Hartford HealthCare

TESTIMONY OF
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SUBMITTED TO THE
JUDICIARY COMMITTEE
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SB 243, An Act Concerning Certificates Of Merit

Hartford HealthCare, on behalf of itself and its hospital members, Hartford Hospital, The Hospital of Central Connecticut, Midstate Medical Center and Windham Hospital, along with its employed physicians, (together "HHC") appreciates the opportunity to submit testimony concerning **SB 243, An Act Concerning Certificates Of Merit.** HHC opposes this bill for the reasons outlined herein.

Under Connecticut law, tort cases that involve technical or scientific fields require expert testimony. For medical liability cases, Connecticut has developed a statutory framework to ensure that the experts used are sufficiently qualified. As part of this system, Connecticut law also contains a requirement that a plaintiff, or the plaintiff's lawyer, perform and certify a pre-suit analysis to ensure that the claim is filed in good faith. This pre-suit process is documented by a "good faith certificate," along with a brief written explanation of the expert's review, stating that the expert believes that there appears to be evidence of medical negligence. Failure to include a good faith certificate with a complaint makes the claim subject to possible dismissal.

This bill seeks to significantly weaken the good faith certificate process. The bill would dramatically expand the types of professionals permitted to give pre-suit expert opinion to include any person who might be deemed an expert at the time of trial, not experts who, as similar healthcare providers, necessarily have the same specialty or training as the defendant. The possible effect of this change would allow a nurse working in a lawyer's office to opine on whether a specialist physician met the standard of care for such specialty. Such a change would roll back important decisions that this legislative body made in 2005 – decisions that created objective criteria for expert qualifications currently used for pre-suit good faith letters. This bill would replace a well-reasoned and balanced system with one that would instead depend on the plaintiff's attorney's subjective assessment of who is a qualified expert. The current certificate of good faith requires an expert opinion similar to that required in presenting the plaintiff's case at trial and therefore is no extra work.

In 2005, the General Assembly purposefully made changes to the good faith certificate statute to require that a pre-suit evaluation be performed by a similar healthcare provider. As noted in the legislative history, the goal of those changes was to reduce ongoing problems "caused by plaintiffs misrepresenting or misunderstanding physicians' opinions as to the merits of their action," to "ensure that there is a reasonable basis for filing a medical malpractice case under the circumstances," and to "eliminate some of the more questionable or meritless cases" filed under the standard that existed prior to 2005.

This statutory design was examined and upheld by the Connecticut Supreme Court, which afforded appropriate deference to legislators' comments and other testimony found in the legislative record.

Many medical malpractice claims brought prior to the 2005 statutory change were of a frivolous nature since the plaintiff's attorney had the ability to retain any expert practitioner, of any specialty, when filing a medical malpractice lawsuit. These practitioners did not have the basic knowledge necessary in determining whether or not the standard of care for the specialty in question, was in fact breached. The result was plain and simple, the cases were eventually withdrawn or resulted in defense verdicts but not before thousands of healthcare dollars were spent defending these frivolous claims.

In our experience, the existing Certificate of Merit statute as interpreted by the Connecticut Supreme Court, has not posed a significant obstacle in the bringing of a medical malpractice claim. Further, there are several safeguards already in place to protect the plaintiff, such as the accidental failure of suit statute. Thus, the change is law is not necessary to ensure that any claim with merit proceeds in the court system.

SB 243 would remove the objective standards applicable to qualified experts that were enacted in 2005. In addition, SB 243 would remove the sanction of possible dismissal – a sanction that essentially assures compliance – for failure to obtain a good faith certificate. The bill would instead merely allow those who do not comply with their pre-suit obligations to submit the certificate within 30 days after filing suit. A pre-suit obligation that can be performed after the suit is filed is meaningless, and makes the process discretionary.

A plaintiff's lawyer should be required to seek advice from a "similar" healthcare provider with the same specialty as the physician s/he intends to sue just as s/he would seek the advice of an appropriate specialist for a medical problem s/he was confronted with. It is not a burden that is being imposed; it's just common sense.

The measures implemented in 2005 – which require a meaningful, pre-suit inquiry – should not be dismantled. Given the current status of the economy and the desire to reduce healthcare spending, repealing this legislation would result in diverting healthcare dollars desperately needed to provide quality patient care to litigation defense costs. The only parties who would benefit are the lawyers.
We urge you to oppose SB 243.

Thank you for your consideration of our position.

For additional information, contact Yvette Melendez at (860) 545-4155.