



March 4, 2011

Senator Eric Coleman
Representative Gerald Fox
Members of the Joint Committee on Judiciary
Legislative Office Building
Hartford, CT 06106

I am writing on behalf of the Connecticut Orthopaedic Society, Connecticut Society of Eye Physicians CT Dermatology & Dermatologic Surgery Society, Connecticut ENT Society, Connecticut Urology Society and Norwalk Hospital which collectively represents more than 1,500 medical doctors in opposition to the proposed changes to, An Act Concerning Certificates of Merit: Raised Bill No. 6487.

My name is Michael R Marks, MD, MBA and I began practicing Orthopaedic Surgery in Norwalk, CT in 1988 and recently named Vice President of Business Development at Norwalk Hospital. I am a Past-President of the Connecticut Orthopaedic Society, former Chief of Staff at Norwalk Hospital and currently serve on the Board of Councilor to the American Academy of Orthopaedic Surgeons.

Every physician, each day strives to do the best for their patients. I know of no physician that seeks to intentionally harm their patient. It flies in the face of the Hippocratic Oath, "first do no harm", which our profession lives by. When an unexpected outcome occurs, everyone is devastated – the patient, their family and the physician.

Our current process for resolving medico-legal issues in this state is inefficient at best and the proposed bill would further undercut the process. A truly injured party has to wait years for restitution and in the case where there wasn't malpractice but possible mal-occurrence, the physician has had to deal with the personal attack of being accused of malpractice when none existed.

The last significant and meaningful changes to the malpractice process occurred in 1987 and the Certificate of Merit legislation was a step in the right direction. To gut or weaken it now would create havoc in the world of malpractice by eliminating important thresholds that must be met in order to move forward with a medical liability complaint.

Currently, one of the steps a plaintiff's attorney must do to file a claim is to have an affidavit of a Certificate of Merit from a physician in like practice, "a similar healthcare provider". The proposed legislation would only allow a challenge of qualifications of the "expert" AFTER the completion of discovery. We have a judicial system in this country that guarantees that a person be tried by a jury of our peers and continuing to mandate that a case could only proceed if a person of like training and specialty would testify for the plaintiff is paramount to a fair and equitable system. I should not be permitted to sign the Certificate of Merit as the expert witness to testify that a practitioner deviated

from the standard of care against any other practitioner who I didn't have similar education and training.

Another provision would eliminate the requirement that a detailed basis for the formation of an opinion of medical negligence by a similar health care provider. In effect, it leaves the defendant with the potential of a non-related specialist rendering a decision that does not require details to determine if there is the appearance of negligence in order to move the case forward. These proposed provisions will not only add to the costs of frivolous suits, prolong the already lengthy time period but do nothing to promote a fair and equitable legal system.

Please don't weaken this process by voting for this bill but instead make the Certificate of Merit stronger by requiring that at the time of filing, complete disclosure of who the expert is and the training and education they have to ensure that they meet the requirements for proceeding with the case and maintain the current statute provision that requires a detailed basis for the formation of a medical negligence opinion in order to move forward.

I thank you for allowing me to give written testimony on this very important issue. If I can be of further assistance, please contact me at 203-852-2613 or michael.marks@norwalkhealth.org

Sincerely,

Michael Marks, MD MBA
American Academy of Orthopaedic Surgeons - Councilor
CT Orthopaedic Society - Past President and Board Member
Norwalk Hospital- VP of Business Development