

TESTIMONY IN FAVOR OF RAISED BILL NO. 6622, AN ACT CONCERNING THE BURDEN OF PROOF IN MEDICAL MALPRACTICE CASES AND THE STANDARD OF CARE RELATED TO EMERGENCY MEDICAL CARE AND TREATMENT.

Michael Carius, M.D., FACEP

Members of the Judiciary Committee:

I support Raised Bill No. 6622 for several reasons.

By way of background, I am a Board-Certified Emergency Physician and have been practicing Emergency Medicine in Connecticut for nearly 30 years. I am the Chairman of the Emergency Department at Norwalk Hospital, a Past President of the Connecticut College of Emergency Physicians, and a Past President of the American College of Emergency Physicians. I am deeply concerned about the status of our Emergency Departments and their collective ability to continue to serve as the ultimate Healthcare Safety Net for our frayed Healthcare System. Furthermore, it is important to remember that Emergency Departments serve this role as Healthcare Safety Net for us all, not just those without Healthcare Insurance or access to Healthcare.

The Emergency Departments of this State and of this Country are struggling. They are overcrowded. They are under-resourced. They are frequently used to hold admitted patients for whom there are no inpatient beds, thus decreasing their already limited capacity. Healthcare reform has not been able (and will not for the foreseeable future) to improve the infrastructure that is so vital to being able to provide medical care to all the members of our society, which is what makes the safety net provided by Emergency Departments so important. The number of Emergency Departments in this state and in this country are decreasing, and yet the total census of patients seen in Emergency Departments continues to increase on a predictable annual basis.

One of the unique aspects of Emergency Medical Care is that it is the *only* healthcare right that is accorded to every person in this country, citizen or non-citizen, insured or uninsured, employed or unemployed, English-speaking or non-English-speaking. This is because of a Federal Law called EMTALA, the Emergency Medical Treatment and Active Labor Act, that has its origins some 25 years ago as an attempt to prevent "hospital dumping" of patients who were uninsured. It has been modified several times by amendments and by judicial interpretations. But the bottom line is that it mandates that anyone who seeks Emergency Medical Care is entitled to a Medical Screening Exam, which must be extensive enough to exclude the presence of an Emergency Medical Condition, without regard to a patient's ability to pay. If an Emergency Medical Condition is found, the Hospital must stabilize that Condition or transfer the patient to a facility that can.

Emergency Physicians are not able to choose or define the patients who present to the Emergency Department because EMTALA says that it is a Federal Right for everyone. Because a significant portion of these patients do not have any ability to pay for their care and because they frequently fall into a high-risk category for one reason or another, they may develop complications or problems following their care that the Emergency Physicians have absolutely no control over. And yet they are mandated to care for everyone. This bill would represent a step in the right direction to address these concerns; there would be no additional reimbursement available for those patients without finances but there would be less likelihood of a successful lawsuit.

Frequently an Emergency Physician may need to enlist the services of a specialist to assist in the Evaluation (the Medical Screening Exam) of these patients and/or assist in the stabilization of any Emergency Medical Condition that is found. Increasingly, specialists do not want to participate in the care of these patients for two reasons: because it is unlikely that they will be paid for their services and/or because the high risk that these patients may have may lead to complications and subsequent lawsuits. This has led to a virtual crisis in Connecticut and in this Country of inadequate numbers of specialists who are willing to take call for Emergency Departments to see these patients. Again, this bill would do nothing to ensure adequate reimbursement for these specialists for their services but it would reduce the fear of a malpractice lawsuit that might arise through no direct fault of their own. And this might be enough incentive to bring back these badly needed Specialists to our Emergency Departments and the Emergency Medical Care System. Something that would benefit all of us.

In conclusion, I implore you to support this bill. It would go a long way toward addressing one of the critical needs of our overcrowded Emergency Departments today, that of ensuring that we have adequate numbers of specialists who are willing to take call to provide federally mandated care for our patients who require their special expertise by removing some of the fear of a malpractice lawsuit. It would also address a very real inequity in our Healthcare system that requires Emergency Physicians to evaluate and care for every patient presenting to an Emergency Department without any guarantee of payment for their services and yet leaves them vulnerable to malpractice lawsuits that may have nothing to do with the actual care that they have rendered.