



General Assembly

January Session, 2011

Raised Bill No. 6487

LCO No. 3956

03956_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING CERTIFICATES OF MERIT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-184c of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage and*
3 *applicable to actions filed on or after said date*):

4 (a) In any civil action to recover damages resulting from personal
5 injury or wrongful death occurring on or after October 1, 1987, in
6 which it is alleged that such injury or death resulted from the
7 negligence of a health care provider, as defined in section 52-184b, the
8 claimant shall have the burden of proving by the preponderance of the
9 evidence that the alleged actions of the health care provider
10 represented a breach of the prevailing professional standard of care for
11 that health care provider. The prevailing professional standard of care
12 for a given health care provider shall be that level of care, skill and
13 treatment which, in light of all relevant surrounding circumstances, is
14 recognized as acceptable and appropriate by reasonably prudent
15 similar health care providers.

16 (b) If the defendant health care provider is not certified by the

17 appropriate American board as being a specialist, is not trained and
18 experienced in a medical specialty, or does not hold himself out as a
19 specialist, a "similar health care provider" is one who: (1) Is licensed by
20 the appropriate regulatory agency of this state or another state
21 requiring the same or greater qualifications; and (2) is trained and
22 experienced in the same discipline or school of practice and such
23 training and experience shall be as a result of the active involvement in
24 the practice or teaching of medicine within the five-year period before
25 the incident giving rise to the claim.

26 (c) If the defendant health care provider is certified by the
27 appropriate American board as a specialist, is trained and experienced
28 in a medical specialty, or holds himself out as a specialist, a "similar
29 health care provider" is one who: (1) Is trained and experienced in the
30 same specialty; and (2) is certified by the appropriate American board
31 in the same specialty; provided if the defendant health care provider is
32 providing treatment or diagnosis for a condition which is not within
33 his specialty, a specialist trained in the treatment or diagnosis for that
34 condition shall be considered a "similar health care provider".

35 (d) [Any health care provider may testify as an expert in any action
36 if he: (1) Is a "similar health care provider" pursuant to subsection (b)
37 or (c) of this section; or (2) is not a similar health care provider
38 pursuant to subsection (b) or (c) of this section but,] In addition to a
39 similar health care provider described in subsection (b) or (c) of this
40 section, a "similar health care provider" is one who, to the satisfaction
41 of the court, possesses sufficient training, experience and knowledge as
42 a result of practice or teaching in a related field of medicine, so as to be
43 able to provide [such] expert testimony as to the prevailing
44 professional standard of care in a given field of medicine. Such
45 training, experience or knowledge shall be as a result of the active
46 involvement in the practice or teaching of medicine within the five-
47 year period before the incident giving rise to the claim.

48 Sec. 2. Section 52-190a of the general statutes is repealed and the

49 following is substituted in lieu thereof (*Effective from passage and*
50 *applicable to actions filed on or after said date*):

51 (a) (1) No civil action or apportionment complaint shall be filed to
52 recover damages resulting from personal injury or wrongful death
53 occurring on or after October 1, 1987, whether in tort or in contract, in
54 which it is alleged that such injury or death resulted from the
55 negligence of a health care provider, unless the attorney or party filing
56 the action or apportionment complaint has made a reasonable inquiry
57 as permitted by the circumstances to determine that there are grounds
58 for a good faith belief that there has been negligence in the care or
59 treatment of the claimant. The complaint, initial pleading or
60 apportionment complaint shall contain a certificate of the attorney or
61 party filing the action or apportionment complaint that such
62 reasonable inquiry gave rise to a good faith belief that grounds exist
63 for an action against each named defendant or for an apportionment
64 complaint against each named apportionment defendant. To show the
65 existence of such good faith, the claimant or the claimant's attorney,
66 and any apportionment complainant or the apportionment
67 complainant's attorney, shall obtain a written and signed opinion of a
68 similar health care provider, as defined in [section 52-184c, which
69 similar health care provider shall be selected pursuant to the
70 provisions of said section] subsection (f) of this section, that there
71 appears to be evidence of medical negligence and [includes a detailed
72 basis for the formation of such opinion] which states one or more
73 specific breaches of the prevailing professional standard of care. Such
74 written opinion shall not be required in any action against a health
75 care provider for assault, lack of informed consent or ordinary
76 negligence unrelated to the rendering of care or treatment.

77 (2) Such written opinion shall not be subject to discovery by any
78 party except for questioning the validity of the certificate. The claimant
79 or the claimant's attorney, and any apportionment complainant or
80 apportionment complainant's attorney, shall retain the original written
81 opinion and shall attach a copy of such written opinion, with the name

82 and signature of the similar health care provider expunged, to such
83 certificate. The similar health care provider who provides such written
84 opinion shall not, without a showing of malice, be personally liable for
85 any damages to the defendant health care provider by reason of
86 having provided such written opinion. Any challenge to the
87 qualifications of the similar health care provider who provides such
88 written opinion shall be made only after the completion of discovery,
89 and shall only be made as part of a challenge to the validity of the
90 certificate.

91 (3) Any consideration of such written opinion shall be based on the
92 copy of the written opinion that is attached to the certificate. In
93 addition to such written opinion, the court may consider other factors
94 with regard to the existence of good faith.

95 (4) If the court determines, after the completion of discovery, that
96 such certificate was not made in good faith and that no justiciable issue
97 was presented against a health care provider that fully cooperated in
98 providing informal discovery, the court upon motion or upon its own
99 initiative shall impose upon the person who signed such certificate or a
100 represented party, or both, an appropriate sanction which may include
101 an order to pay to the other party or parties the amount of the
102 reasonable expenses incurred because of the filing of the pleading,
103 motion or other paper, including a reasonable attorney's fee. The court
104 may also submit the matter to the appropriate authority for
105 disciplinary review of the attorney if the claimant's attorney or the
106 apportionment complainant's attorney submitted the certificate.

107 (b) Upon petition to the clerk of the court where the civil action will
108 be filed to recover damages resulting from personal injury or wrongful
109 death, an automatic ninety-day extension of the statute of limitations
110 shall be granted to allow the reasonable inquiry required by subsection
111 (a) of this section. [This] Such ninety-day extension period shall be in
112 addition to other tolling periods.

113 (c) The failure to obtain and file the written opinion required by

114 subsection (a) of this section [shall] may be grounds for the dismissal
115 of the action, except that no such action may be dismissed for failure to
116 obtain and file such written opinion unless the plaintiff has failed to
117 remedy such failure within thirty days after being ordered to do so by
118 the court.

119 (d) A defendant's motion to dismiss an action based on the failure to
120 obtain or file the written opinion required by subsection (a) of this
121 section shall not be granted unless it is filed within sixty days after the
122 return date of the action brought against the defendant.

123 (e) The written opinion required by subsection (a) of this section
124 shall (1) be used for the sole purpose of demonstrating that the
125 claimant has made a reasonable inquiry as permitted by the
126 circumstances to determine that there are grounds for a good faith
127 belief that there has been negligence in the care or treatment of the
128 claimant with respect to each named defendant, and (2) not limit the
129 allegations in the complaint against any named defendant or limit the
130 testimony of expert witnesses.

131 (f) For the purposes of this section, "similar health care provider"
132 means: (1) A similar health care provider, as defined in subsection (b),
133 (c) or (d) of section 52-184c, as amended by this act, who is selected
134 pursuant to the provisions of said subsections, or (2) a health care
135 provider who would be qualified to testify regarding the prevailing
136 professional standard of care with respect to any defendant that is a
137 corporation or business entity, including, but not limited to, a hospital,
138 as defined in section 19a-490, nursing home, as defined in section 19a-
139 490, or health care center, as defined in section 38a-175, or any other
140 corporation or business entity that employs health care providers from
141 different practice specialties.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage and applicable to actions filed on or after said date</i>	52-184c
Sec. 2	<i>from passage and applicable to actions filed on or after said date</i>	52-190a

Statement of Purpose:

To revise provisions concerning certificates of merit and opinions and testimony of health care providers in medical malpractice actions.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]