



**Testimony of Connecticut Orthopaedic Society, Presented by F. Scott Gray, MD**

**In Opposition of *Senate Bill 243 An Act Concerning Certificate of Merit***

**Judiciary Committee March 7, 2012**

Senator Coleman, Representative Fox and distinguished Members of the Judiciary Committee, thank you for the opportunity to present this testimony to you in strong opposition to Senate Bill 243, An Act Concerning Certificate of Merit

I am Dr. Scott Gray, Secretary Treasurer for the Connecticut Orthopaedic Society representing over 200 orthopaedic surgeons in Connecticut and I am a board certified orthopaedic surgeon with a subspecialty in Foot and Ankle in private practice in Danbury, Connecticut.

I am here today to represent the collective voice of my colleagues in opposition to the proposed changes to An Act Concerning Certificate of Merit which will diminish the credibility of the expert witness. If these meaningful qualifications to the definition of similar healthcare provider are removed, it would be a serious step backwards and flies in the face of the recent Connecticut's Supreme Court ruling, *Bennett v. New Milford Hospital* (2011).

The proposed language change will disband the requirement of a detailed basis for an expert's opinion which defeats the purpose of requiring an expert report in the first place. Like the standard upheld by Connecticut's Supreme Court and similar statutes in over 40 states, both maintain the integrity of the law by ensuring that testimony against a physician needs to be provided by an expert who is board-certified and similarly qualified in the field of practice of the defendant physician. In fact, Florida went a step further last year by instituting an out of state certificate requirement for expert witnesses practicing outside their state which provides a simple but effective vetting process for out of state witnesses- verifying their licensing status.

Data from the Connecticut Medical Insurance Company for 2006 through 2010, which has previously been presented, indicates that out of the 405 CMIC policy holder malpractice cases, only two of the Company's seven filed motions to dismiss relating to Certificate of Merit, were granted and only one was upheld indicating the effectiveness of the current statute for all involved parties and illustrates if a suit has merit it will be brought forward. Our physician members are not looking to stop lawsuits from happening but to maintain legitimate standards.

Another provision would eliminate the requirement that a board- certified, similarly trained health care provider be an expert in the first place. In effect, it leaves the defendant with the potential of a non- related specialist rendering a decision that does not require details to determine if there is the appearance of negligence in order to move the case forward. These proposed provisions will not only add to the costs of frivolous suits, prolong the already lengthy time period but do nothing to promote a fair and equitable legal system.

Please oppose the changes proposed in this bill and consider making the Certificate of Merit stronger by requiring that at the time of filing, complete disclosure of who the expert is and the training and education they have to ensure that they meet the requirements for proceeding with the case and maintain the current statute provision that requires a detailed basis for the formation of a medical negligence opinion in order to move forward.

With significant malpractice reforms in many other states, Connecticut's Certificate of Merit is comparatively modest and to gut or weaken it now by eliminating important and justified thresholds threatens the vibrancy of medical practice and healthcare delivery in our State. Thank you for your time.

Sincerely,

F. Scott Gray, M.D.  
Connecticut Orthopaedic Society – Secretary Treasurer  
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