

March 11, 2011

To: Committee on Public Health

From: Michelle DiLieto/Victim of Medical Malpractice

Re: Raised Bill No. 6547: AN ACT CONCERNING THE RESPONSIBILITIES OF THE DEPARTMENT OF PUBLIC HEALTH UPON RECEIVING NOTICE OF A MALPRACTICE CLAIM OR SETTLEMENT INVOLVING A HEALTH CARE PROVIDER PRESENTLY OR FORMERLY LICENSED BY THE STATE.

Respectfully I submit to this committee that this proposed Bill must be amended as follows to cure defects in the current statute, Section 1. Section 19a-17a:

As To Section (a):

DPH Review and Investigation of Awards and Settlements:

The way, in which the current law (a) is written, it allows the DPH to have discretion regarding its review of awards and settlements, and *then* make a determination of whether they want to investigate further, or whether disciplinary action is warranted. In the case of a malpractice award that is adjudicated in a court of law there should be a mandate that DPH shall investigate (which means that they must investigate) and determine if disciplinary action is warranted against the providers and/or the facility. The public is entitled to this information.

In my own medical malpractice case, I reported my award to Kathleen Boulware at the DPH. However, I hit a virtual "stone wall" and resorted to filing a complaint directly to the Commissioner. Although I provided the DPH with a thirty-nine page unanimous decision in my favor from the Connecticut Supreme Court including specific language, and outlining at length that Yale University and their doctors Peter Schwartz, Scott Casper, and Babak Edraki breached the standard of care, and that they were found to be negligent; Ms. Boulware was completely uncooperative stating that she would not investigate because my complaint was against Yale University, and not against specific doctors. She refused to listen to specifics and was not interested in reading the Supreme Court's ruling. She stated that when/if the DPH received a notification of an award or settlement from this entity(s), that she would then, and only then, "determine" herself whether or not she would investigate.

In the case of a settlement, where certain rights may have been waived on the part of the entity, the DPH is currently allowed to review and then determine whether or not further investigation or disciplinary action as warranted. The state should mandate that DPH must investigate the entity even in the case of a settlement.

Therefore, the section of the current law (a) related to this issue should be amended to include language as follows:

- The department shall investigate all medical malpractice awards to determine whether further disciplinary action against the providers and/or facility involved is warranted;
- The department shall review all medical malpractice settlements to determine whether further investigation or disciplinary action against the providers and/or facility involved is warranted.

Lack of Mandate for Enforcement:

Currently there is no reporting time frame requirement in place for as follows:

“.....the entity making payment on behalf of a party or, if no such entity exists, the party, shall notify the Department of Public Health of the terms of the award or settlement and shall provide to the department a copy of the award or settlement and the underlying complaint and answer, if any.

Language must be included to require:

- a deadline for reporting the award or settlement;
- and to provide DPH with a copy of the award or settlement and the underlying complaint and answer, if any.

No mechanism for DPH to begin an investigation if the entity(s) fails to report award or settlement:

Currently, the statute requires that the entity(s) report an award or settlement. However, if they fail to do so, DPH may not investigate based solely on a complaint from a plaintiff in a medical malpractice case, which has been adjudicated in a court of law. Even when DPH has been provided with a ruling by the Court regarding the medical malpractice, it has no mechanism for investigating the entity unless the entity reports it to the DPH.

There should be language inserted within the statute to allow:

- for the DPH to begin an investigation on the entity(s) in a medical malpractice based on a ruling from the Court.

Penalty for Non-Disclosure:

Currently there is no penalty imposed upon the entity(s) if they fail to report an award or settlement to the DPH, and the public remains unaware of any court rulings and/or disciplines imposed upon an entity(s).

- Language should be inserted within the statute to impose fines and/or sanction upon the entity(s) for failing to report an award or settlement;
- A requirement must be issued to the entity(s) to link the award or settlement information to information, which is required on yearly license renewals.

As To Section (b):

DPH's Actions to Determine Whether Such An Individual Is Practicing In Another State:

- DPH should notify the professional licensing department of the other 49 states of the name and identifying information of the individual involved in a malpractice award or settlement;
- in absence of a national registry, electronic transfer of information would facilitate the ability of DPH to report the professional and avoid time/expenditures necessary to locate a mal-practitioner.

Additional Suggestions:

Further, there may possibly be a need to amend the statute to include language pertaining to the public's ability to access disciplinary information on an entity(s) from the DPH website. The website should be revised to provide easily accessible, clear, current information to consumers.

Finally, the statute may be revised to pertain to any personal injury award or settlement, and not exclusively to medical malpractice awards or settlements.

I greatly appreciate your consideration on all of the above.

Thank you.

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Published: Tuesday, June 22, 2010

Opinion

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