

To: New Jersey Law Revision Commission
From: Dominic DiLeo
Re: Ptaszynski v. Atlantic Health Systems, Inc.
Date: July 2, 2015

M E M O R A N D U M

This potential project arises out of a recent Appellate Decision interpreting a provision of the Nursing Home Responsibilities and Residents' Rights Act ("NHA").¹ The statutory provision, N.J.S. 30:13-4.2, defines the causes of action that private parties and the Department of Health ("DOH") can maintain upon a particular violation. This project would aim to clarify the statute in light of the decision regarding the scope of applicability of private parties to bring an action under N.J.S. 30:13-4.2.

Background

The relevant portion of N.J.S. 30:13-4.2 states: "A person shall have a cause of action against the nursing home for any violation of *this act*. The Department of Health may maintain an action in the name of the State to enforce the provisions of *this act*² and any rules and regulations promulgated pursuant to *this act*" (*emphasis added*).³ The footnote in N.J.S. 30:13-4.2 after the second occurrence of "this act" explicitly restricts the applicability of the statute to state actions through the DOH to only N.J.S. 30:13-4.1 and N.J.S. 30:13-4.2.⁴

The ambiguity that arguably existed in the statute was the applicability of the language of the first instance of "this act" referring to private parties in N.J.S. 30:13-4.2, and whether this language granted private parties the ability to sue for any violation of the NHA, or only for a violation of the provision directly preceding it, N.J.S. 30:13-4.1. N.J.S. 30:13-4.1 regulates the handling and investment of nursing home resident's security deposit.⁵

In *Ptaszynski v. Atlantic Health Systems, Inc.*, the court found that N.J.S. 30:13-4.2 only allows private parties to recover from a violation of N.J.S. 30:13-4.1, not a violation of any other provision of the NHA.⁶ Staff is concerned that any reference to "this act" in the statute that has been deemed by the court to refer to something less than the entire act can be characterized as unclear on its face.

¹ See Nursing Home Responsibilities and Residents' Rights Act, N.J. Stat. Ann. § 30:13-1 – 13:13-17 (West 1976).

² N.J.S. §§ 30:13-4.1 and 30:13-4.2

³ See N.J.S. §§ 30:13-4.2

⁴ Id.

⁵ See N.J.S. §§ 30:13-4.1. Establishes requirements for investment of deposits, notification of residents, and return of deposits with interest or earnings.

⁶ *Ptaszynski v. Atlantic Health Systems, Inc.*, 440 N.J. Super 24, 36, 111 A.3d 111, 118 (N.J. Super. Ct. App. Div. 2015).

In *Ptasynski*, the executor of the estate of a deceased nursing home resident brought multiple claims against Atlantic Health Systems stemming from the care of a patient at Mt. Kemble Rehabilitation at Morristown Memorial Hospital.⁷ Two of these claims were brought under the NHA.⁸ The relevant claim that was asserted under N.J.S. 30:13-4.2 alleged that the hospital violated N.J.S. 30:13-3h, which establishes a responsibility for nursing homes to comply with all applicable state and federal statutes, rules and regulations.⁹ The defendant did not raise an argument regarding the validity of this claim at the trial level.¹⁰ On appeal, however, the court agreed with the defendant that the trial court erred by permitting the estate to pursue a claim under N.J.S. 30:13-4.2, finding that a private party could only pursue a claim under this statute by a violation of N.J.S. 30:13-4.1.¹¹

Private parties still would have means of recovery for a violation of their rights under the NHA with a revision. The NHA was enacted in 1976, and has always allowed private parties to bring actions for a violation of a resident's rights as defined by the law.¹² Private parties, however, cannot enforce nursing home's responsibilities under the law – N.J.S. 30:13-8a authorizes only the DOH to bring an action to enforce these responsibilities.¹³

The court came to this conclusion largely by looking at the legislative history of the bill.¹⁴ The two provisions at issue in this potential project, N.J.S. 30:13-4.1 and N.J.S. 30:13-4.2, were added to the NHA by amendment in 1991.¹⁵ The court found that the phrase “this act” was only intended to apply to these two added provisions for three reasons. First, there are other occurrences of “this act” within the provisions that could only be applied to these provisions. In N.J.S. 30:13-4.1g, the legislature authorized the Commissioner of Banking to “comput[e] the interest due [...] pursuant to the provisions of this act[.]”¹⁶ Since the content of these provisions are limited to security deposits, the legislature could not have intended “this act” to apply to the entire NHA.¹⁷ Second, the court reasoned that “[t]he 1991 legislation imposed upon nursing homes new, specific requirements pertaining to security deposits, and allowed residents to bring actions to enforce those requirements, not other responsibilities that nursing homes have under

⁷ Id. at 113.

⁸ *Ptasynski v. Atlantic Health Systems, Inc.* 440 N.J. Super 24, 33, 111 A.3d 111, 114 (N.J. Super. Ct. App. Div. 2015) Id. at 114-115. In addition to these two claims, the estate also brought a negligence claim and a wrongful death claim against the hospital.

⁹ Id. at 116. Executor asserted claim specifically for alleged violation of *N.J.S.A.* 30:13-5j: “to a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident[.]”

¹⁰ Id.

¹¹ Id.

¹² Id.; See N.J.S. 30:13-1.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 117.

¹⁶ See id.

¹⁷ Id.

the law.”¹⁸ And third, the court found that the position that “this act” only applied to the 1991 amendments is supported by the background legislative history of the bill, with multiple statements from the Senate Senior Citizen and Veterans Affairs Committee and the Assembly Senior Citizens Committee referring to “this act” as only applying to the added provisions.¹⁹

Conclusion

Staff seeks authorization from the Commission to undertake a project in this area in an effort to research and clarify the statutory language of N.J.S. 30:13-4.1 and N.J.S. 30:13-4.2 in keeping with the judicial interpretation in *Ptasynski*.

¹⁸ See *id.*

¹⁹ *Id.* at 118.