CONNECTICUT TRIAL LAWYERS ASSOCIATION

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Raised Bill 243
Public Hearing: 3-7-12

TO: **MEMBERS OF THE JUDICIARY COMMITTEE**
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: March 7, 2012

RE: ***SUPPORT OF RAISED BILL 243, AN ACT CONCERNING CERTIFICATES OF MERIT***

The Connecticut Trial Lawyers Association respectfully urges the members of the Connecticut General Assembly to PASS RAISED BILL NO. 243.

Raised Bill NO. 243 seeks to revise provisions concerning certificates of merit, or opinion letters that Connecticut law requires in medical malpractice actions. Under current law, a certificate of merit, signed by a "similar health care provider" must be attached to all lawsuits alleging medical malpractice. This Raised Bill responds to recent Connecticut appellate decisions, which make clear that the current law, 52-190a, as amended by P.A. 05-275, led to unfair and irrational results.

In Bennett v New Milford Hospital, 300 Conn. 1, 12 A. 3d 65, 2011 WL 245565 (Conn. 2011); affirming 117 Conn. App. 535 (2009), the Connecticut Supreme Court upheld the Appellate Court's determination that a medical malpractice action is subject to dismissal if the physician's opinion is not written by a "similar health care provider." Unfortunately, this decision revealed a significant problem with P.A. 05-275 regarding the definition of a "similar health care provider."

In the Bennett decision, the Court found that Connecticut law imposes a higher standard on an expert used to provide a good faith basis for filing a lawsuit than the standard required for an expert to testify at trial. In other words, under current law, an expert may be unqualified to sign a certificate of merit, yet this same expert could testify at trial and provide a basis for a jury finding that a defendant acted negligently.

As proposed, this Raised Bill seeks to amend Connecticut General Statutes § 52-190a which governs the certificates of good faith required in negligence actions against health care providers and to amend corresponding sections of§ 52-184c which governs the qualifications of standard of care expert witnesses. These changes address the Court's decision in Bennett and makes clear that there Is only one standard to determine whether an expert witness Is qualified to offer the opinion that a health care provider acted negligently.

Additionally, Raised Bill 243 will help to ensure that, while frivolous suits are stopped early in the process, meritorious cases will not be blocked or delayed by unnecessary and burdensome procedural requirements. Moreover, the bill seeks to save judicial resources by eliminating the current burdensome and time consuming process in which defendants file Motions to Dismiss In nearly all medical malpractice cases, no matter how meritorious; (hundreds of such Motion have been filed in the last 5 years).

In this regard, the bill codifies the majority opinion in a recent Connecticut Supreme Court case Wilcox v Schwartz 303 Conn. 630, xx A. 3d xx, 2012 WL 48 (Conn. 2012); affirming 119 Conn. App. 808 (2010) in which the Connecticut Supreme Court split 4-3. The majority opinion set a reasonable standard for the detail required for this good faith opinion letter and this bill will codify that standard, which will hopefully minimize the number of unnecessary motions filed under current law.

For these reasons, CTLA urges members to PASS the Raised Bill.

Thank you.

WE RESPECTFULLY URGE YOU TO PASS RAISED BILL 243