



Saint Raphael Healthcare System

659 George Street • New Haven, Connecticut 06511 • www.srhs.org

J.C. Lubin-Szafranski
*Vice President
General Counsel*

203.789.3336
fax 203.789.4244

jlubinszafranski@srhs.org

**WRITTEN TESTIMONY OF
JANEANNE LUBIN-SZAFRANSKI, ESQ.
VICE PRESIDENT AND GENERAL COUNSEL
SAINT RAPHAEL HEALTHCARE SYSTEM**

**BEFORE THE JUDICIARY COMMITTEE
Friday, March 4, 2011**

RE: HB 6487, AN ACT CONCERNING CERTIFICATES OF MERIT

Senator Coleman, Representative Fox, and Judiciary Committee members, I am submitting written testimony today in opposition to HB 6487, An Act Concerning Certificates of Merit.

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 the legislature made in 2005 -- these decisions 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 attorney's subjective assessment of who is a qualified expert. Additionally, it would cause Connecticut to move in a direction contrary to what is now almost universally considered to be best practices, relative to the issue of the qualification of technical experts, used in the most jurisdictions.

The Connecticut Supreme Court recently clarified that 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 Supreme Court noted from the 2005 legislative history that the goal of the 2005 changes 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 to removing the objective standards regarding qualified experts, HB 6487 would remove the penalty of possible dismissal of a case which is a penalty that assures compliance for failure to obtain a good faith certificate. The bill would merely require those caught in non-compliance 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 entire process discretionary.

The bill also alters the rules of trial evidence, limits the right of cross-examination of expert witnesses, and removes defense arguments, evidence, and motions directed at the plaintiff's case if the plaintiff changes his theory, allegations, or expert opinion. These changes would result in an unlevel playing field for litigants.

Due process, evidentiary rights, and essential elements of trial such as cross-examination should not be stacked in favor of one side only. We urge you to oppose HB 6487.

Thank you for your consideration of our position.