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CT Supreme Court case involving Hartford HealthCare to test limits of hospital immunity

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Cheryl Mills, a Colchester resident with a serious heart condition, had been in [Hartford Hospital](#) for five days when she died on the bathroom floor of her room in March 2020.

For four days, the 63-year-old had been waiting for the result of a COVID test so she could be cleared to enter the hospital's special cardiac treatment area. The negative test result came through at 7:40 p.m. on March 24.

At 6 a.m. the next day, a doctor ordered her transfer. She was scheduled to be moved to the special unit later that day.

A heart attack came first.

Her estate sued the hospital, but an executive order issued by Gov. Ned Lamont at the beginning of the pandemic granted hospitals and nursing homes legal immunity as they worked through the early days of the COVID pandemic.

Now, the circumstances of Mills' case have become the center of a state Supreme Court legal battle over how far that immunity can be extended, and other cases involving Connecticut nursing homes could be affected by the outcome.

Both [Hartford HealthCare](#) and [Cheryl Mills' estate](#) are appealing the [ruling](#) of Superior Court Judge Matthew Budzik, who agreed that the hospital was covered under immunity for the first four and a half days Cheryl Mills was at

Hartford Hospital in March 2020 but was not immune after they found out she did not have COVID.

The stakes are potentially high. If the court were to agree that Hartford Hospital was covered by Lamont's order, it would set a precedent that would make it difficult for other families to use the courts to seek answers to why loved ones died.

If the court were to overrule Budzik's order, it could mean more wrongful death lawsuits could be filed against nursing home providers at a time when many of them are struggling financially as they recover from the pandemic.

"A lot of people will never know how their loved one died. And for some, litigation might be the only way they'll ever find out, through the discovery process," said Sam Brooks, an attorney and director of public policy for [The National Consumer Voice for Quality Long-Term Care](#).

"A lot of people were just called and told, 'Your loved one died.' I'm not saying litigation is always the way to get to the bottom of the facts, but for some folks, that will be their only avenue," Brooks said.

Not tested here

"This is a heart attack case, not a COVID-19 case," Mills' attorney Elisabeth Swanson said. "We don't think the governor's order was intended to cover what happened here. We aren't attacking the order itself. We want to make sure it is being interpreted narrowly — for the actual treatment of COVID-19 patients and to not be used to give them a pass on medical malpractice."

A spokeswoman for Hartford HealthCare said the organization could not comment due to the litigation.

Attorneys for Hartford HealthCare, the owners of Hartford Hospital, also are appealing the judge's ruling, arguing that the whole event is "an archetypal case for immunity" under the governor's order.

"Plaintiff attempts to invoke fears that applying immunity here would lead to immunity in all sorts of cases. But immunity here is no stretch," Hartford HealthCare's attorney Brendan N. Gooley wrote in his Supreme Court brief.

Gooley's firm, Carlton Fields, is representing Hartford HealthCare and Dr. William Farrell, who ordered Mills be moved to the special catheterization unit after the COVID test came back.

“Doctors had a good faith belief that a patient complaining principally of a sore throat and a headache had COVID-19 and doubted she was having a heart attack,” [Gooley wrote](#). “That good faith belief regarding COVID-19 immediately, substantially, and irreversibly altered the patient’s treatment. This is a prototypical case for immunity, not a case on the outer limits of immunity. Whatever the outer limits of immunity are,

On April 5, 2020, about a month after Connecticut’s first recorded case of COVID and two weeks after Mills’ death, Lamont issued [executive order 7U](#), which shielded nursing homes and hospitals from civil liability, except in cases of “crime, fraud, malice, gross negligence or willful misconduct.” The immunity applied to both health care workers and the facilities that employed them.

“In order to encourage maximum participation in efforts to expeditiously expand Connecticut’s health care workforce and facilities capacity, there exists a compelling state interest in affording such professionals and facilities protection against liability for good faith actions taken in the course of their significant efforts to assist in the state’s response,” the governor wrote in the order.

It was a controversial order from the start, with advocates arguing it allowed health care institutions to use the pandemic as an excuse for negligent care.

“When you don’t have access to other forms of oversight and protection, that seems like a moment when you shouldn’t also be denied your redress of last resort, which is what the courts are,” said Anna Doroghazi, associate state director of advocacy and outreach for the AARP in Connecticut.

“Residents needed accountability more than ever in those moments, and we took it away from them,” she added.

Nursing homes were particularly hard hit at the beginning of the pandemic as the virus spread quickly, killing thousands. At the same time, state officials were worried about hospitals getting overrun with patients and a shortage of personal protection gear for health care workers trying to treat infected patients.

Connecticut Hospital Association spokeswoman Nicole Rall said the governor’s order providing immunity “played a critical role during the pandemic to help maintain staffing levels and support the health care workforce on the front lines providing life-saving care.”

“The Governor’s Executive Orders establishing immunity are legally sound and were necessary actions to support the good faith actions taken by health care workers and facilities during the public health emergency.”

Both Rall and Matthew Barrett, president and CEO of the Connecticut Association of Health Care Facilities, pointed out that the order didn’t give hospitals or long-term care facilities blanket immunity, and if there were cases where “gross negligence, fraud or willful conduct” occurred, lawsuits could proceed.

“Connecticut skilled nursing facilities never viewed the governor’s executive order as establishing a broad-based blanket immunity,” Barrett said. “The policy was limited, measured and appropriate during the early period of the COVID-19 public health emergency when there were so many unknowns about the novel virus, severe limitation on resources and testing and consistently changing public health guidance. That these cases are moving forward, and the courts evaluating these questions and facts, demonstrates the limited immunity policy is playing out as expected.”

Brooks said the emergency orders granting immunity — which were issued in about a dozen states across the country — were designed to stop lawsuits from being filed.

“In these cases, challenging laws is really important,” Brooks said. “Unfortunately, I think a lot of these executive orders and things like that were about having a chilling effect.”

“We don’t want to hold facilities [liable] who did their best, but because of an unseen act of God or catastrophe, they couldn’t do it. We want to hold facilities accountable that could have and didn’t provide proper care,” Brooks added.

Nationally, officials in 10 states issued executive orders providing immunity to health care workers or facilities responding to COVID, and 28 other states passed legislation that offers some form of immunity to long-term care centers.

Seven months after Lamont’s order was issued, legislators and patient advocates in Connecticut asked the governor to curtail the policy, saying it stripped nursing home residents and their families of a fundamental protection and weakened accountability for facility operators.

Lawmakers tried unsuccessfully in 2021 to pass a bill that would have amended state statutes to shield health care workers and facilities from civil liability.

“We thought it was a mistake that at a moment when most inspections of nursing homes had been suspended, and you didn’t have in-person family visits, and the long-term care ombudsman didn’t have great access to facilities ... we created an additional lack of oversight by taking away the tool that is civil liability,” Doroghazi said.

Lamont extended the immunity several times, once in September 2020 for two months and again in November 2020 for three months. In February 2021, he announced that it would expire for facilities on March 1.

A separate, unrelated pending lawsuit against nursing home providers will likely be stalled as the Supreme Court takes up the issue of whether the governor’s order grants Hartford HealthCare immunity in the death of Mills.

The 63-year-old worked as a registrar of patients in the Backus Hospital emergency room, when on March 21, 2020, while at work, she complained of a sore throat and a headache. When she told doctors she also had a heart condition, they ran a series of tests and determined she may be having a heart attack.

Because Backus doesn’t have a catheterization lab, doctors called Hartford Hospital and asked to transfer her there. She was transported to Hartford Hospital, but when she arrived, Dr. Asad Rizvi didn’t agree with the initial diagnosis.

Rizvi said in an affidavit that because she had been exposed to COVID-19 at work and because experts believed heart inflammation was a symptom of the virus, he couldn’t admit her to the specialized unit without making sure she didn’t have the virus.

Rizvi ordered a COVID-19 test for Mills and isolated her in a regular room, where she was monitored for the next three days until her COVID test came back negative on the evening of March 24.

At 6 a.m. on March 25, Dr. William Farrell ordered her to be transferred to the cardiac catheterization laboratory later that same day. She was found dead on the bathroom floor in her hospital room before that transfer took place. Her death certificate listed the cause of death as a heart attack.

In their motion to dismiss the case, hospital attorneys argued that “the undisputed facts demonstrate that the delay in Ms. Mills’ transfer to Hartford Hospital’s cardiac catheterization lab was the direct result of a delay in the reporting of Ms. Mills’ COVID-19 test results and the defendants’ good faith concern that Ms. Mills’ symptoms were being caused by COVID-19.”

The judge agreed, dismissing all of the claims against the doctors who treated Mills before her COVID test results were known, saying they clearly were covered by Lamont’s immunity order.

“The fact that the defendant’s treatment of Ms. Mills occurred just two weeks after Governor Lamont declared a public health emergency and at a time when comparatively little was known about COVID-19 is a relevant practical factor in the court’s conclusion that Dr. Rizvi acted in good faith,” Budzik wrote.

“The court concludes that the circumstances of this case are plainly anticipated by the executive order because Ms. Mills’ delayed transfer to the cardiac catheterization unit was directly tied to Hartford Hospital’s attempt to conserve scarce PPE,” Budzik concluded.

But then he also ruled that once hospital officials knew that Mills did not have the virus, they were no longer covered by Lamont’s order.

Budzik ruled that the lawsuit could proceed regarding Mills’ treatment during the hours after her COVID test result was known.

In their argument to overturn Budzik’s ruling, attorneys for Mills’ estate argue that the hospital is using the COVID-19 crisis to hide the misdiagnosis that Mills wasn’t having life-threatening heart issues.

“The health care services the defendants performed upon Mills’ arrival at HHD, namely, determining whether she was experiencing a STEMI that required immediate referral to the Cath Lab, had nothing to do with COVID-19, and accordingly, did not constitute health care services in support of the State’s COVID-19 response,” attorney John R. Weikart wrote in his Supreme Court brief.

“The trial court was factually mistaken in concluding that the administration of a COVID-19 test caused Mills’ injuries; the undisputed factual record establishes instead that the doctors’ initial misdiagnosis of Mills caused their decision to delay her life-saving treatment.”

Attorneys expect the Supreme Court to hear oral arguments on the case as early as next month.

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