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ZARELLA, J., with whom ROGERS, C. J., joins, concurring in part and dissenting in part. I agree with parts I and II A of the majority opinion. I respectfully disagree, however, with the majority's decision in part II B of the opinion not to reach and decide the defendant's statutory claim. The majority concludes that the plaintiff did not assert an independent claim under General Statutes § 52-146o because that claim is contained in counts two and four of the amended complaint alleging negligence and negligent infliction of emotional distress, respectively, instead of in a separate count. In my view, however, the majority indulges in an overly technical reading of counts two and four that is inconsistent with the modern view of pleading, which rejects a narrow, formalistic reading of the pleadings in favor of construing pleadings broadly and applying common sense. See, e.g., *Fuessenich v. DiNardo*, 195 Conn. 144, 150–51, 487 A.2d 514 (1985); *Bombero v. Marchionne*, 11 Conn. App. 485, 496, 528 A.2d 396 (*Borden, J.*, dissenting), cert. denied, 205 Conn. 801, 529 A.2d 719 (1987); *DeMartin v. Yale-New Haven Hospital*, 4 Conn. App. 387, 390, 494 A.2d 1222, cert. denied, 197 Conn. 813, 499 A.2d 62 (1985). I thus believe that counts two and four, in which one of the plaintiff's assertions is that the defendant "disclosed the medical file, without authority, in violation of . . . § 52-146o," directly allege a violation of the statute, and the fact that the allegation is not contained in a separate count is immaterial because the trial court and the parties have treated counts two and four throughout the proceedings as asserting a statutory violation. Accordingly, I believe that the statutory claim was properly raised and should have been decided by this court.

I finally emphasize that, because this court has determined that the issue of whether Connecticut's common law provides a remedy for a health care provider's breach of its duty of confidentiality in the course of complying with a subpoena has not been raised, the issue remains unresolved, which leaves the parties and the trial court to determine the most appropriate course of action as the litigation proceeds.
