

**TESTIMONY OF
YALE NEW HAVEN HEALTH SYSTEM
BEFORE THE
JUDICIARY COMMITTEE
Friday, March 4, 2011**

HB 6487, AN ACT CONCERNING CERTIFICATES OF MERIT

Yale New Haven Health System (YNHHS), Connecticut's leading healthcare system with more than 14,000 employees serving more than 89,000 inpatients and 1.2 million outpatients per year, appreciates the opportunity to submit testimony in opposition to HB 6487, An Act Concerning Certificates of Merit.

We are aware that, among others, the Connecticut Hospital Association (CHA) has submitted testimony objecting to the passage of HB 6487, and are in agreement with its opposition. YNHHS also objects to the passage of HB 6487 for the following reasons:

- At the outset, it should be stated that YNHHS agrees that injured patients should be reimbursed for losses suffered due to medical negligence. YNHHS – through Yale-New Haven, Bridgeport and Greenwich hospitals, Northeast Medical Group and other affiliated organizations – provides comprehensive, cost-effective, advanced patient care characterized by safety, quality and service. YNHHS providers continually monitor performance on more than 60 metrics related to patient care, safety and clinical quality, *and that is where our focus needs to be.* The proposed legislation will increase health care costs and ultimately harm the public when limited healthcare resources necessary to improve patient care, safety and clinical quality are spent defending claims that, had they been properly investigated before filing, would have proven to be without merit.
- Current law encourages pretrial resolution of meritorious claims. The “similar healthcare provider” requirement as it stands today serves as a gatekeeping function that eliminates frivolous lawsuits, thereby allowing for a more focused identification of the issues on those cases with merit. In this manner, the current law has been effective in bringing the parties together to resolve meritorious claims. Furthermore, experienced and knowledgeable plaintiff attorneys routinely perform the requisite pre-suit investigation properly, and exhibit no difficulty in finding similar healthcare providers to offer opinions supportive of their positions on meritorious claims.
- The adoption of this bill will reverse a 25 year history of the General Assembly's efforts to rein in frivolous lawsuits. In 1986, the General Assembly enacted CGS 52-184c, which established that plaintiffs' lawyers could not prevail in a medical malpractice action unless a similar healthcare provider offered testimony at trial that the defendant healthcare provider's care did not meet the standard of care. While this was a salutary reform, it did not prevent the filing of frivolous actions, because the plaintiffs' lawyers were not required to obtain the expert opinion

before filing suit. This defect was corrected in 2005 with the passage of CGS 52-190a, which requires that plaintiffs' lawyers obtain the support of a similar healthcare provider prior to filing suit. The proposed bill will gut these reforms.

- The proposed amendments eliminate the objective criteria of who qualifies as a "similar healthcare provider", and require a court to await the completion of discovery and to conduct a mini-trial based on a new, watered-down and purely discretionary standard for "similar health care provider." Consequently, far from bringing an early resolution to frivolous medical malpractice lawsuits, the amendments seek to mandate that such lawsuits survive long enough to create the expense and confusion that CGS 52-190a was enacted to avoid. This ultimately impacts time and costs that are better served addressing those patients whose cases have merit.
- The substitution of the discretionary "may" for the mandatory "shall" with regard to the requirement that a judge dismiss a case where the plaintiff has failed to provide an appropriate expert opinion will further increase litigation costs, burden the courts with additional motions, and lead to inconsistent results. A bright line test is preferable for both the courts and the litigants on both sides, because all parties will have advance notice of the requirements for filing a medical malpractice case. Moving to a discretionary standard will result in the filing of more motions because the lawyers for both sides will have no way of knowing in advance whether a particular judge will see fit to dismiss a case or not, since different judges would be applying a discretionary standard.
- Rolling back medical malpractice reform at this time would be particularly anomalous, given our President's acknowledgement in his State of the Union address that additional medical malpractice reform is needed to accomplish the goals established by the health care initiative enacted last year by Congress which are expanding access, improving quality and controlling costs.

We do not want the good work achieved by the Legislature in 2005 to be undone. On behalf of YNHHS, we respectfully recommend the Committee reject this bill to best serve the public's interest in the delivery of health care by providers whose time and efforts are best devoted to their patients -- not to the defense of *non-meritorious* law suits.

Thank you for your consideration of YNHHS' position regarding this important matter.