Testimony Dated March 6, 2012 from Jerome Krasnow , 27 Kennedy Road, Manchester, CT 06042

Suggested Amendments to SB 243 – An Act Concerning Certificates of Merit (CGS 52-190a)

Current statute states:

No civil action or apportionment complaint shall be filed to recover damages resulting from personal injuries... in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney r party filing the action... has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint, initial pleading... shall contain a certificate of the attorney or party filing the action... that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant.... To show the existence of such good faith, the claimant or claimant's attorney... shall obtain a written and signed opinion of a similar health care provider, as provided by section 52-184c... that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion... The claimant or the claimant's attorney ... shall retain the original written opinion and shall attach a copy of such written opinion... to such (good faith) certificate.

The above statute has been strictly interpreted by the Connecticut judicial system, even to cases started in small claims court.

PROPOSED AMENDMENT 1 – Small Claims Exemption:

The requirements of CGS 52-190a shall not apply in small claims medical negligence cases filed in Small Claims court. Transfer of such cases begun in Small Claims court to the Superior Court shall not have CGS 52-190a as a remedy to dismiss.

PROPOSED AMENDMENT 2– Replace motion to dismiss with motion to strike

The language in 52-190a which sets forth, "The failure to obtain and file the written opinion required by subsection (s) of this section shall be grounds for dismissal of the action" shall be replaced with

"The failure to obtain and file the written opinion required by subsection (s) of this section shall be grounds for a motion to strike."

Then following the replacement, this language shall be added: "Claimant shall have up to twenty four months to provide a good faith written and signed opinion from a similar health care provider that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. Until such evidence and certification is provided, no further motions shall be considered by the Court."

REASONING:

With regard to Amendment 1: The purpose of CGS52-190a was to unclog the courts from frivolous law suits involving medical negligence. It succeeded too well. Only the most egregious cases can afford to pay for the medical opinion required for such suits. Judge Dembrowski in Krasnow v. Hartford Hospital when pro se claimant indicated that two hospitals refused to allow their phlebotomists to provide an opinion (pro or con) as to possible medical negligence, the judge stated, "Even attorneys have difficulty getting such letters." The State Constitution indicates that everyone has the right to bring an action before a jury. That right is crushed by setting a bar beyond the means of the poor.

The State court having strictly interpreted the legislation's intent, extending the requirement of CGS52-192a to cases begun in small claims court. Judge Dembrowski says that it is the legislature's place to correct this. Small claims court is intended for hearings without the need to engage an attorney. Because no notice is provided before filing an action of the requirements of CGS52-190 in the instructions from Small Claims Court, the only way litigant would know of this requirement would be engage an attorney first. The poor cannot. This violates the State Constitution on the right to be heard by a jury.

Doesn't most medical negligence result from a small failure, a sloppy practice that happened? It isn't the case of the doctor cut off the wrong leg to save a life, but that a sponge was left in the body because of a miscount, that lead to harm. Or the pharmacy administered the wrong pill or a nurse accidentally gave a wrong pill resulting in harm. Small errors that lead to big consequences might be avoided if accountability exists with small matters of negligence. Suits begun in small claims court can keeping the medical providers on their toes. If they cannot be dismissed, a cost benefit analysis may occur that it is better for the hospital to correct the fault and pay the damages, rather than pour money into legal fees. For the reasons stated, cases begun in small claims court should be excluded from the requirements of 52-190a, and if transferred to superior court may not be dismissed on its grounds.

With regard to Amendment 2: Judge Berdon in his dissent in *Aramis Rois et al v. CCMC Corporation et al* argued that the proper course for failure to meet 52-190a should be a motion to strike, rather than a motion to dismiss with its finality.

The proposed amendment seeks to keep the essence of 52-190a of not clogging the court with frivolous motions, but also to give time to provide merit. Berdon indicates that a motion to strike typically provides 15 days to provide the requirements. However, given the difficulty to obtain good faith statements with detailed reasoning of negligence, the time frame of 24 months allows ample time to obtain the needed requirements of 52-190a.

Thank you for this opportunity to provide testimony to the committee.

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