



Testimony of Michael R. Marks, MD, MBA

**In Opposition of
*Senate Bill 243 An Act Concerning Certificate of Merit***

Judiciary Committee March 7, 2012

Senator Coleman, Representative Fox and distinguished Members of the Judiciary Committee, thank you for the opportunity to present this testimony to you in strong opposition of Senate Bill 243, An Act Concerning Certificate of Merit

I am Dr. Michael R Marks MD MBA. Currently, I am the Vice President of Business Development at Norwalk Hospital. Before taking this position January 2011, I have been a practicing orthopaedic surgeon since 1988 at Norwalk Hospital. I am a Past-President of the Connecticut Orthopaedic Society and have traveled to Hartford to give testimony previously.

I fully understand the stress and anxiety surrounding medical malpractice for both the physician and the plaintiff's family. I have testified for both the defense and the plaintiff in these cases. However, we shouldn't let a case go forward if there truly isn't any merit, as it doesn't appropriately serve either party. If there truly is no merit, the family shouldn't be given false hope that they have a case when there has been no negligence.

For a physician going through the stress of defending oneself when there truly is no expert to state there was a deviation from the standard of care is not fair to the physician.

We should have the best and the brightest truly determine if there has been negligence or if a poor outcome is just maloccurrence. Allowing any practitioner to provide a certificate of merit to permit the process to go forward that is not of like training and experience doesn't get to the issue of whether there has been negligence. I as an orthopaedic surgeon don't truly know what a chiropractor's training or scope of practice is and shouldn't be allowed to state that they deviated from the standard of care. I don't know what their standard is. Likewise, I shouldn't be able to comment on a supposed deviation of care provided by an internist.

This would be akin to having a paralegal testify that a lawyer committed malpractice. I don't think any lawyer would think that the paralegal had a basis of



knowledge for testifying. In a similar vein, would we let a carpenter comment about the abilities of a plumber? They are both in construction, but certainly have different areas of expertise. The analogies and examples could go on and on.

At a time when many states are looking to the Connecticut regulations on Certificate of Merit as an example of how to make the system better, why are we considering relaxing them? For years I've been asking for creating a real change to the process of dealing with malpractice cases to streamline the process and make it fairer for both sides. This will not improve the process. Voting for a change to weaken the certificate of merit would be making a sham of the entire process.

Challenges to the Certificate of Merit have previously been heard by the state Supreme Court. They ruled in favor of the current status and stated that each healthcare professional has their own scope of practice as defined by legislation. So if they can only practice within their scope of practice, how are we now letting/encouraging them to give professional expertise in a court outside of their scope? I strongly encourage you to vote against moving this bill out of committee. I would be more than happy to answer any questions on this subject.

Respectfully submitted,

Michael R Marks, MD MBA
(signed electronically)
VP of Business Development
Norwalk Hospital
Past President - Connecticut Orthopaedic Society