



TESTIMONY OF
DANIEL DEBARBA, PRESIDENT AND CEO
NORWALK HOSPITAL
SUBMITTED TO THE JUDICIARY COMMITTEE
Wednesday, March 7, 2012
SB 243 An Act Concerning Certificates Of Merit

Norwalk Hospital appreciates the opportunity to submit testimony concerning **SB 243, An Act Concerning Certificates Of Merit**. Norwalk Hospital opposes this bill.

Under Connecticut law, tort cases that involve technical or scientific fields require expert testimony. For medical liability cases, Connecticut has developed a statutory framework to ensure that the experts used are sufficiently qualified. As part of this system, Connecticut law also contains a requirement that a party, or the party's lawyer, perform and certify a pre-suit analysis to ensure that the claim is filed in good faith. This pre-suit process is documented by a "good faith certificate," along with a brief written explanation of the expert's review, stating that the expert believes that there appears to be evidence of medical negligence. Failure to include a good faith certificate with a complaint makes the claim subject to possible dismissal.

This bill seeks to significantly weaken the good faith certificate process. The bill would dramatically expand the types of professionals permitted to give pre-suit expert opinion to include any person who might be deemed an expert at the time of trial, not experts who, as similar healthcare providers, necessarily have the same specialty or training as the defendant. Such a change would roll back important decisions that this legislative body made in 2005 – decisions that created objective criteria for expert qualifications currently used for pre-suit good faith letters. This bill would replace a well-reasoned and balanced system with one that would instead depend on the plaintiff's attorney's subjective assessment of who is a qualified expert.

In 2005, the General Assembly purposefully made changes to the good faith certificate statute to require that a pre-suit evaluation be performed by a similar

healthcare provider. As noted in the legislative history, the goal of those changes was to reduce ongoing problems “caused by plaintiffs misrepresenting or misunderstanding physicians’ opinions as to the merits of their action,” to “ensure that there is a reasonable basis for filing a medical malpractice case under the circumstances,” and to “eliminate some of the more questionable or meritless cases” filed under the standard that existed prior to 2005. This statutory design was examined and upheld by the Connecticut Supreme Court, which afforded appropriate deference to legislators’ comments and other testimony found in the legislative record.

SB 243 would remove the objective standards applicable to qualified experts that were enacted in 2005. In addition, SB 243 would remove the sanction of possible dismissal – a sanction that essentially assures compliance – for failure to obtain a good faith certificate. The bill would instead merely allow those who do not comply with their pre-suit obligations to submit the certificate within 30 days after filing suit. A pre-suit obligation that can be performed after the suit is filed is meaningless, and makes the process discretionary.

The measures implemented in 2005 – which require a meaningful, pre-suit inquiry – should not be dismantled. We urge you to oppose SB 243.

Thank you for your consideration of our position. If you have any questions, please feel free to call me at 203-852-2682.