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The Honorable Eric D. Coleman
Chair
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

The Honorable Gerald Fox, III
Chair
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

**Re: Senate Bill 243 - OPPOSE**

Dear Chairman Coleman and Chairman Fox:

On behalf of the American Medical Association (AMA) and our physician and student members, I am writing to you today to oppose Senate Bill (S.B.) 243. As you may know, the AMA has been working for years to reform the medical liability system at both the federal and state levels. The current medical liability system reduces patients' access to health care – particularly high risk procedures. It hinders patients' communication with their physicians. It adds to the cost of patients' health care expenses. And it forces patients to go through additional tests and procedures due to a system that encourages physicians to practice defensive medicine.

The current medical liability system has a detrimental effect on physician practices as well. According to results from a 2010 AMA report, 61 percent of physicians age 55 and older have been sued at some point during their careers and nearly 40 percent have been sued two or more times. Among surgeons age 55 and older, nine out of 10 have been sued. Even more remarkably, 51 percent of obstetricians and gynecologists under age 40 have been sued.

These statistics are even more alarming after reviewing how such claims are resolved. According to a 2006 *New England Journal of Medicine* article, researchers found that no injury had occurred in 3 percent of the claims that they reviewed and in another 37 percent, there had been no error. Further, according to Physician Insurers Association of America data, 64 percent of the claims against physicians that closed in 2010 were dropped, withdrawn or dismissed. These data highlight the need for strong certificate of merit statutes to help eliminate meritless lawsuits before they enter the litigation process and add costs to a health care system that is already strained.

During the most recent medical liability crisis, medical liability premiums skyrocketed in many parts of the United States. Among the states most adversely affected was Connecticut, where premiums reached some of the highest in the nation. In recent years, there had been some relief from the crisis; however, that was not the case in Connecticut. Although some states experienced modest decreases in premiums, they remain high in Connecticut. Currently, some obstetricians and gynecologists in Connecticut face premiums of over $170,000 a

year. Also, according to a Kaiser Family Foundation report, Connecticut ranks 6th in average claim payment at $535,472 which further depicts the negative liability climate that Connecticut physicians face.

Turning to S.B. 243, it would be a major mistake for a state to reverse course with any of its medical liability provisions – especially at a time of transition for the health care system - which could lead to new or expanded liability theories. We have long supported certificate of merit statutes, and a key provision in these laws is the expert witness requirement. Medical liability cases involve highly technical and complicated scientific matters. Many times, physician specialists and subspecialists are the only ones who will have the necessary medical education, training and practice experience to be able to offer a sound opinion regarding whether or not a physician breached the standard of care in a particular case.

For example, orthopaedic surgeons have up to 14 years of formal education, including four years of undergraduate education, four years of medical school, five years of residency in orthopaedic surgery, and one optional year of specialized education in foot and ankle orthopaedics, a subspecialty of orthopaedic surgery. After establishing a licensed practice, an orthopaedic surgeon may demonstrate mastery of orthopaedic knowledge by passing both written and oral examinations given by the American Board of Orthopaedic Surgery. Physicians in other specialties and subspecialties also participate in similar rigorous education and training. Based on the highly technical nature of many medical liability lawsuits, the AMA contends that physicians offering their medical opinion regarding the standard of care in such a lawsuit should be asked to opine only within their specialty expertise. This is good public policy and creates a fair process for physicians.

An even greater concern is that non-physician providers may be called on to offer their opinion on the standard of care in a medical liability lawsuit against a physician. Non-physician providers play an important role in our nation's health care system, but they do not have the medical education, training and practice experience to be qualified to opine on whether or not a physician breached the standard of care. Such a change to Connecticut's certificate of merit requirement would be a step backward as the state seeks to create a fair system for all parties involved.

In closing, thank you for your consideration of our comments, and we urge you to oppose S.B. 243. If you have questions or need further information, please contact Mike Glasstetter, Senior Legislative Attorney, at (312) 464-5033 or michael.glasstetter@ama-assn.org.

Sincerely,

James L. Madara, MD

cc: Members of the Joint Committee on Judiciary
Connecticut State Medical Society