
OLR Bill Analysis

sHB 6487 (as amended by House "A")*

AN ACT CONCERNING CERTIFICATES OF MERIT.

SUMMARY:

This bill expands the types of health care providers who may provide a prelitigation opinion letter concerning evidence of medical negligence in a medical malpractice lawsuit or apportionment complaint (see BACKGROUND). It eliminates the requirement that the opinion letter include a detailed basis for the formation of the opinion, instead requiring that it state one or more specific breaches of the prevailing professional standard of care.

The bill allows dismissal due to failure to obtain and file the opinion letter only if the claimant does not (1) attach a copy of the opinion letter to the good faith certificate, as is required by law or (2) remedy the failure to obtain and file the letter within 60 days of the court's order to do so.

*House Amendment "A" adds the terminology "qualified health care provider." It allows dismissal due to failure to obtain and file the opinion letter if the claimant does not attach a copy of it to the good faith certificate. It deletes several provisions, such as those (1) allowing an opinion letter to be submitted by a provider qualified to testify on the standard of care for corporate or business defendants, (2) requiring consideration of the letter to be based on the attached copy, and (3) specifying that the letter cannot limit expert witness testimony or allegations against a defendant. It also specifies that the bill applies to causes of actions pending on, or accruing on or after, the date of the bill's passage.

EFFECTIVE DATE: Upon passage, and applicable to causes of actions pending on or accruing on or after that date.

HEALTH CARE PROVIDERS QUALIFIED TO SUBMIT OPINION LETTER

By law, an attorney or claimant cannot file a medical malpractice lawsuit or apportionment complaint unless he or she has made a reasonable inquiry under the circumstances to determine that grounds exist for a good faith belief that the claimant received negligent medical care or treatment. The complaint or initial pleading must contain a certificate to this effect (“good faith certificate”).

Under current law, to show such good faith, the claimant or attorney must obtain a written, signed opinion from a “similar health care provider” (see BACKGROUND) that there appears to be evidence of medical negligence. The bill also allows an opinion letter from health care providers who are not “similar health care providers” but are otherwise legally qualified to be expert witnesses. By law, this includes a provider who, to the court’s satisfaction, has sufficient training, experience, and knowledge due to actively practicing or teaching in a related field within the five years before the incident giving rise to the claim, to be able to provide expert testimony on the prevailing professional standard of care in a given medical field.

The bill classifies all providers who may submit an opinion letter as “qualified health care providers.”

BACKGROUND

Apportionment Complaints

The requirement for a good faith certificate and opinion letter also applies to apportionment complaints against another health care provider. An apportionment complaint is a defendant’s claim in a medical malpractice lawsuit that another health care provider, who the plaintiff did not make a defendant, committed malpractice and partially or totally caused the plaintiff’s damages.

Similar Health Care Providers

By law, similar health care providers may be expert witnesses, and may also submit an opinion letter as specified above. Similar health care providers are either of the following:

1. if the defendant is a specialist or holds himself or herself out as a specialist, a provider (a) trained and experienced in the same specialty as the defendant and (b) certified by the appropriate American board in that specialty, provided that if the defendant is providing treatment or diagnosis for a condition not within his or her specialty, a specialist trained in that condition is also considered a similar health care provider; or
2. if the defendant is not board certified, trained, or experienced as a specialist, or does not hold himself or herself out as a specialist, a provider (a) licensed by the appropriate Connecticut agency or another state requiring the same or greater qualifications and (b) trained and experienced in the same discipline or school of practice as the defendant as a result of active involvement in practice or teaching within the five years before the incident giving rise to the claim.

Related Case

In *Bennett v. New Milford Hospital, Inc.*, 300 Conn. 1 (2011), the defendant filed a motion to dismiss the medical malpractice action because the author of the plaintiff's opinion letter was not a "similar health care provider." The defendant specialized in emergency medicine, but the opinion letter's author described himself as "a practicing and board certified general surgeon with added qualifications in surgical critical care, and engaged in the practice of trauma surgery."

The court ruled that the author of an opinion letter must be a similar health care provider. The court found the statute requiring the opinion letter to be ambiguous when read in isolation. However, when read together with related statutes and legislative history, the court concluded that the author of an opinion letter must be a similar health care provider, regardless of his or her potential qualifications to testify at trial under another statutory provision.

The court also ruled that the law required a case to be dismissed when a plaintiff failed to file an opinion letter written by a similar

health care provider. They found this statutory text also to be ambiguous, but when read in conjunction with legislative history and other cases, the court concluded that dismissal was mandatory. The court acknowledged the severity of this remedy, but emphasized that plaintiffs could re-file their case.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 30 Nay 11 (03/30/2011)