternal and paternal family members. Such information is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
Suicide Assessment - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Hartford Hospital	08/25/13	Institute of Living	N/A	The redacted portion relates to the medical history of Defendant Glen Lovejoy as well as one of Owen

					Lovejoy's cousins. Such information is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
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Medical History and Physical Examination - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Hartford Hospital	08/25/13	Institute of Living	N/A	The redacted portion relates to the medical history of Owen Lovejoy's maternal and paternal family members. Such information is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
Suicide Assessment - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Hartford Hospital	08/24/13	Institute of Living	N/A	The redacted portion relates to the medical history of Defendant Glen Lovejoy as well as one of Owen

					Lovejoy's cousins. Such information is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
Family Support Plan – Defendants' Home and Cellular Telephone Numbers	Medical Records of Owen Lovejoy produced by Keeper of Records of Hartford Hospital	08/25/13	Institute of Living	N/A	Defendant's cellular and home phone numbers are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.
Progress Notes – Family History	Medical Records of Owen Lovejoy produced	08/26/13	Institute of Living	N/A	The redacted portion relates to/and is immaterial,

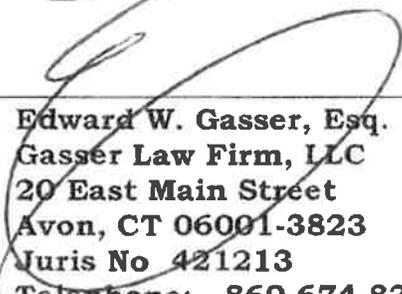
	by Keeper of Records of Hartford Hospital				irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
Progress Notes – Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Hartford Hospital	08/27/13	Institute of Living	N/A	The redacted portion relates to the medical history of Plaintiff's family members. Such information is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.

Progress Notes – Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Hartford Hospital	08/28/13	Institute of Living	N/A	The redacted portion relates to the medical history of Plaintiff's family members. Such information is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
Progress Notes – Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Hartford Hospital	08/29/13	Institute of Living	N/A	The redacted portion relates to the medical history of Plaintiff's family members. Such information is immaterial, irrelevant,

					and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
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**THE DEFENDANTS,
GLEN LOVEJOY AND
KATHLEEN RYSKA-LOVEJOY**

By: _____


**Edward W. Gasser, Esq.
Gasser Law Firm, LLC
20 East Main Street
Avon, CT 06001-3823
Juris No 421213
Telephone: 860-674-8342
Facsimile: 860-676-8912
egasser@gasserlaw.com**

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Rome McGuigan PC
1 State Street
Hartford, CT 06103
zstclair@rms-law.com

Thomas G. Benneche, Esq.
885 Hopmeadow Street
Simsbury, CT 06070
tom@benneche.com



Edward W. Gasser
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PENSION PLAN AND TRUST : J.D. OF LITCHFIELD

VS. : AT LITCHFIELD

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PRIVILEGE LOG

Pursuant to Practice Book § 13-3, Defendants assert privilege with regard to the following documents that were produced to Plaintiff on the above-captioned date with appropriate redaction:

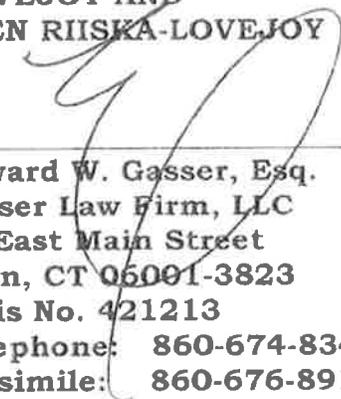
General Subject Matter	Document Type	Document Date	Author	Recipient	Privilege
Treatment Notes – Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Community Mental Health Affiliates	04/30/14 Redaction located at Page 7 of 13	Community Mental Health Affiliates	N/A	The redacted portion relates to Defendant Glen Lovejoy’s medical history which is immaterial, irrelevant, and not reasonably

					calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
Treatment Notes - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Community Mental Health Affiliates	04/30/14 Redaction located at Page 8 of 13	Community Mental Health Affiliates	N/A	The redacted portion relates to Defendant Glen Lovejoy's medical history which is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.

Treatment Notes - Family History	Medical Records of Owen Lovejoy produced by Keeper of Records of Community Mental Health Affiliates	05/5/14 Redaction located at Page 2 of 6	Community Mental Health Affiliates	N/A	The redacted portion relates to Defendants' medical history which is immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Disclosure may also violate HIPPA.
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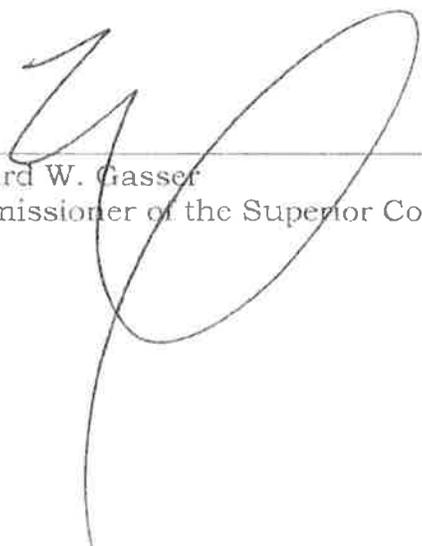

Edward W. Gasser, Esq.
Gasser Law Firm, LLC
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