Connecticut State Medical Society
Connecticut Chapter of the American College of Physicians
Connecticut Chapter of the American College of Surgeons
Testimony on Senate Bill 243 An Act Concerning the Certificate of Merit

Judiciary Committee
March 7, 2012

Senator Coleman, Representative Fox and members of the Judiciary Committee, my name is Dr. Courtland Lewis. I am Chairman of the Connecticut State Medical Society Legislative Committee and a practicing orthopedic surgeon in Farmington. On behalf of the more than 8,500 physicians and physicians-in-training of the Connecticut State Medical Society (CSMS) and the Connecticut Chapters of the American College of Surgeons and the American College of Physicians, thank you for the opportunity to present this testimony to you in STRONG opposition to **Senate Bill 243 An Act Concerning the Certificate of Merit.** This bill turns back the clock on a delicate compromise enacted by the Legislature in Public Act 05-275 at the end of a two-year review of medical liability reform. This proposal undoes the compromise and would be a significant step backward in addressing medical liability in Connecticut.

Language contained in CGS 52-190a establishes comprehensive yet appropriate standards for certificates of merit. This language has proven to be effective and beneficial to the filing and adjudication of civil medical liability claims. Clearly their presence has not resulted in lopsided results in Connecticut courts: in 2011, Connecticut Insurance Department statistics show half of medical liability cases were decided for plaintiffs and half for defendants.

SB 243 makes significant changes to the medical standard for filing a certificate of merit. CGS 52-190a states that in providing an opinion relating to medical negligence, plaintiffs must provide a "detailed basis for the formation of such opinion." SB 243 lowers that threshold to "one or more breaches of the prevailing professional standard of care." This modification lowers the standard for such certificates to make it easier to claim negligence has occurred.

As part of the medical liability reform compromise enacted in 2004-2005, physicians were assured the expert making the good faith assertion as to the alleged medical negligence was a "similar" health care provider – in other words, a physician practicing in the same specialty as the defendant physician. SB 243 drastically lowers this standard and simply asks that the health care provider issuing the good-faith assertion be "qualified," a significantly lower standard than currently exists.

As an orthopedic surgeon who actively practices in Connecticut, I have 14 years of formal education, including four years of undergraduate education, four years of medical school, five years of residency in orthopedic surgery, and an additional year of specialized education in arthritis surgery, a subspecialty of orthopedic surgery. The practice of medicine is becoming increasingly specialized – no longer is an "orthopedist" simply an "orthopedist," or a "specialist" a "specialist." For example, .a rheumatologist specializing in non-surgical arthritis treatments does not have the same insight, expertise and up-to-date training total knee replacement as an orthopedist who specializes in arthritis surgery. Under the proposed changes in SB 243, an

orthopedist specializing in foot and ankle surgery would be qualified to issue an opinion letter regarding an alleged breach of the standard of medical care by a total joint surgeon like me. (I would not know that, bearing in mind that the identity of the qualified physician would also be withheld from me under the statute.) By the same token, I would not feel comfortable issuing a certificate for a case against an orthopedist who is a hand specialist or a foot specialist.

Medical liability cases involve highly technical and complicated scientific matters, and many times, it is only physicians practicing in the same specialty or subspecialty who will have the necessary medical education, training and practice experience to be able to offer a sound opinion whether a physician breached the standard of care in a particular case.

The Connecticut Supreme Court has interpreted the existing statute in a manner that is true to the original legislation while creating a forgiving climate for plaintiffs in meritorious cases. In situations when an attorney fails to meet the appropriate standard for a certificate of merit, dismissals are without prejudice. Furthermore, cases can easily be revived under the Accidental Failure of Suit statute.

This legislative body undertook the task of a comprehensive review of the medical liability system in 2005. That included appropriate changes to the tort system and the insurance system in the interest of patient safety. Physicians of this state, myself included, are very concerned that this legislation proposes to tinker with only one portion of that comprehensive reform -- one that is actually working as intended -- without a complete review of Public Act 05-275.

Please oppose Senate Bill 243.