

RETURN DATE: OCTOBER 20, 2009

GARY BLICK, M.D., AND
RONALD M. LEVINE, M.D.

VS.

OFFICE OF THE DIVISION OF CRIMINAL
JUSTICE,
KEVIN T. KANE, in his official capacity as
Chief State's Attorney,
KEVIN LAWLOR, in his official capacity as the
State's Attorney for the Ansonia-Milford
Judicial District,
STEPHEN J. SEDENSKY III, in his official
capacity as the State's Attorney for the
Danbury Judicial District,
JONATHAN BENEDICT, in his official capacity
as the State's Attorney for the Fairfield
Judicial District,
GAIL P. HARDY, in her official capacity as the
State's Attorney for the Hartford Judicial
District,
DAVID SHEPACK, in his official capacity as
the State's Attorney for the Litchfield
Judicial District,
TIMOTHY J. LISTON, in his official capacity
as the State's Attorney for the Middlesex
Judicial District,
SCOTT MURPHY, in his official capacity as the
State's Attorney for the New Britain Judicial
District,
MICHAEL DEARINGTON, in his official
capacity as the State's Attorney for the New
Haven Judicial District,
MICHAEL REGAN, in his official capacity as
the State's Attorney for the New London
Judicial District,
DAVID COHEN, in his official capacity as the
State's Attorney for the Stamford-Norwalk
Judicial District,

SUPERIOR COURT

J.D. OF HARTFORD
AT HARTFORD

MATTHEW C. GEDANSKY, in his official :
 capacity as the State’s Attorney for the :
 Tolland Judicial District, :
 JOHN A. CONNELLY, in his official capacity :
 as the State’s Attorney for the Waterbury :
 Judicial District, AND :
 PATRICIA M. FROELICH, in her official :
 capacity as the State’s Attorney for the :
 Windham Judicial District. :

SEPTEMBER 30, 2009

VERIFIED COMPLAINT

Introduction

1. This action is brought by two Connecticut physicians who regularly care for terminally-ill patients to clarify that when physicians provide aid in dying, they do not violate Connecticut law. Specifically, this action alleges that Conn. Gen. Stat. §53a-56, which makes a person guilty of manslaughter in the second degree when “he intentionally causes or aids another person, other than by force, duress or deception, to commit suicide[,]” does not encompass the conduct of a physician providing aid in dying to a mentally-competent, terminally-ill individual.
2. The plaintiffs seek declaratory relief pursuant to Conn. Gen. Stat. §52-29 and injunctive relief pursuant to Conn. Gen. Stat. §52-471, et seq.

Parties

The Plaintiffs

3. Plaintiff Gary Blick, M.D., is currently the Medical and Research Director of CIRCLE Medical, LLC, in Norwalk, Connecticut. Dr. Blick specializes in infectious disease and the treatment of HIV/AIDS and is licensed to practice medicine in Connecticut.
4. Dr. Blick formerly was a resident at the Yale University School of Medicine Affiliate at Greenwich Hospital, an attending and consulting physician at Greenwich Hospital, an

attending physician at St. Agnes Hospital in White Plains, New York, an attending physician at Mt. Vernon Hospital in Mt. Vernon, New York, and an Assistant Professor of Medicine at New York Medical College in Valhalla, New York.

5. Prior to forming CIRCLE Medical in 2002, Dr. Blick spent fifteen years practicing internal medicine and treating HIV/AIDS patients in Stamford, Connecticut.

6. Dr. Blick was the founder and chairman of the Greenwich Hospital AIDS Task Force, and has been the Medical Director of numerous organizations in Fairfield County devoted to the treatment of individuals suffering from HIV/AIDS.

7. In the course of his current medical practice, Dr. Blick regularly treats patients approaching death due to terminal illness.

8. Plaintiff Ronald M. Levine, M.D., is currently a primary care internist with a practice devoted to providing medical care to the residents of Fairfield County. Dr. Levine is licensed to practice medicine in Connecticut

9. Since 1999, Dr. Levine's practice has focused on "old-fashioned medicine for the new millennium," returning to the era of house calls and "old-fashioned" medical care.

10. Dr. Levine also currently is an attending physician at Greenwich Hospital and a clinical instructor at the Yale University School of Medicine Affiliate at Greenwich Hospital.

11. Dr. Levine formerly was a resident at the Albert Einstein College of Medicine, Montefiore Medical Center, in Bronx, New York, and currently is a clinical instructor there.

12. In the course of his current medical practice, Dr. Levine regularly treats patients approaching death due to terminal illness.

The Defendants

13. Defendant Office of the Division of Criminal Justice is the constitutionally-created state agency charged, pursuant to Conn. Gen. Stat. §51-277, with "exercis[ing] all powers

and duties with respect to the investigation and prosecution of criminal matters conferred upon or required of it by this chapter, or conferred upon or required of state's attorneys, assistant state's attorneys and deputy assistant state's attorneys of the superior court by the common and statutory law of this state." §51-277(a).

14. Defendant Kevin T. Kane, in his official capacity as Chief State's Attorney, is vested by Article 4, Section 27 of the Connecticut Constitution with "[t]he prosecutorial power of the state" Defendant Kane further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-279, to "administer, direct, supervise, coordinate and control the operations, activities and programs of the [criminal justice] division as it shall apply to the superior court." §51-279(a). This includes the duty to "adopt and enforce rules and regulations to carry out the purposes of this chapter[.]" §51-279(a)(2).

15. Defendant Kevin Lawlor, in his official capacity as the State's Attorney for the Ansonia-Milford Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with "[t]he prosecutorial power . . . for the [Ansonia-Milford] judicial district" Defendant Lawlor further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to "diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed" §51-286a(a).

16. Defendant Stephen J. Sedensky III, in his official capacity as the State's Attorney for the Danbury Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with "[t]he prosecutorial power . . . for the [Danbury] judicial district" Defendant Sedensky further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to "diligently inquire after and make appropriate presentment and complaint to

the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

17. Defendant Jonathan Benedict, in his official capacity as the State’s Attorney for the Fairfield Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [Fairfield] judicial district” Defendant Benedict further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

18. Defendant Gail P. Hardy, in her official capacity as the State’s Attorney for the Hartford Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [Hartford] judicial district” Defendant Hardy further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

19. Defendant David Shepack, in his official capacity as the State’s Attorney for the Litchfield Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [Litchfield] judicial district” Defendant Shepack further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

20. Defendant Timothy J. Liston, in his official capacity as the State’s Attorney for the Middlesex Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [Middlesex] judicial district” Defendant Liston further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

21. Defendant Scott Murphy, in his official capacity as the State’s Attorney for the New Britain Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [New Britain] judicial district” Defendant Murphy further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

22. Defendant Michael Dearington, in his official capacity as the State’s Attorney for the New Haven Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [New Haven] judicial district” Defendant Dearington further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

23. Defendant Michael Regan, in his official capacity as the State’s Attorney for the New London Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [New London] judicial district” Defendant

Regan further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

24. Defendant David Cohen, in his official capacity as the State’s Attorney for the Stamford-Norwalk Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [Stamford-Norwalk] judicial district” Defendant Cohen further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

25. Defendant Matthew C. Gedansky, in his official capacity as the State’s Attorney for the Tolland Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [Tolland] judicial district” Defendant Gedansky further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

26. Defendant John A. Connelly, in his official capacity as the State’s Attorney for the Waterbury Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [Waterbury] judicial district” Defendant Connelly further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior

Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

27. Defendant Patricia M. Froelich, in her official capacity as the State’s Attorney for the Windham Judicial District, is vested by Article 4, Section 27 of the Connecticut Constitution with “[t]he prosecutorial power . . . for the [Windham] judicial district” Defendant Froelich further has the statutory responsibility, pursuant to Conn. Gen. Stat. §51-286a, to “diligently inquire after and make appropriate presentment and complaint to the Superior Court of all crimes and other criminal matters within the jurisdiction of the court or in which the court may proceed” §51-286a(a).

28. Attorney General Richard Blumenthal has been provided notice of this action pursuant to Conn. Gen. Stat. §17-56(b).

Facts As To All Parties

29. Conn. Gen. Stat. §53a-56(a) provides, in relevant part: “A person is guilty of manslaughter in the second degree when: . . . (2) he intentionally causes or aids another person, other than by force, duress or deception, to commit suicide.”

30. “Aid in dying” is a recognized term of medical art for providing a mentally-competent, terminally-ill patient with a prescription for medication that the patient may choose to take in order to bring about a peaceful death if the patient finds his dying process unbearable.

31. In the course of their current medical practices, each of the plaintiffs regularly encounters terminally-ill patients who have no chance of recovery and for whom medicine cannot offer any hope other than a small degree of symptomatic relief. Indeed, in some cases, even symptomatic relief is impossible to achieve without the use of terminal sedation, a pharmacological technique that renders the patient unconscious during the days or weeks prior to his or her death. The only choice available to such patients,

therefore, is prolonged and unrelieved anguish on the one hand, or unconsciousness and total loss of control and personal dignity on the other.

32. Faced with this reality, some terminally-ill patients choose to seek the help of a physician to achieve a peaceful, dignified death, in the form of a prescription for medication that the patient may take to end a dying process the patient finds unbearable.

33. Providing aid in dying may, in the professional judgment of a physician, be a medically and ethically appropriate course of treatment.

34. In the course of their current medical practices, each of the plaintiffs has treated patients faced with the choice described above.

35. In those circumstances, the professional judgment of each of the plaintiffs was that aid in dying would be a medically and ethically appropriate option for those patients.

36. Each of the plaintiffs has treated mentally-competent, terminally-ill adult patients who requested aid in dying, but were deterred from providing such treatment due to fear of potential prosecution under Conn. Gen. Stat. §53a-56.

38. Each of the plaintiffs reasonably expects to encounter such patients in the future course of their respective medical practices due to the nature of their medical practices.

39. The existence and potential application of Conn. Gen. Stat. §53a-56 deters the plaintiffs from providing aid in dying and thereby prevents the plaintiffs from offering medical care which, in their professional judgment, would otherwise be appropriate under the circumstances.

Count One: Declaratory Judgment

1-39. Paragraphs 1-39 are hereby incorporated by reference and made paragraphs 1-xx of Count One as if fully set forth therein.

40. Conn. Gen. Stat. §53a-56 does not provide a valid statutory basis to prosecute any licensed physician for providing aid in dying because the choice of a mentally competent terminally ill individual for a peaceful death as an alternative to enduring a dying process the patient finds unbearable does not constitute “suicide” within the meaning of §53a-56(a)(2).

41. Because no court has had occasion prior to now to construe the meaning of the word “suicide” as used in §53a-56(a)(2), there is substantial uncertainty and/or a substantial question as to the legal rights and responsibilities of the parties as they relate to a physician for providing aid in dying to a mentally-competent, terminally-ill individual.

Count Two: Injunctive Relief

1-41. Paragraphs 1-39 are hereby incorporated by reference and made paragraphs 1-xx of Count One as if fully set forth therein.

42. The potential for prosecution under §53a-56(a)(2) for providing aid in dying harms the plaintiffs in that it impairs their ability to provide adequate and appropriate medical care to their patients.

43. The plaintiffs have no adequate remedy at law for that harm.

Prayer for Relief

WHEREFORE, the plaintiffs respectfully seek the following relief:

1. A judgment declaring that Conn. Gen. Stat. §53a-56 does not provide a valid statutory basis to prosecute any licensed physician for providing aid in dying because the choice of a mentally competent terminally ill individual for a peaceful death, as an

alternative to enduring a dying process the patient finds unbearable, does not constitute “suicide” within the meaning of §53a-56(a)(2), and further declaring that any such prosecution is void as a matter of law.

2. An order permanently enjoining the defendants from prosecuting any licensed physician for providing aid in dying to a mentally-competent, terminally-ill individual.

PLAINTIFFS,
GARY BLICK, MD, AND
RONALD M. LEVINE, MD

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