



AMERICAN ACADEMY OF  
OTOLARYNGOLOGY—  
HEAD AND NECK SURGERY

Statement of the  
American Academy of Otolaryngology-Head and Neck Surgery  
to the  
Joint Committee on Judiciary  
Regarding SB 243  
March 7, 2012

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The American Academy of Otolaryngology-Head and Neck Surgery (AAO-HNS) appreciates the opportunity to comment. **We wish to convey our strong opposition to SB 243, an act concerning certificates of merit.**

As background, the AAO-HNS represents approximately 12,000 physicians in the United States who diagnose and treat disorders of the ears, nose, throat, and related structures of the head and neck, including over 150 members who live and practice in Connecticut and the thousands of patients under their care. Otolaryngologist-head and neck surgeons, commonly referred to as ear, nose, and throat specialists (ENTs), diagnose and treat medical disorders that commonly afflict many Americans, including hearing and vestibular disorders, speech and swallowing disorders, head and neck cancer, chronic ear infections, sinusitis, snoring and sleep apnea, facial and cranial nerve disorders, and reconstructive and elective facial cosmetic surgery.

The AAO-HNS firmly supports *effective* certificates of merit, including the provision under current law in Connecticut, which require all medical professional liability case filings to be accompanied by an affidavit from an appropriately licensed medical professional. Connecticut General Statute §52-190a, the “good faith” statute, currently provides that the plaintiff’s attorney must file a written opinion prior to filing suit, the expert offering the opinion must be a “similar health care provider,” and mandates dismissal if this opinion is not obtained prior to filing suit.

If enacted, SB 243 would devalue the current requirements in Connecticut for a “good faith” pre-screening of lawsuits. Instead, as proposed by SB 243, there would only be a requirement for a “qualified health care provider.” This modification would create a much wider and unnecessary pool of who could provide the required medical expert opinion, and does so without any acknowledgment of the clinical and practical differences between medical professionals and their specialty knowledge bases. With the removal of the requirement for “similar health care providers,” the proposal essentially makes it easier for trial lawyers to bring frivolous and meritless lawsuits against all healthcare providers, and particularly against specialist physicians, including otolaryngologists. This likely increase in frivolous cases completely goes against the underlying purpose of an effective certificate of merit.

Furthermore, in 2011, the Connecticut Supreme Court upheld the current structure of §52-190a in *Bennett v. New Milford Hospital*. The Court confirmed the mandatory lawsuit dismissal if the plaintiff fails to obtain a written opinion from a “similar health care provider.” There is nothing in the current system to prevent a plaintiff from bringing a lawsuit, so long as the “similar health care provider” standard is adhered to. This protection is in place for the healthcare community to ensure that



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liability lawsuits are supported by reliable and competent evidence. SB 243 would instead promote a system that would not be universal in its qualifications and standards for a medical opinion, making it completely subjective as to who could be an expert. This bill, if passed, would have a lasting negative impact on the physicians who practice in Connecticut and on the state itself; there would no longer be a fair and balanced system.

The AAO-HNS strongly urges members of the Committee to oppose SB 243. Thank you for the opportunity to comment. If you have any questions, please contact Shannon Morey, JD, AAO-HNS Program Manager for State Legislative Affairs, at 703-535-3794 or [smorey@entnet.org](mailto:smorey@entnet.org).