CHA CONNECTICUT HOSPITAL ASSOCIATION

TESTIMONY OF CONNECTICUT HOSPITAL ASSOCIATION SUBMITTED TO THE JUDICIARY COMMITTEE Friday, March 4, 2011

HB 6487, An Act Concerning Certificates Of Merit

The Connecticut Hospital Association (CHA) appreciates the opportunity to submit testimony concerning **HB 6487, An Act Concerning Certificates Of Merit**. CHA opposes this bill.

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 party, or the party'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. 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, instead, depends on the plaintiff's attorney's subjective assessment of who is a qualified expert.

As the Connecticut Supreme Court recently clarified in Bennett v. New Milford Hospital, the 2005 changes to the good faith certificate – which require that a pre-suit evaluation be performed by a similar healthcare provider – were purposefully made. The goal of the 2005 changes, as the Supreme Court noted from the legislative history, was to reduce ongoing problems "caused by plaintiffs misrepresenting or misunderstanding physicians' opinions as to the merits of their action" and to "ensure that there is a reasonable basis for filing a medical malpractice case under the circumstances" and "eliminate some of the more questionable or meritless cases" filed under the standard that existed prior to 2005.

In addition, HB 6487 would remove the objective standards regarding qualified experts, but it also would remove the penalty of possible dismissal – a penalty that essentially assures compliance – for failure to obtain a good faith certificate. The bill, instead, would merely require those caught in non-compliance 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.

Additionally, the bill seeks to alter the rules of trial evidence, limit the right of cross-examination of expert witnesses, and remove defense arguments, evidence, and motions directed at the plaintiff's case if the plaintiff changes his theory, allegations, or expert opinion. These changes would be a stunning departure from current practice and will result in an unlevel playing field for litigants.

Due process, evidentiary rights, and essential elements of trial such as cross-examination, cannot be stacked in favor of one side only, or the civil justice system risks being thrown out of balance. We urge you to oppose HB 6487.

Thank you for your consideration of our position.

For additional information, contact CHA Government Relations at (203) 294-7310.