House of Representatives

File No. 865

General Assembly

January Session, 2011

(Reprint of File No. 552)

Substitute House Bill No. 6487
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 31, 2011

AN ACT CONCERNING CERTIFICATES OF MERIT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 52-190a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to causes of action pending on or accruing on or after said date*):

(a) (1) No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint 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 or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist

for an action against each named defendant or for an apportionment complaint against each named apportionment defendant. To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant's attorney, shall obtain a written and signed opinion of a **[**similar**]** qualified health care provider, as defined in **[**section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section**]** subsection (d) of this section, that there appears to be evidence of medical negligence and **[**includes a detailed basis for the formation of such opinion**]** which states one or more specific breaches of the prevailing professional standard of care.

(2) Such written opinion shall not be subject to discovery by any party except for questioning the validity of the certificate. The claimant or the claimant's attorney, and any apportionment complainant or apportionment complainant's attorney, shall retain the original written opinion and shall attach a copy of such written opinion, with the name and signature of the **[**similar**]** qualified health care provider expunged, to such certificate. The **[**similar**]** qualified health care provider who provides such written opinion shall not, without a showing of malice, be personally liable for any damages to the defendant health care provider by reason of having provided such written opinion.

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

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

disciplinary review of the attorney if the claimant's attorney or the apportionment complainant's attorney submitted the certificate.

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

(c) The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action, except that no such action may be dismissed for the failure to obtain and file such written opinion, unless the claimant has failed to attach a copy of such written opinion to such certificate pursuant to subdivision (2) of subsection (a) of this section, or has failed to remedy such failure within sixty days after being ordered to do so by the court.

(d) For the purposes of this section, "qualified health care provider" means a similar health care provider, as defined in subsection (b) or (c) of section 52-184c, or any other health care provider who may testify as an expert pursuant to subsection (d) of section 52-184c.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage and applicable to causes of action pending on or accruing on or after said date*	52-190a

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 $	FY 13 $
UConn Health Center	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill alters the manner in which attorneys may determine a good faith belief that a claimant received negligent medical care or treatment.

Should the provisions of the bill lead to an increase in the number of malpractice cases that are litigated, the University of Connecticut Health Center (UCHC) may realize additional legal and medical malpractice costs. The extent of these costs cannot be known in advance. However, for purposes of illustration, UCHC has incurred legal costs of $1.8 million over the last four years defending malpractice claims that ultimately resulted in no payment to the claimant.

House "A" made several changes to the underlying bill that did not alter the fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis
sHB 6487 (as amended by House "A")*

AN ACT CONCERNING CERTIFICATES OF MERIT.

SUMMARY:

This bill expands the types of health care providers who may provide a prelitigation opinion letter concerning evidence of medical negligence in a medical malpractice lawsuit or apportionment complaint (see BACKGROUND). It eliminates the requirement that the opinion letter include a detailed basis for the formation of the opinion, instead requiring that it state one or more specific breaches of the prevailing professional standard of care.

The bill allows dismissal due to failure to obtain and file the opinion letter only if the claimant does not (1) attach a copy of the opinion letter to the good faith certificate, as is required by law or (2) remedy the failure to obtain and file the letter within 60 days of the court's order to do so.

*House Amendment "A" adds the terminology "qualified health care provider." It allows dismissal due to failure to obtain and file the opinion letter if the claimant does not attach a copy of it to the good faith certificate. It deletes several provisions, such as those (1) allowing an opinion letter to be submitted by a provider qualified to testify on the standard of care for corporate or business defendants, (2) requiring consideration of the letter to be based on the attached copy, and (3) specifying that the letter cannot limit expert witness testimony or allegations against a defendant. It also specifies that the bill applies to causes of actions pending on, or accruing on or after, the date of the bill's passage.

EFFECTIVE DATE: Upon passage, and applicable to causes of actions pending on or accruing on or after that date.

HEALTH CARE PROVIDERS QUALIFIED TO SUBMIT OPINION LETTER

By law, an attorney or claimant cannot file a medical malpractice lawsuit or apportionment complaint unless he or she has made a reasonable inquiry under the circumstances to determine that grounds exist for a good faith belief that the claimant received negligent medical care or treatment. The complaint or initial pleading must contain a certificate to this effect ("good faith certificate").

Under current law, to show such good faith, the claimant or attorney must obtain a written, signed opinion from a "similar health care provider" (see BACKGROUND) that there appears to be evidence of medical negligence. The bill also allows an opinion letter from health care providers who are not "similar health care providers" but are otherwise legally qualified to be expert witnesses. By law, this includes a provider who, to the court's satisfaction, has sufficient training, experience, and knowledge due to actively practicing or teaching in a related field within the five years before the incident giving rise to the claim, to be able to provide expert testimony on the prevailing professional standard of care in a given medical field.

The bill classifies all providers who may submit an opinion letter as "qualified health care providers."

BACKGROUND

Apportionment Complaints

The requirement for a good faith certificate and opinion letter also applies to apportionment complaints against another health care provider. An apportionment complaint is a defendant's claim in a medical malpractice lawsuit that another health care provider, who the plaintiff did not make a defendant, committed malpractice and partially or totally caused the plaintiff's damages.

Similar Health Care Providers

By law, similar health care providers may be expert witnesses, and may also submit an opinion letter as specified above. Similar health care providers are either of the following:

1. if the defendant is a specialist or holds himself or herself out as a specialist, a provider (a) trained and experienced in the same specialty as the defendant and (b) certified by the appropriate American board in that specialty, provided that if the defendant is providing treatment or diagnosis for a condition not within his or her specialty, a specialist trained in that condition is also considered a similar health care provider; or

2. if the defendant is not board certified, trained, or experienced as a specialist, or does not hold himself or herself out as a specialist, a provider (a) licensed by the appropriate Connecticut agency or another state requiring the same or greater qualifications and (b) trained and experienced in the same discipline or school of practice as the defendant as a result of active involvement in practice or teaching within the five years before the incident giving rise to the claim.

Related Case

In *Bennett v. New Milford Hospital, Inc.*, 300 Conn. 1 (2011), the defendant filed a motion to dismiss the medical malpractice action because the author of the plaintiff's opinion letter was not a "similar health care provider." The defendant specialized in emergency medicine, but the opinion letter's author described himself as "a practicing and board certified general surgeon with added qualifications in surgical critical care, and engaged in the practice of trauma surgery."

The court ruled that the author of an opinion letter must be a similar health care provider. The court found the statute requiring the opinion letter to be ambiguous when read in isolation. However, when read together with related statutes and legislative history, the court

concluded that the author of an opinion letter must be a similar health care provider, regardless of his or her potential qualifications to testify at trial under another statutory provision.

The court also ruled that the law required a case to be dismissed when a plaintiff failed to file an opinion letter written by a similar health care provider. They found this statutory text also to be ambiguous, but when read in conjunction with legislative history and other cases, the court concluded that dismissal was mandatory. The court acknowledged the severity of this remedy, but emphasized that plaintiffs could re-file their case.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 30 Nay 11 (03/30/2011)