
OLR Bill Analysis

SB 243 (File 331, as amended by Senate "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 negligent medical care in malpractice cases. (The opinion letter is often referred to as a certificate of merit.) Under specified conditions, the bill allows such opinion letters from health care providers who are not "similar health care providers" (see BACKGROUND) as the defendants, but only after the attorney or claimant made reasonable efforts to obtain an opinion letter from a similar health care provider.

Existing law requires such an opinion letter to indicate that there appears to be evidence of medical negligence and include a detailed basis for the formation of that opinion. The bill adds the requirement that the letter identify one or more breaches of the prevailing professional standard of care as part of the basis for the opinion.

Under current law, failure to obtain and file the opinion letter is grounds for the case to be dismissed. The bill instead provides that failure to comply with any aspect of the requirement to make a reasonable inquiry to determine that grounds exist for a good faith belief that there was medical negligence, including the opinion letter requirement, is grounds for dismissal, except the case cannot be dismissed unless the claimant has failed to (1) attach a copy of an opinion letter or (2) comply within a single 45-day period after the court's order to do so.

***Senate Amendment "A":**

1. adds the requirement that the attorney or claimant make reasonable efforts to obtain an opinion letter from a similar

- provider before obtaining one from another provider;
2. changes qualifications for non-similar providers who submit opinion letters and adds to the required information such providers must include;
 3. adds the provision specifying that the court's decision to allow such a provider to submit an opinion letter is without prejudice to challenges at trial of the provider's qualifications;
 4. includes the requirement of identifying breaches of the standard of care as an addition to, rather than substitution for, the existing requirement that the letter include a detailed basis for the opinion;
 5. reduces from 60 to 45 days the period allowed to comply with a court order before the case can be dismissed; and
 6. makes the bill apply to actions filed on or after passage, rather than causes of actions pending on or accruing on or after that date.

EFFECTIVE DATE: Upon passage, and applicable to actions filed on or after that date.

NON-SIMILAR HEALTH CARE PROVIDERS QUALIFIED TO SUBMIT CERTIFICATE OF MERIT

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, indicating a good faith belief that such grounds exist against each named defendant.

Under current law, 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. The bill also allows such an opinion letter from health care providers

who are not similar health care providers but who the court approves under the following circumstances.

Under the bill, a claimant or attorney seeking to submit an opinion letter written by someone other than a similar health care provider must have made reasonable efforts to obtain such a letter from a similar health care provider, as part of the reasonable inquiry to determine that grounds exist for a good faith belief that there was medical negligence. Presumably, a claimant or attorney can only use a letter from someone other than a similar provider if such reasonable efforts to obtain a similar provider's letter were not successful.

In these circumstances, the claimant or attorney can obtain a letter from a provider whom the court approves, based on its review of the opinion letter. The letter must describe in detail that the provider has sufficient training, knowledge, and experience in the specific care, treatment, or diagnosis at issue, within the five years before the alleged malpractice, to be able to provide expert testimony on the standard of care for each defendant for whom the provider has issued an opinion.

Under the bill, an opinion letter from such a provider must indicate whether the provider is (1) board-certified in a related specialty and (2) licensed to practice in any jurisdictions. The bill also specifies that the court's determination that such a provider is qualified to submit an opinion letter as set forth above is without prejudice as to any challenge of the provider's qualifications at trial.

BACKGROUND

Similar Health Care Providers

By law, similar health care providers may testify as 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 Connecticut 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 through active involvement in practice or teaching within the five years before the incident giving rise to the claim.

Apportionment Complaints

The requirement for a good faith certificate and opinion letter also applies to apportionment complaints against another health care provider. In this context, an apportionment complaint is a defendant's claim that another health care provider, whom the plaintiff did not make a defendant, committed malpractice and partially or totally caused the plaintiff's damages.

Related Cases

Several recent state Supreme Court decisions have interpreted the statute that this bill amends (CGS § 52-190a). For example, in *Wilcox v. Schwartz*, 303 Conn. 630 (2012), the court held that a written opinion letter satisfies the statute's "detailed basis" requirement "if it sets forth the basis of the similar health care provider's opinion that there appears to be evidence of medical negligence by express reference to what the defendant did or failed to do to breach the applicable standard of care."

Also, in *Bennett v. New Milford Hospital, Inc.*, 300 Conn. 1 (2011), the court granted the defendant's motion to dismiss because the author of the opinion letter was not a "similar health care provider" within the meaning of the statute. 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.”

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 29 Nay 14 (03/21/2012)