



House of Representatives

General Assembly

File No. 552

January Session, 2011

Substitute House Bill No. 6487

House of Representatives, April 18, 2011

The Committee on Judiciary reported through REP. FOX of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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 Section 52-184c of the general statutes is repealed and the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*):

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

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

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

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

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

48 following is substituted in lieu thereof (*Effective from passage*):

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

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

82 opinion shall not, without a showing of malice, be personally liable for
83 any damages to the defendant health care provider by reason of
84 having provided such written opinion.

85 (3) Any consideration of such written opinion shall be based on the
86 copy of the written opinion that is attached to the certificate. In
87 addition to such written opinion, the court may consider other factors
88 with regard to the existence of good faith. Such written opinion shall
89 not be used to limit the allegations in the complaint against any named
90 defendant or limit the testimony of expert witnesses.

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

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

109 (c) The failure to obtain and file the written opinion required by
110 subsection (a) of this section shall be grounds for the dismissal of the
111 action, except that no such action may be dismissed for failure to
112 obtain and file such written opinion unless the claimant has failed to
113 remedy such failure within sixty days after being ordered to do so by
114 the court.

115 (d) For the purposes of this section, "similar health care provider"
 116 means: (1) A similar health care provider, as defined in subsection (b),
 117 (c) or (d) of section 52-184c, as amended by this act, who is selected
 118 pursuant to the provisions of said subsections, or (2) a health care
 119 provider who would be qualified to testify regarding the prevailing
 120 professional standard of care with respect to any defendant that is a
 121 corporation or business entity, including, but not limited to, a hospital,
 122 as defined in section 19a-490, nursing home, as defined in section 19a-
 123 490, or health care center, as defined in section 38a-175, or any other
 124 corporation or business entity that employs health care providers from
 125 different practice specialties.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	52-184c
Sec. 2	<i>from passage</i>	52-190a

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
UConn Health Center	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill broadens the manner in which attorneys may determine a good faith belief that a claimant received negligent medical care or treatment.

Should the provisions of the bill lead to an increase in the number of malpractice cases that are litigated, the University of Connecticut Health Center (UCHC) may realize additional legal and medical malpractice costs. The extent of these costs cannot be known in advance. However, for purposes of illustration, UCHC has incurred legal costs of \$1.8 million over the last four years defending malpractice claims that ultimately resulted in no payment to the claimant.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6487*****AN ACT CONCERNING CERTIFICATES OF MERIT.*****SUMMARY:**

By law, an attorney or claimant cannot file a medical malpractice lawsuit or apportionment complaint (see BACKGROUND) 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. To show such good faith, the claimant or attorney must obtain a written, signed opinion from a “similar health care provider” that there appears to be evidence of medical negligence.

This bill modifies these requirements in several respects. Specifically, it:

1. broadens the definition of “similar health care provider” for purposes of identifying those qualified to submit an opinion letter;
2. 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;
3. only allows dismissal due to failure to obtain and file the opinion letter if the claimant does not remedy the failure within 60 days of the court’s order to do so;
4. explicitly provides that the opinion letter is not required in actions against health care providers for assault, lack of

informed consent, or ordinary negligence unrelated to the rendering of care or treatment;

5. requires any consideration of the opinion letter to be based on the copy of the letter attached to the certificate; and
6. specifies that the opinion letter is not to be used to limit allegations in the complaint against any defendant or to limit expert witness testimony.

EFFECTIVE DATE: Upon passage

SIMILAR HEALTH CARE PROVIDER

By law, a similar health care provider for purposes of submitting an opinion letter must be:

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.

The bill broadens the definition of “similar health care provider” for purposes of the opinion letter to also include:

1. a provider who, to the court’s satisfaction, has sufficient training, experience, and knowledge due to active involvement in practice

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 as to the prevailing professional standard of care in a given medical field and

2. a provider qualified to testify on the prevailing professional standard of care with respect to any corporate or business defendant, including hospitals, nursing homes, health care centers (HMOs), or other corporations or businesses employing health care providers from different practice specialties.

The bill also classifies providers in category 1 above as “similar health care providers” for purposes of establishing the prevailing professional standard of care in medical malpractice actions. Current law does not classify such providers as similar health care providers but allows them to testify as expert witnesses.

BACKGROUND

Apportionment Complaints

The requirement for a good faith certificate and opinion letter applies as well 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.

Bennett v. New Milford Hospital

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 in conjunction 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 fails 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)