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NEW JERSEY DEFENSE

PRESIDENT'S LETTER

Dear New Jersey Defense Association members and New Jersey's respected Judiciary,

At the time of my last letter a mere, three months ago, I could never have envisioned writing this letter. COVID-19 was not in our thoughts or minds; yet, now, it has forced its way into our lives in unimaginable ways. Our major sporting events, including my favorite time of the year, March Madness, canceled. Schools are closed and jury trials suspended. The NJDA rescheduled its Insurance Coverage Seminar from March 20th to September 25th and canceled its Emerging Leaders networking event, which we hope to reschedule.

Although we are now dealing with a situation far more widespread, I see similarities to our past. In October 2012, Hurricane Sandy ravaged the Jersey Shore. Living in an area directly impacted before and after, I recall a scene in some ways comparable to now: empty shelves at Costco, Shoprite, and Whole Foods, as well as limitations on purchasing quantities of certain items. Unlike our current situation, at that time, there were other ramifications, such as gas stations running out of gas and only being able to fill up the gas tank on certain days, along with a complete lack of power for days, or longer. Life came to a stop, for some, far longer than others.

Profound in its impact was the resilience of neighbors, colleagues, adversaries, families and friends. Everyone rallied around a common goal: working together to move forward. As said best by Martin Luther King, Jr., "only in the darkness can you see the stars."

Now, as then, we need to remember that we are all going through the same, difficult times. The best way for us to move forward and overcome the current challenges is together. In furtherance of that goal, the NJDA organized conference calls for managing partners or other senior members of our firms/offices to discuss ways in which we can learn from each other in combatting issues posed by COVID-19. We will provide helpful information from those meetings to all of our members, along with any other assistance we can offer. Additional suggestions for helping our members is also greatly appreciated. Please do not hesitate to call (732-359-0220) or email me (mmalia@peristewart.com).

My best wishes to you and your families during this difficult time,

MICHAEL A. MALIA, ESQ.

CLOSING TIME: NEW JERSEY SUPREME COURT TO DECIDE SOCIAL HOST LIABILITY FOR ADULTS UNDER 21

BY THERESA GIAMANCO AND MICHAEL DOLICH

On October 7, 2019, Certiorari was granted by the New Jersey Supreme Court in the Estate of Narleski v. Gomes, 239 N.J. 493 (2019), marking the first time the Supreme Court will hear a social host liability case in over three decades. The issue on appeal is whether an adult who is under the legal drinking age, i.e., over 18 but under 21, owes a duty to injured parties to desist from providing drinks or facilitating drinking by underage adults at his or her place of residence.

The Honorable Jack M. Sabatino, P.J.A.D. authored the opinion in the Estate of Narleski v. Gomes, 459 N.J. Super. 377 (App. Div. 2019). In Narleski, The Appellate Division was faced with a wrongful death lawsuit involving the tragic fatality of a 19 year-old young man. The facts are as follows: The Defendant liquor store sold the underage decedent a half-gallon of vodka and three twenty-four ounce cans of beer. Thereafter, the decedent and a group of friends, all between the ages of 18-20, consumed alcohol in the young host's bedroom. The decedent left the house as a passenger in a vehicle driven by another friend who attended the gathering. He died when the driver lost control of the vehicle, causing it to flip over. Id. at 382.

The decedent's estate filed suit against the driver of the car and its owners for negligence and the liquor store under the Dram Shop Act. The liquor store thereafter filed a third-party Complaint against the young man who hosted the party and his parents. The theory of liability of the third party complaint was a failure to supervise the decedent and the driver, enabling both to consume alcohol in their home. The third-party defendants argued that there was no statutory authority that controlled this scenario because the social host was under 21 years-old. They further argued that there was no case law imposing a duty under these facts. They distinguished this case from Morella v. Machu, 235 N.J. Super. 604, 610 (App. Div. 1989), which held that absent parents may be held liable for the service of alcoholic beverages to minors by teenaged hosts (under the age of 18) where an intoxicated minor negligently thereafter operates a motor vehicle. Id. at 611. Relying on common law principles, the Appellate Division concluded in Morella "that the . . . parents or their agents had a duty to the public to exercise reasonable care to arrange for competent supervision of their teenagers while they were out of the state on vacation. If they

failed to do so, and if that breach of duty was the reasonably foreseeable proximate cause of plaintiff's injuries, they must respond in damages." Id.

Unlike Morella, the third-party defendants argued that none of the individuals involved were minors under the age of 18. Therefore, this case hinges on a parent's duty to supervise an adult child, which our courts have not generally recognized on the basis that there is no duty to control the conduct of another absent a special relationship or obligation. The third-party defendants argued it would not be fair for the court to impose a duty on the parents for failing to supervise their adult son and his adult friends. Further, they argued that their son, who did not provide the alcohol consumed, did not have a duty to supervise his adult friends. The alcohol consumed by the driver was purchased by the decedent.

The liquor store, on the other hand, argued that Morella does apply to these facts because it involved the conduct of an 18 year-old guest who became intoxicated after drinking at a house where alcohol was present and later was involved in a car accident with another vehicle while the owners of the home were away on vacation. The Morella court held that parents were responsible for ensuring that their teenaged children were left with proper supervision. In reaching this decision, the court relied on N.J.S.A. 2C:33-17, which made it a disorderly persons offense to make alcohol available to an underage drinker. This statute was enacted with the express legislative intent to discourage drinking by underage individuals by placing more responsibility on adults. Thereafter, N.J.S.A. 2C:33-17 was amended to specifically include the requirement that property owners not make their property available for underage drinking. N.J.S.A. 2C:33-7(b). Further, in Morella, while the social host was 17 years-old, the intoxicated driver who caused the accident was 18 years-old and the "babysitter" arranged for by the parents when they were out of town on vacation was 20 years-old. The liquor store also highlighted that in addition to holding parent homeowners liable, the court allowed the case to proceed against the 17-year old son and the 20 year-old supervisor.

The Narleski trial court granted the third-party defendants' motion for summary judgment, holding that neither the underage host nor his parents breached any established duty because the individuals consuming alcohol were adults. The young host's father did not reside at the home at the time and his mother did not make the home available for the purpose of consumption of alcohol by underage persons, as required by the disorderly persons statute.

Ultimately, the Appellate Division affirmed the trial court, holding that "[u]nder the circumstances presented, the parents had no statutory or common law duty to prevent their underage adult son from allowing his underage adult friends to drink alcohol in their home without the parents' proven knowledge or consent. Nor did the son have an established duty of care under current law." 459 N.J. at 382. However, the Court noted that "[g]oing forward, however, we prospectively hold that an adult who is under the legal drinking age shall owe injured parties a duty under the common law to desist from facilitating drinking by underage adults in his or her place of residence. The recognition of such a legal duty is a logical extension of case law, and is consistent with the general public policies that underpin the related statutes." Id. at 382-83.

In reaching this conclusion, the Appellate Division created a new duty of care based on common law principles along with "strong public policies codified in legislation relating to alcohol consumption" and the laws that impose responsibilities on social hosts for serving visibly intoxicated guests. Id. at 387.

First, the Narleski Appellate Court considered the statutes involving consumption of alcohol by a minor. New Jersey requires that individuals be 21 or older in order to purchase and consume alcohol (N.J.S.A. 9:17B-1(b)) and makes it a disorderly persons offense for individuals under the age of 21 to consume alcohol in a public place or a motor vehicle (N.J.S.A. 2C:33-15). Moreover, there is a longstanding policy in New Jersey that holds social hosts liable for allowing visibly intoxicated guests to consume alcohol in their home. This rule of law was initially espoused by the Supreme Court in Kelly v. Gwinnel1, 96 N.J. 358, 348 (1984), which held a social host liable to a third party for injuries caused by the guest's negligent operation of a motor vehicle where that social host serves alcoholic beverages to an adult guest, knowing the guest is intoxicated and will operate a motor vehicle. Id. Three years later, New Jersey codified this principal in N.J.S.A. 2A:15-5.5 to -5.8, generally referred to as the Social Host Liability Statute, which imposes civil liability upon social hosts who injure third parties in limited circumstances:

(1) The social host willfully and knowingly provided alcoholic beverages either:

(a) To a person who was visibly intoxicated in the social host's presence; or

(b) To a person who was visibly intoxicated under circumstances manifesting reckless disregard of the consequences as affecting the life or property of another; and

(2) The social host provided alcoholic beverages to the visibly intoxicated person under circumstances which created an unreasonable risk of foreseeable harm to the life or property of another, and the social host failed to exercise reasonable care and diligence to avoid the foreseeable risk; and

(3) The injury arose out of an accident caused by the negligent operation of a vehicle by the visibly intoxicated person who was provided alcoholic beverages by a social host. [N.J.S.A. 2A:15-5.6(b)].

The statute further limits liability to social hosts who provide alcohol to another person who is the legal age to purchase and consume alcohol. The statute specifically states that it is the exclusive civil remedy for the negligent provision of alcohol by a social host to a person who has reached the legal age to purchase to and consume alcohol. It was undisputed that this statute did not apply to the Narleski facts since all the young men were under the age of 21. Noting also that the decedent illegally purchased the alcohol for his friends, he could not be considered a third person for the purposes of the statute, which specifically excludes first party liability. N.J.S.A. 2A:15-5, 459 N.J. at 390.

The Narleski Court then considered whether the common law or other statutes support the existence of a duty under the present circumstances. The Court first considered the quasi-criminal disorderly persons statute, which applies to anyone who offers, serves or makes available alcoholic beverages to underage persons. N.J.S.A. 2C:33-17. The Court concluded that neither section of the statute applied to the young host or his parents because there is no proof that any of them purposely or knowingly served or made available alcoholic beverages to individuals under the legal drinking age. There was also no proof that they encouraged underage persons to consume alcohol, nor did they have a purpose for

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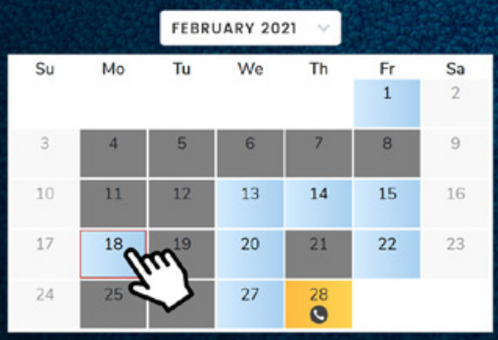

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making alcohol beverages available at their home. As mentioned above, the young men brought the alcohol into the home and consumed it in the host's bedroom. There was no proof that the parents were aware of, facilitated or condoned drinking alcohol. Id. at 392.

The Court also considered the second part of the disorderly persons statute, which applies to a person who makes available to or leaves the property in the care of another person with the purpose that alcohol would be consumed by individuals under the age of 21. It determined that this section also did not apply to the young host because alcohol was not purchased by him and he did not own, lease or manage the house. Notably, the court reasoned that at most, the evidence showed that the young host "kept a bedroom there, as is common among many young adults." Id. at 392.

The Court next turned to Morella v Machu, 235 N.J. Super. 604 (App. Div. 1989) and Thomas v. Romeis, 234 N.J. Super. 364 (App. Div. 1989), to evaluate whether common law conferred a duty under these facts. In Thomas, the Appellate Division considered whether a 20 year-old who hosted a party and provided alcohol while his parents were away on vacation could be liable for a car accident that was caused by a 17 year-old who attended the party. The Thomas court held that although he was a minor for the purpose of purchasing alcoholic beverages, the host was an adult with respect to "basic civil and contractual rights and obligations," including the right to "sue, be sued and defend civil actions. . . ." and as such, the case should not be analyzed in terms of one minor serving alcohol to another minor. Id. at 370. Ultimately, however, the court ruled that the young host was not negligent and further determined that the disorderly conduct statute referenced above did not apply because it was not enacted until after the incident. The Thomas court also decided in favor of the parent homeowners on the basis that they were not home when the incident occurred. Id. at 368.

The Narleski Court reasoned that Morella held that parents have a duty to exercise reasonable care in arranging for proper supervision of their minor children while away from their home. 235 N.J. Super. at 608. The Court also noted that the Morella decision reversed summary judgment in favor of the minor son and 20 year-old "supervisor" on the basis that it would be appropriate to treat them as adults even though they were not old enough to purchase alcohol. Id. 235 N.J. Super. at 611.

Ultimately, the Narleski Court determined that as to the parents, Thomas and Morella were distinguishable from this case because in both of those cases, the individuals who consumed alcohol "at the parents' residence included some minors," but in the present case, the young host and his friends were all adults, although under age 21. The Court therefore agreed with the motion judge that it would not be appropriate to impose civil liability against the parents. They also rejected the liquor store's suggestion that the parents were required to take steps to supervise their adult child, stating that "[i]t is unrealistic to expect a parent of an adult in such circumstances to prevent such underage drinking on the premises." 459 N.J. at 395. Moreover, other jurisdictions have held that for public policy reasons, parents generally do not have a duty to control their adult children's wayward conduct. Id.

The Court declined to adopt the "novel principle" of liability against parents in underage drinking scenarios that was adopted in other jurisdictions, that parents owe a duty of care for an adult child's conduct where a "special relationship" existed between the parent and child. The Court did, however, reason that a factual situation could arise imposing such liability. For example, if an underage child informs the parents that he/she plans to have a party in their absence and consume alcohol, and the parents leave alcohol available in the house. Id. at 397.

As to the underage host, the Court viewed his potential liability as materially different than that of his parents. The Court recognized a theory of liability against the young host for his involvement in the scenario, in that he went with his friends to purchase the alcohol and provided his bedroom to consume alcohol. Moreover, he was also a parent himself. As such, the Court noted that under this set of facts it was a logical extension of Morella and Thomas to expose a young adult to liability. Id. at 387. In Morella, the court also ruled that the 17 year-old social host had liability for providing alcohol to minors at the party. In Thomas, the court implicitly recognized potential liability for underage party hosts. Id. at 398.

Although the court recognized this duty owed by the young social host, it stopped short "of imposing upon him a novel rule of liability that might not have been reasonably anticipated." Id. 398. Prospectively, however, the Court ruled that an adult such as the host in Narleski, who is under the legal drinking age, "shall owe a common law duty to injured parties to desist from facilitating the drinking of alcohol underage adults in his place of residence, regardless of whether he owns, rents or manages the premises." Id. The Court deferred the effective date for 180 days. Id. At the time this article was prepared, the case had not yet been scheduled for oral argument before the state Supreme Court.

Though Narleski has been viewed as creating a duty of care on the part of young adults, when closely read, it is rather filling in the gap for social hosts who do not presently come under the Social Host Liability statute, specifically, adults between the ages of 18-20. Though the Narleski Court deferred application of this duty, it appears from the opinion that the young social host could be liable under this set of facts for facilitating the consumption of alcohol in his bedroom though he did not purchase the alcohol himself.

When defending a social host case, one of the first questions a litigator should ask is the age of the social host. Even if he or she is under the age of 18, liability may still attach under the Morella case. The parents of a minor host have a heightened duty to arrange for their child's property supervision if they will be away from the home. If the host is over the age of 21, the current legal age to consume alcohol in New Jersey, the case will be governed by the Social Host Liability statute.

The decision also underscores the fact-driven nature of social host lawsuits. The Court seemed very hesitant to impose liability on the host parents, seemingly rejecting the notion that parents are vicariously liable for their child's underage drinking simply because it took place in their home. The holding certainly does not exempt parents from liability in these contexts, though it suggests that parents must have actual knowledge of underage consumption on their property or specific knowledge that underage drinking will occur in their absence. The Court did not follow the commonly held notion that parents should assume their underage children and their friends will consume alcohol in violation of the law.

From a coverage standpoint, defense attorneys will likely find themselves representing the young social host and parents. Since the

young host is residing on the premises, he/she will likely be considered an insured by definition and the same policy will be implicated. The Narleski court distinguished the potential liability on the part of the parents as materially different than that of the young host. As such, attorneys should pay close attention to potential conflicts throughout litigation, such as whether the child will suggest that his/her parents were aware of the party and/or provided the alcohol.

In light of the Narleski decision and the pending Supreme Court review, it is imperative that those defending these actions take special care during the fact-finding process to delineate the parents' knowledge of, or the possibility of underage consumption. The practice of ensuring that the young guests sleep at the house and not drive away will not exempt a parent from liability. Unlike the Social Host Liability statute, which limits liability to third parties injured in auto accidents, underage social hosts and their parents may be liable to any injured party regardless of the circumstance, which would also include the intoxicated guest. If Narleski is upheld, this rule of law would seem to apply equally to the class of hosts who have reached the age of majority but are not yet out of high school, which seems particularly relevant as we approach high school graduation season.

Theresa Giamanco is an associate and Michael Dolich is a member of Bennett Bricklin & Saltzburg LLC. Both attorneys regularly defend clients in premises liability matters.

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TRELLA V. BRADISH: BRUGALETTA VERSION 2.0

BY HERBERT KRUTTSCHNITT III, ESQ., ANTHONY COCCA, ESQ., & KATELYN CUTINELLO, ESQ.

The Appellate Division in Trella v. Bradish, Docket No. A-3039-18T3 (App. Div. Oct. 8, 2019), recently ordered a hospital in a medical malpractice action to provide a "Brugaletta narrative"—a summary identifying where in the medical records the facts of an "adverse event" relating to the patient's treatment were located—even though the medical records at issue were not lengthy and the facts were readily evident.

Just last year, the New Jersey Supreme Court, in Brugaletta v. Garcia, 234 N.J. 225 (2018), applying the Patient Safety Act, N.J.S.A. 26:2H-12.23 to -12.25, prohibited the release of an Incident Report prepared as part of the statutory self-critical analysis process, even if redacted. The Supreme Court commented, however, that the Patient Safety Act does not immunize from discovery information otherwise discoverable, such as the facts within the medical record which constitute the "adverse event" which was reviewed by the Patient Safety Committee. The Supreme Court held that, while the plaintiff was not entitled access to any part of the Patient Safety Act-privileged incident report, "the trial court should have used its common law power, in administering the discovery rules to order defendants to provide," in response to plaintiff's discovery requests, a "narrative to accompany the approximately 4,500 pages of medical records turned over during discovery" so that the plaintiff would "be informed of an adverse incident related to her care," Brugaletta, 234 N.J. at 252.

In Brugaletta, "Discrete yet interconnected notations," Id. at 257, containing "the raw underlying factual data," Id. at 252, relating to missed doses of an antibiotic on a single day—the subject of the incident report at issue in that case—appeared on nine pages of the 4500 page hospital record produced. See Id. at 257. Justice LaVecchia's opinion drew a parallel between counsel's being compelled to identify key information responsive to interrogatories, rather than referring to voluminous business records as to which research is feasible only to one who is already familiar with the documents. See Id. at 254-55.

In the months following the Brugaletta decision, so-called "Brugaletta narratives" became the subject of considerable motion practice as plaintiffs and defendants were unable agree on whether a narrative must be provided in all cases in which an adverse event occurred at a hospital—as urged by plaintiffs—or only in cases in which the hospital records are voluminous and the underlying facts are not apparent—the defense position.

Recently, the Appellate Division in the unpublished two-judge Trella opinion affirmed the Law Division's order requiring the defendant hospital to provide the plaintiff with a written narrative of any "adverse incident" pertaining to her treatment described in her medical chart. The Appellate Division rejected defendant Newton Medical Center's argument that a narrative was unnecessary because, in the case at hand, unlike Brugaletta, plaintiff's medical records were neither voluminous nor complex. Furthermore, the provision of such a narrative summary would circumvent the Patient Safety Act privilege as applied the root cause analysis ("RCA") the hospital performed regarding the plaintiff's treatment. The Trella court concluded that the Brugaletta "Court's analysis applies to **any** patient's medical records, not simply patients whose medical records are voluminous." Trella, Docket No. A-3029-18T3 slip op. at 16. The Trella court further observed that "The trial court did not, however, order Newton Medical Center to produce the RCA or any documents, materials, or information developed in the process of self-critical analysis." Id. slip. op. at 17. As the Brugaletta Court observed, the Patient Safety Act "does not 'immunize from discovery information that would be otherwise discoverable.'" (Ibid. (quoting Brugaletta, 234 N.J. at 250).) The plaintiff in Trella therefore was "entitled to discovery of the data recorded in her medical records, including any 'adverse incidents' that were or should have been documented" in her hospital chart. Ibid.

Plaintiffs, relying upon the Appellate Division's decision in Trella, undoubtedly will routinely make discovery requests for a "Brugaletta narrative" in all cases in which an "adverse event" may have occurred at a hospital. Given that the facts of an adverse event are not privileged, and the lack of a dissent in the Trella decision, it is not anticipated that the Supreme Court will take up this issue at this time. Nevertheless, while the facts of an incident are not privileged, the recitation of the facts contained in an Incident Report remains privileged. That is to say, the language from the Incident Report remains privileged and access to that language remains protected. However, the event which is the subject of the privileged internal review may spawn a so-called "Brugaletta narrative."

While a patient certainly is entitled to know the facts concerning his or her medical treatment, the countervening goal of the Patient Safety Act was and is to improve patient outcomes. Indeed, the Supreme Court in applying the Patient Safety Act has emphasized that the facts and conclusions contained in Incident Reports or investigations are not

subject to disclosure—whether or not the event was reported to New Jersey's Department of Health. See Conn v. Rebustillo, 445 N.J. Super. 349 (App. Div. 2016).

Of course, the facts of a patient's care and treatment are not the subject of the Patient Safety Act privilege, and patients are entitled to know what treatment or mistreatment has been rendered. We should ask, however, whether we are headed down the slippery slope to full disclosure. The circumstances may be similar to the near total evisceration of the Affidavit of Merit Statute.

The Affidavit of Merit Statute, N.J.S.A. 2A:53A-26 to -29, was adopted in 1995 as part of a tort reform package, in order to strike "a fair balance between preserving a person's right to sue and controlling nuisance suits" against certain licensed professionals "that drive up the costs of doing business in New Jersey." L. 1995, c. 139, Statement of Governor Whitman on Signing S. 1493 (June 29, 1995). The Affidavit of Merit Statute required plaintiffs, in an action against any of the sixteen types of "licensed persons" to whom the affidavit of merit requirement extends, to obtain an Affidavit of Merit from an "appropriate licensed person" who attests to a "reasonable probability" that the defendant's conduct deviated from the relevant standard of care in that profession. N.J.S.A. 2A:53A-27; see N.J.S.A. 2A:53A-26. Failure to file and serve an affidavit of merit within sixty days of the filing of the defendant's answer—extended to a maximum of 120 days upon a showing of good cause—is to result in the dismissal of the complaint with prejudice. See N.J.S.A. 2A:53A-29.

Since the passage of the Affidavit of Merit Statute, its tort reform impact has been systematically weakened by the case law interpreting the statute. In Ferreira v. Rancocas Orthopedics Associates, 178 N.J. 144 (2003), the Supreme Court initiated the practice of holding an accelerated case management conference within ninety days of service of an answer in all professional negligence cases, in order to instruct the plaintiff of the obligations imposed by the statute and to allow an opportunity to correct any deficiencies in an affidavit of merit that has already been served. The Ferreira Court also described two equitable exceptions to the affidavit of merit requirement, "extraordinary circumstances" and "substantial compliance," recognizing that "technical defects will not defeat a valid claim," so as to "temper the draconian results of an inflexible application of the statute." Ferreira, 178 N.J. at 151. More recently, in A.T. v. Cohen, 231 N.J. 337 (2017), the Supreme Court instructed that R. 4:5B-4 and the judiciary's electronic filing system should be modified in order to insure that Ferreira conferences are promptly scheduled in every professional negligence case.

In connection with these procedural practices and judicially created exceptions, the courts have, for example, allowed an automatic extension of the sixty-day time period for filing and service of the affidavit of merit to the statutory maximum of 120 days in all cases. Defendant physicians are required to advise plaintiffs of any relevant specialty or board certification in their Answers, if application of the equitable waiver doctrines is to be avoided. See, e.g., Nicholas v. Mynster, 213 N.J. 463 (2013) (applying same specialty provisions of the Patients First Act); Buck v. Henry, 207 N.J. 377 (2011) (requiring defendant physicians to identify their areas specialty in their answers and discussing statutory deadlines and application of equitable waiver doctrines in connection with the conduct of a Ferreira conference); Ferreira, 178 N.J. 144 (discussing statutory deadlines and substantial compliance and extraordinary circumstances exceptions to the affidavit of merit requirement). Over time, case law has riddled the Affidavit of Merit Statute with exceptions, and has imposed burdens on both the Court and the defense.

Both the Affidavit of Merit Statute and the Patient Safety Act serve laudable goals and legislative purposes. Although the Affidavit of Merit Statute was a tort reform provision designed to limit frivolous litigation, the Patient Safety Act aims to promote the delivery of quality, error-free health care. A privilege log identifying any Patient Safety Act-shielded documents, perhaps coupled with a court's in camera review of the privileged materials, should serve to cure any issues plaintiffs in a medical negligence case may have regarding access to the facts. Indeed, the so-called Brugaletta narrative is fraught with problems. Factual and evidential issues abound. Who is the best person to prepare the narrative? How detailed must it be? What is its evidential value? If neither the reporting of the event to the patient, nor the facts or conclusions of the reviewing committee are subject to discovery and may not be used as evidence in a civil proceeding, then the mere fact that an investigation occurred likewise should not be the subject of discovery. See N.J.S.A. 26:2H-12.25(f)-(g). Trella goes too far, but at the same time, it does not give plaintiffs anything that is reasonably calculated to lead to the discovery of admissible evidence.

Indeed, the Trella court's instruction that a "Brugaletta narrative" must be provided for every "adverse event" that occurs in a hospital setting has limited value and cannot be viewed as anything but a hollow marketing victory for the plaintiffs' bar. Further efforts to continue to seek to erode the Patient Safety Act privilege, however, serves no interest of plaintiffs, defendants, or, most importantly, of the health care organizations that seek to conduct internal review processes with confidentiality and candor, in order to foster better patient care and outcomes. These reviews are supposed to be held without fear that such communications will be used offensively in litigation, the primary interest the Patient Safety Act seeks to preserve.

It is delicate work to ask expert healthcare professionals to take a good hard look at themselves, to criticize their imperfections and to explore ways to be better when they already are doing their best. Take away the protections that encourage them to do that work, and they will not do that work. It takes being stupid to walk a high wire without a net. And people are not stupid. They will not do it. So, when the court has completely eroded the self critical analysis privilege we will have Root Cause Analysis Reports that say, "Cause of Death: His number came up".

Is that what the Patient Safety Act was supposed to be all about? When the moderator at a recent ICLE Medical Malpractice seminar called Trella an important decision he might as well have called it the beginning of the end for the Patient Safety Act. We should not repeat the mistakes of the past by having lawmakers pass groundbreaking legislation only to have the court erode that legislation's foundational underpinnings.

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O'TOOLE'S COUCH:
THE COACH'S CLUB

Over 35 years ago it became apparent that the adults we spent the most time with were the parents of our children's teammates and their coaches. And so it began. Labor Day week-end at the shore, or anywhere else, was not possible, because our children were playing in soccer tournaments. Thus, the families in our neighborhood got together for a Labor Day cook-out. In time, these families became known as the Coaches' Club, and our activities expanded for so many years past those days on the bleachers.

A Super Bowl Party begins the calendar year at one family's home. Lots of appetizers (our favorite being pepperoni bread) and a few cold beers or apple martinis are consumed while we fill out our betting sheets. (Even if the game is boring, if you guessed which team would get the coin toss or score the first touchdown, etc. there is always some interest.)

A Memorial Day barbeque is next on the Coaches' Club agenda. Hosted by another family who are grilling experts, it is great sitting on the porch, catching up with everyone's family and activities. You must realize that now it is our children sitting on the bleachers watching their children play endless games. (Remember when you paid $25 to sign your kid up for baseball? They got a hat and a shirt and showed up on the field with a baseball mitt. The coaches provided a bag full of bats. We found out a few years ago that now parents provide their own child's bat at a cost of over $200. No, we're not going to say anything about "the good ole days.")

Summer is Sunny and my turn to host the Coaches' Club. We spend the week-end on the beach in Manasquan (now heavily lathered with suntan lotion and sitting under an umbrella.) There is always a golf tournament going on so constant up-dates are required in front of the television. Dinner outside and long walks are part of the early evening activities. (The walk is to burn off some of the nasty calories we have consumed!) Then Trivial Pursuit, Catch Phrase or some other game is taken on. Top off the evening with an after-dinner drink (I wouldn't say no to a Jameson and a cigar outside.) Church on Sunday, brunch and good-byes. (It is a coincidence that the five families still active in this Club are of the same faith, so a walk to church is a given.)

Next, Fall Foliage. Each couple takes a turn picking a week-end destination. The trips have included West Point, and various other college football games (i.e. Villanova, Annapolis and Syracuse.) We've been to Virginia, New Hope, Maine, Hershey Pa., Washington D.C., Sleepy Hollow, Philadelphia (to name just a few.) Okay, we've been doing this a long time!

Not done yet – We try to go Christmas tree cutting on Thanksgiving week-end. We are split for this activity because it is difficult to pick a day when the extended families can make it, and others are fine with a pre-cut tree from a local lot. However, we have great memories and pictures of having over 35 of us (with children and grandchildren in tow) driving in a caravan up to Sussex County and having lunch together at a restaurant/tavern.

Another Coaches' Club family has hosted a Christmas Eve Gathering for many years. This has been a chance for our "kids" to catch up with each other. Lots of friends and good food! Also, the big guy in a red suit usually made an appearance. Unfortunately for me, I always got called by the police to process a warrant and didn't show up until Santa had left. A coincidence? Hey, you never know.

Our last Coaches' Club event of the year is New Year's Eve. We have a progressive dinner party at three homes. This is another rotation each year for appetizers, dinner and dessert. It is a chance to visit at each couple's house, enjoy their Christmas decorations, visit in front of the fire and then move on to the next house. (I think the best part is each person is only responsible for one course. Then you are done and move on to the next house.) Another good feature is that we live so close to each other, there is no danger of being on the streets late at night. Ending the year with a champagne toast to such good friends, is always the perfect way to ring in the New Year!

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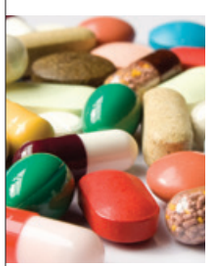



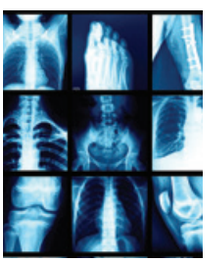

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OCTOBER 12, 2020

ANNUAL TRIAL COLLEGE

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