University of Connecticut Health Center

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Risk Management

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Testimony
JUDICIARY COMMITTEE
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SB 243, AN ACT CONCERNING CERTIFICATES OF MERIT

Senator Coleman, Representative Fox, Senator Kissel, Representative Hetherington, members of the Judiciary Committee, my name is Barry D. Kels, JD, MD. Executive Director, Risk Management and Associate Professor of Surgery, with the University of Connecticut Health Center.

Thank you for the opportunity to submit written testimony in opposition to **SB 243 AN ACT CONCERNING CERTIFICATES OF MERIT. With due respect we ask that the committee oppose the passage of the bill as we feel** it will have an adverse impact on the financial well-being of the Health Center and, by extension, the State of Connecticut. SB 243 eliminates the pre-screening requirements of General Statutes § 52-190a, known as the "Good Faith statute," thereby making it significantly easier for meritless lawsuits to be filed against health care providers, including the Health Center as an agent of the State of Connecticut.

The Health Center's John Dempsey Hospital is the state's only public acute care hospital that, under Connecticut law, is subject to the same liability as private hospitals and other private health care providers. See General Statutes § 4-160(b).

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The General Assembly has "determined that the John Dempsey Hospital of The University of Connecticut Health Center is a vital resource of The University of Connecticut and the state and is essential as a clinical resource for the teaching and research programs of the schools of medicine and dental medicine of The University of Connecticut and as a provider of comprehensive health care and treatment within the state and the region." General Statutes § 10a-251.

If medical malpractice lawsuits are permitted to be filed against the State of Connecticut via the auspices of the Health Center without appropriate pre-suit screening, the Health Center's ability to discharge its essential function to the taxpayers of Connecticut will be hampered. Recognizing the need to reduce the staggering cost of defending against meritless lawsuits, the General Assembly strengthened the Good Faith statute in 2005. The 2005 version of the Good Faith statute has three important components: (1) it requires that the attorney who files the lawsuit obtain a written opinion from an expert prior to filing suit; (2) it requires that the expert offering the opinion be a "similar health care provider" to the defendant(s) and that the designated expert provide a "detailed basis for the formation" of the opinion that there "appeared to be evidence of medical negligence," and (3) it mandates dismissal if a plaintiff fails to obtain the required written opinion prior to filing suit.

The enormous financial cost to health care providers, including the Health Center and the State of Connecticut, in defending against meritless lawsuits is detailed in the Connecticut Insurance Department's "Connecticut Medical Malpractice Annual Report," published in April of 2011. (See at: http://www.ct.gov/cid/lib/cid/2011_MM_Report_Final.pdf). Page 4 of the report notes that, over four years (2006-2010), more than 50% of malpractice claims resulted in

no payment to the claimant, yet insurance companies and self-insured entities, such as the Health Center, paid more than $50,000,000.00 in legal expenses to defend against these meritless claims. Over that same four year period approximately 40% of medical malpractice claims against UConn/The State of Connecticut have resulted in no payment to the claimant with a concomitant $800,000 in defense costs to defend against these unsuccessful actions. These costs however vary by year and over time, in fact, the costs to the Health Center to defend against unsuccessful actions (2005-2009) was approximately $1.8m. These costs are significant and substantial for institutions, like the Health Center, whose resources are extremely limited and positive operating margins non-existent .

Very recently, the Connecticut Supreme Court confirmed that, if a plaintiff fails to obtain an opinion from a "similar health care provider" prior to filing suit, dismissal is mandatory. See Bennett v. New Milford Hosp., Inc., 300 Conn. 1 (2011). However, the Supreme Court also made clear that the dismissal is "without prejudice" and, therefore, a plaintiff can re-file the action by simply complying with the Good Faith statute. Therefore, a plaintiff who does have a meritorious case will ***never*** be prevented from having his or her day in court.