



General Assembly

February Session, 2012

Amendment

LCO No. 4045

SB0024304045SD0

Offered by:

SEN. COLEMAN, 2nd Dist.
REP. FOX, 146th Dist.
SEN. DOYLE, 9th Dist.
SEN. FASANO, 34th Dist.
SEN. KISSEL, 7th Dist.

REP. HETHERINGTON, 125th Dist.
REP. ROWE, 123rd Dist.
REP. LABRIOLA, 131st Dist.
REP. KLARIDES, 114th Dist.
REP. SMITH, 108th Dist.

To: Senate Bill No. 243

File No. 331

Cal. No. 263

"AN ACT CONCERNING CERTIFICATES OF MERIT."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 52-190a of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective from passage and*
5 *applicable to actions pending on or filed on or after said date*):

6 (a) (1) No civil action or apportionment complaint shall be filed to
7 recover damages resulting from personal injury or wrongful death
8 occurring on or after October 1, 1987, whether in tort or in contract, in
9 which it is alleged that such injury or death resulted from the
10 negligence of a health care provider, unless the attorney or party filing
11 the action or apportionment complaint has made a reasonable inquiry
12 as permitted by the circumstances, including reasonable efforts to

13 obtain a written opinion from a similar health care provider, as defined
14 in section 52-184c, and if proceeding under subparagraph (B) of this
15 subdivision, to determine that there are grounds for a good faith belief
16 that there has been negligence in the care or treatment of the claimant.
17 The complaint, initial pleading or apportionment complaint shall
18 contain a certificate of the attorney or party filing the action or
19 apportionment complaint that such reasonable inquiry gave rise to a
20 good faith belief that grounds exist for an action against each named
21 defendant or for an apportionment complaint against each named
22 apportionment defendant. To show the existence of such good faith,
23 the claimant or the claimant's attorney, and any apportionment
24 complainant or the apportionment complainant's attorney, shall obtain
25 a written and signed opinion of (A) a similar health care provider, as
26 defined in section 52-184c, [which similar health care provider shall be
27 selected pursuant to the provisions of said section,] or (B) from a
28 health care provider who the court concludes, based on a review of the
29 written opinion which shall include a detailed description indicating
30 that the health care provider possesses sufficient training, knowledge
31 and experience in the specific care, treatment or diagnosis at issue in
32 the complaint within a five-year period before the incident giving rise
33 in the complaint, so as to be able to testify as an expert as to the
34 standard of care as to each defendant to whom the expert has issued
35 an opinion. A written opinion from a health care provider pursuant to
36 subparagraph (B) of this subdivision shall include a statement as to the
37 existence of any board certification in a related specialty and license to
38 practice medicine in any jurisdiction. The conclusion of the court
39 pursuant to subparagraph (B) of this subdivision shall be made
40 without prejudice as to said health care provider should such health
41 care provider's qualifications be challenged at trial. The written
42 opinion shall state that there appears to be evidence of medical
43 negligence and [includes] include a detailed basis for the formation of
44 such opinion which identifies one or more breaches of the prevailing
45 professional standard of care.

46 (2) Such written opinion shall not be subject to discovery by any

47 party except for questioning the validity of the certificate. The claimant
48 or the claimant's attorney, and any apportionment complainant or
49 apportionment complainant's attorney, shall retain the original written
50 opinion and shall attach a copy of such written opinion, with the name
51 and signature of the similar health care provider expunged, to such
52 certificate. The similar health care provider who provides such written
53 opinion shall not, without a showing of malice, be personally liable for
54 any damages to the defendant health care provider by reason of
55 having provided such written opinion.

56 (3) In addition to such written opinion, the court may consider other
57 factors with regard to the existence of good faith.

58 (4) If the court determines, after the completion of discovery, that
59 such certificate was not made in good faith and that no justiciable issue
60 was presented against a health care provider that fully cooperated in
61 providing informal discovery, the court upon motion or upon its own
62 initiative shall impose upon the person who signed such certificate or a
63 represented party, or both, an appropriate sanction which may include
64 an order to pay to the other party or parties the amount of the
65 reasonable expenses incurred because of the filing of the pleading,
66 motion or other paper, including a reasonable attorney's fee. The court
67 may also submit the matter to the appropriate authority for
68 disciplinary review of the attorney if the claimant's attorney or the
69 apportionment complainant's attorney submitted the certificate.

70 (b) Upon petition to the clerk of the court where the civil action will
71 be filed to recover damages resulting from personal injury or wrongful
72 death, an automatic ninety-day extension of the statute of limitations
73 shall be granted to allow the reasonable inquiry required by subsection
74 (a) of this section. This period shall be in addition to other tolling
75 periods.

76 (c) The failure to [obtain and file the written opinion required by]
77 comply with subsection (a) of this section shall be grounds for the
78 dismissal of the action, except that no such action may be dismissed

79 unless the claimant has failed to attach a copy of a written opinion, or
80 has failed to comply within a single forty-five-day period after being
81 ordered to do so by the court."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to actions pending on or filed on or after said date</i>	52-190a