



Senate

General Assembly

File No. 331

February Session, 2012

Senate Bill No. 243

Senate, April 10, 2012

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the 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 Section 52-190a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage and*
3 *applicable to causes of action pending on or accruing on or after said date*):

4 (a) (1) No civil action or apportionment complaint shall be filed to
5 recover damages resulting from personal injury or wrongful death
6 occurring on or after October 1, 1987, whether in tort or in contract, in
7 which it is alleged that such injury or death resulted from the
8 negligence of a health care provider, unless the attorney or party filing
9 the action or apportionment complaint has made a reasonable inquiry
10 as permitted by the circumstances to determine that there are grounds
11 for a good faith belief that there has been negligence in the care or
12 treatment of the claimant. The complaint, initial pleading or
13 apportionment complaint shall contain a certificate of the attorney or
14 party filing the action or apportionment complaint that such
15 reasonable inquiry gave rise to a good faith belief that grounds exist

16 for an action against each named defendant or for an apportionment
17 complaint against each named apportionment defendant. To show the
18 existence of such good faith, the claimant or the claimant's attorney,
19 and any apportionment complainant or the apportionment
20 complainant's attorney, shall obtain a written and signed opinion of a
21 [similar] qualified health care provider, as defined in [section 52-184c,
22 which similar health care provider shall be selected pursuant to the
23 provisions of said section] subsection (d) of this section, that there
24 appears to be evidence of medical negligence and which includes a
25 detailed [basis for the formation of such opinion] statement that
26 identifies one or more breaches of the prevailing professional standard
27 of care.

28 (2) Such written opinion shall not be subject to discovery by any
29 party except for questioning the validity of the certificate. The claimant
30 or the claimant's attorney, and any apportionment complainant or
31 apportionment complainant's attorney, shall retain the original written
32 opinion and shall attach a copy of such written opinion, with the name
33 and signature of the [similar] qualified health care provider expunged,
34 to such certificate. The [similar] qualified health care provider who
35 provides such written opinion shall not, without a showing of malice,
36 be personally liable for any damages to the defendant health care
37 provider by reason of having provided such written opinion.

38 (3) In addition to such written opinion, the court may consider other
39 factors with regard to the existence of good faith.

40 (4) If the court determines, after the completion of discovery, that
41 such certificate was not made in good faith and that no justiciable issue
42 was presented against a health care provider that fully cooperated in
43 providing informal discovery, the court upon motion or upon its own
44 initiative shall impose upon the person who signed such certificate or a
45 represented party, or both, an appropriate sanction which may include
46 an order to pay to the other party or parties the amount of the
47 reasonable expenses incurred because of the filing of the pleading,
48 motion or other paper, including a reasonable attorney's fee. The court

49 may also submit the matter to the appropriate authority for
50 disciplinary review of the attorney if the claimant's attorney or the
51 apportionment complainant's attorney submitted the certificate.

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

58 (c) The failure to obtain and file the written opinion required by
59 subsection (a) of this section shall be grounds for the dismissal of the
60 action, except that no such action may be dismissed for the failure to
61 obtain and file such written opinion unless the claimant has failed to
62 attach a copy of such written opinion to such certificate pursuant to
63 subdivision (2) of subsection (a) of this section or has failed to remedy
64 such failure within sixty days after being ordered to do so by the court.

65 (d) For the purposes of this section, "qualified health care provider"
66 means a similar health care provider, as defined in subsection (b) or (c)
67 of section 52-184c, or any other health care provider who may testify as
68 an expert pursuant to subsection (d) of section 52-184c.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to causes of action pending on or accruing on or after said date</i>	52-190a

JUD *Joint Favorable*

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:*** None***Municipal Impact:*** None***Explanation***

The bill expands the types of healthcare providers who may provide a pre-litigation opinion letter and does not result in a fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**SB 243*****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 medical negligence in a medical malpractice lawsuit or apportionment complaint (see BACKGROUND). The bill also requires that instead of including a detailed basis for the formation of the opinion, the opinion letter include a detailed statement identifying one or more breaches of the prevailing professional standard of care.

The bill allows dismissal of an action due to failure to obtain and file the opinion letter only if the claimant does not (1) attach a copy of the opinion letter to the good faith certificate, as is required by law, or (2) remedy the failure to attach the letter within 60 days of a court order to do so.

EFFECTIVE DATE: Upon passage, and applicable to causes of actions pending on or accruing on or after that date.

HEALTH CARE PROVIDERS QUALIFIED TO SUBMIT OPINION LETTER

By law, an attorney or claimant cannot file a medical malpractice lawsuit or apportionment complaint 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, 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” (see BACKGROUND) that there appears to be evidence of medical negligence. The bill also allows an opinion letter from health care providers who are not “similar health care providers” but are otherwise legally qualified to be expert witnesses. By law, this includes a provider who, to the court’s satisfaction, has sufficient training, experience, and knowledge from actively practicing 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 on the prevailing professional standard of care in a given medical field.

The bill classifies all providers who may submit an opinion letter as “qualified health care providers.”

BACKGROUND

Apportionment Complaints

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

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.

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)