

Testimony of the  
Connecticut ENT Society  
Connecticut Urology Society  
Connecticut Orthopaedic Society  
Connecticut Society of Eye Physicians  
Connecticut State Society of Anesthesiology  
Connecticut Chapter of the American College of Surgeons  
Connecticut Chapter of The American College of Cardiology  
Connecticut Dermatology and Dermatologic Surgery Society

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**on S.B. 252, AN ACT CONCERNING MEDICAL MALPRACTICE DATA**

Before the Insurance and Real Estate Committee

March 4, 2010

Good Afternoon, Senator Crisco, Representative Fontana and other distinguished members of the Insurance and Real Estate Committee. I am Dr. William Ehlers and I am a board certified ophthalmologist practicing at the University of Connecticut Health Center. I am also the legislative chair of the Connecticut Society of Eye Physicians and I am here today representing over 2500 physicians in the medical specialties of Ophthalmology, Otolaryngology, Cardiology, Anesthesiology, Dermatology, Orthopaedics, General Surgery and Urology to **oppose** RB 252, AN ACT CONCERNING MEDICAL MALPRACTICE DATA REPORTING.

Connecticut physicians have long supported transparency in health care and this includes malpractice reporting. In fact, exactly two years ago to the day, we gave testimony supporting SB 471, a bill that ultimately became part of the Connecticut General Statutes requiring all licensed health care providers to report malpractice events to the Department of Public Health. It is therefore distressing to us to speak in opposition to this proposed legislation.

It must be noted that this bill largely seeks to duplicate the system that makes malpractice settlement information available to the public on the Department of Public Health website. As I mentioned, physicians were instrumental in supporting legislation that strengthened this system by expanding reporting requirements – something that is actually missing from this proposed legislation. Unfortunately, because of budget constraints, this expanded coverage has yet to be implemented. This fact alone suggests that expending time and resources creating a parallel system might better be applied to completing the legislatively mandated strengthening of DPH reporting requirements. This seems especially important as we face the worst budget crisis in Connecticut's history.

We are also troubled by some of the language in this bill. Everyone knows that our current legal system sometimes requires individuals and companies to fight lawsuits that are frivolous or without merit, and this holds true for malpractice lawsuits as well. Any legal defense is time consuming and expensive, and it is well known that lawsuits are sometimes settled to avoid a costly, protracted legal battle. Such settlements often contain language that denies any wrong doing on the part of the defendant, but the language in this bill literally equates "liability settlements", including alleged, but not proven, negligence, and claims closed without payment with "compensation for malpractice". This violates a basic tenet of the American legal system, the concept of presumed innocence by equating a claim of malpractice that is not defeated outright

or dropped, with actual malpractice. Malpractice should never be hidden, but the act of crying “wolf” should never be equated to an actual wolf.

Every time that I discuss cataract surgery with a patient, I spend at least ten minutes describing in frightening detail some of the things that can go wrong during their surgery. Some of these events are complications that are fortunately rare, but not completely avoidable, and some are adverse events which are unforeseen mal-events despite technically uncomplicated surgery. Adverse events are unfortunate but are generally not malpractice. But a malpractice lawsuit can be initiated by any unhappy patient, and it is a life changing, traumatic event for a physician. Thus, lowering the threshold for defining an event as “malpractice” will have a negative effect on healthcare in Connecticut, as doctors practicing here, and those considering practice here; find an even less friendly environment. We are already recognized as one of the five worst states in the nation in which to practice medicine. The cost of doing business is high, and personal taxes are among the highest in the nation, and unfortunately, we are still listed as a “malpractice crisis state”. This bill will only exacerbate this situation, and it will be more difficult to recruit new physician to practice in Connecticut.

In summary, while we strongly support transparency in healthcare and full disclosure of malpractice events for all licensed healthcare providers, we believe this bill is does little to accomplish those goals. It duplicates malpractice disclosure requirements that are already in place, and it redefines terms in a way that would be harmful and misleading. We believe it will ultimately have a negative impact on the delivery of safe, cost-effective care in Connecticut. Thank you for your attention.