

EXHIBIT 5

Sec. 52-190a. Prior reasonable inquiry and certificate of good faith required in negligence action against a health care provider. Ninety-day extension of statute of limitations. (a) No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint, initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant or for an apportionment complaint against each named apportionment defendant. To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant's attorney, shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. Such written opinion shall not be subject to discovery by any party except for questioning the validity of the certificate. The claimant or the claimant's attorney, and any apportionment complainant or apportionment complainant's attorney, shall retain the original written opinion and shall attach a copy of such written opinion, with the name and signature of the similar health care provider expunged, to such certificate. The similar health care provider who provides such written opinion shall not, without a showing of malice, be personally liable for any damages to the defendant health care provider by reason of having provided such written opinion. In addition to such written opinion, the court may consider other factors with regard to the existence of good faith. If the court determines, after the completion of discovery, that such certificate was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court upon motion or upon its own initiative shall impose upon the person who signed such certificate or a represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. The court may also submit the matter to the appropriate authority for disciplinary review of the attorney if the claimant's attorney or the apportionment complainant's attorney submitted the certificate.

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

(c) The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action.

(P.A. 86-338, S. 12; P.A. 87-227, S. 9; P.A. 03-202, S. 14; P.A. 05-275, S. 2; P.A. 07-65, S. 1.)

History: P.A. 87-227 amended Subsec. (a) to replace provision that "No action, accruing on or after October 1, 1986, shall be filed to recover damages for personal injury or wrongful death" with "No civil action shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987"; P.A. 03-202 amended Subsec. (a) by deleting provision re form prescribed by rules of the superior court and making technical changes; P.A. 05-275 amended Subsec. (a) to make provisions applicable to an apportionment complaint and the filing thereof, require the opinion of the similar health care provider to be signed and include a detailed basis for the formation of such opinion, require the claimant or the claimant's attorney and any apportionment complainant or apportionment complainant's attorney to retain the original written opinion and attach a copy of such written opinion, with the name and signature of the similar health care provider expunged, to such certificate and provide that such similar health care provider shall not, without a showing of malice, be personally liable by reason of having provided such written opinion and added new Subsec. (c) to provide that the failure to obtain and file the written opinion shall be grounds for dismissal of the action, effective October 1, 2005, and applicable to actions filed on or after that date; P.A. 07-65 amended Subsec. (b) to substitute "civil action" for "action" and add "to recover damages resulting from personal injury or wrongful death" re extension of statute of limitations.

P.A. 86-338 cited. 214 C. 1. Good faith certificate is not jurisdictional. 215 C. 701. Cited. 236 C. 681. Cited. 242 C. 1. In workers compensation case where city sought to intervene in employee's negligence action against physician, the city as a would-be intervenor was not required to file a good faith certificate where employee had filed such a certificate and the city asserted no additional claims. 253 C. 429. Applies only to civil actions to recover damages and does not apply to apportionment complaints under Sec. 52-102b which seek only apportionment of liability. 269 C. 10. Section does not require plaintiffs to attach an opinion from a similar health care provider addressing causation. 292 C. 350.

Cited. 26 CA 497. Cited. 33 CA 378. Cited. 37 CA 105. Fall by person dependent on a wheelchair while transferring from wheelchair to an exercise mat at physical therapy facility during scheduled session, where transfers were a stated goal of therapy, is medical malpractice. 61 CA 353. If a complaint is found to sound of medical malpractice, even if plaintiff claims the complaint sounds of ordinary tort and breach of contract, then failure by plaintiff to include a good faith certificate and an opinion of a similar health care provider shall constitute grounds for dismissal. 113 CA 569.

Cited. 41 CS 169.

Subsec. (a):

Section establishes objective criteria, not subject to the exercise of discretion, making prelitigation requirements more definitive and uniform than requirements to testify at trial and arguably sets the bar higher to get into court than to prevail at trial; as to defendant health care provider who is a physician, the similar health care provider contemplated here is one defined in either Sec. 52-184c(b) or (c). 117 CA 535. Good faith opinion submitted sufficiently addressed allegations of negligence by indicating evidence of a breach of the standard of care, was not required to address causation, and, therefore, was sufficiently detailed for purposes of this Subsec. 119 CA 808. Because defendant is a board certified specialist, a similar health care provider must be one trained and experienced in same specialty as defendant and certified by appropriate American board in same specialty. 122 CA 597.

Detailed basis for written opinion must enable defendant to ascertain basis of claim. 50 CS 385.

Subsec. (b):

Ninety-day extension provided in Subsec. applies equally to both the two-year statute of limitation and three-year statute of repose in Sec. 52-584. 269 C. 787.

Cited. 43 CA 397. The term "filed", for purposes of effective date of a public act, refers to the bringing of a complaint or other pleading to the clerk of the court, not a state marshal for service. 106 CA 810.

Subsec. (c):

Failure to comply with this Subsec. renders complaint subject to motion to dismiss and not motion to strike. 106 CA 810. Action subject to dismissal not only for lack of opinion letter but also if opinion letter is not from similar health care provider or does not give detailed basis for the opinion. 117 CA 535.

Failure to provide written opinion required by Subsec. (a) does not result in automatic dismissal under Subsec. (c), but rather dismissal is discretionary and based upon facts. 50 CS 385.

EXHIBIT 6

THE CONNECTICUT GENERAL ASSEMBLY

HOUSE OF REPRESENTATIVES

JUNE 8, 2005

52-190a

The House of Representatives was called to order at 12:35 o'clock p.m., Speaker James A. Amann in the Chair.

SPEAKER AMANN:

The House please come to order. Will the Members, and staff, and guests please rise and direct your attention to the dais where our Guest Chaplain Garland Higgins, Reverend Garland D. Higgins of the Bethel African Methodist Episcopal Church of Bloomfield will lead us in prayer.

REVEREND GARLAND D. HIGGINGS:

Let us pray. Eternal sovereign parent, the one who ultimately leads and guides us, may You bless the closing day of this Session.

May You provide peace and rest to the Legislators who have labored in the best interests on of the people of our state. Grant them wisdom today as they go forth to prepare for a new year. Amen.

SPEAKER AMANN:

Thank you, Mr. Speaker. Through you, an additional question. Is it correct, then, that the General Assembly can modify the code as submitted by the State Contracting Standards Board? Through you, Mr. Speaker.

SPEAKER AMANN:

Representative Caruso.

REP. CARUSO: (126th)

Through you, Mr. Speaker, that is correct.

REP. WARD: (86th)

Thank you, Mr. Speaker.

SPEAKER AMANN:

Representative Ward. I'm sorry.

REP. WARD: (86th)

Thank you, Mr. Speaker. That is how I read it as well.

Mr. Speaker, I am not certain but I raise the question. It appears to me that this provision is probably unconstitutional under the separation of powers provisions. Many of you may realize that we have a Regulation Review Committee.

When that was created, we delegate to Executive Branch agencies the power to make regulations and then

created a Regulation Review Committee. It was one of the first in the nation.

That Regulation Review Committee had the ability to reject regulations that we had delegated the authority to the Executive Branch to create. A constitutional challenge was brought to that, saying that once delegating the authority, you can't take it back, essentially.

It was upheld because our Regulation Review Committee cannot rewrite the regulation. It can reject it or it can reject it with prejudice.

That's the only basis under standard interpretation of administrative law in terms of delegation where it comes back to the authority, the Legislative Branch to delegate it, that you can act on it.

It appears to me this intends to circumvent that. We delegate to the State Contracting Standards Board, the right to create a new code. We then submit it back to a committee with instructions that we vote on it, but can change it.

It really would have been much wiser to write it in accordance with what the Supreme Court had ruled when

our Regulation Review Committee, which is that you can reject it, you can reject it without prejudice, which means the Contracting Board can change it if it wishes and send it back.

We could have also skipped the whole process and had a legislative committee write the code. That's completely legitimate. But I think there are serious questions about the constitutionality of the procedure that's been set up here, and I think somebody should have paid attention to it.

Mr. Speaker, I am also concerned about the provisions of the Bill that are the anti-privatization provisions. To reform the state contracting process makes absolute sense and should be done.

I think it should have been a clean bill focused on contracting standards and not be used as a vehicle to forward legislation that had been sought by state collective bargaining units for a number of years.

And so under the reform of a contracting out process, somebody else's agenda comes forward. Those provisions on privatizations, we have granted our employees the right to collectively bargain those.

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EXHIBIT 7

2005 Amendment
52-190a

THE CHAIR:

Will you remark further? Senator Gunther.

SEN. GUNTHER:

Mr. President, I rise to oppose the bill. I'll say this. It's a big disappointment to me. We've had two sessions where we worked on the malpractice in this Legislature.

Last year, it was quite extensive. We had three different Committees, all three did do some consideration, put things together, had special meetings of the three Committees and members of that three Committees.

But the big disappointment is this year, we get this laid on our deck by a group that sat down and took three bills that were considered by three Committees, and they compromised the whole report of the three Committees to come up with what we have here.

And I won't say it's without some good things that they have tried to do. On the other hand, there is an awful lot that doesn't, hasn't been included. In fact, I don't even know if they were ever considered in the discussions on this particular bill.

I think that when I hear the report on the Judiciary, and my good leader, Mr. McDonald, that it really sounds very, very familiar to me that this considers to be a very, very new thing.

But in listening to his report, I think they've done 99% of it is to justify what has been the practice over the years that I've been sitting up here and listening to the dialogue on malpractice.

And that is, you know, we passed a bill that said, gave a whole formula on how much a lawyer could charge when he handled these cases. It was a pro rata thing. It was, you know, high in the lower levels of settlement, and lower as you went down the line, and that type of thing.

✓ But lo and behold, two years ago, when we had a hearing, I brought the fact out that the judges had ruled that that was unconstitutional. You can't do that with lawyers. You can't tell a lawyer how much he can take on a case. Even though you had a state law, he says, it's unconstitutional.

What amazes me, Mr. President, I don't think that there's another profession in the State of Connecticut, in either medicine or anything else you can think of, that prohibits us from passing laws that say how much these people can get.

May not be on the percentage in that, but doctors, we have the HMOs, we have Medicare, we have Medicaid, sets out all the fees on exactly how much you can charge.

✓ But you can't do that in the legal profession because a judge rules it's unconstitutional.

Now, in this particular bill, all they've done is recited what's been the practice over years, that I can understand. I mean, I read it. I couldn't believe it, because all they are is justifying, all right.

Now, the lawyer can say, oh, we're only supposed to take a third of the fee here. But if you want me to handle this case, you better take and sign a waiver that tells me I can charge anything I damn well please.

And the nice part about that, they're really generous with that, because if the patient at that point decides he doesn't want him to represent him, all he has to do is say, oh, fine, I'll look for another lawyer. That's really a generous thing to put into the law.

As far as I'm concerned, there were things that we had talked about over the years we've been considering this, and I know in my bag of worms, for the malpractice, I'd say that I'm amazed that lawyers take a third of the economic settlement that comes in.

This means the person's actual cost to doctors, cost for his loss of time, cost for his braces, every dime

EXHIBIT 8



General Assembly

January Session, 2011

Raised Bill No. 6487

LCO No. 3956

03956 _____ JUD

Referred to Committee on Judiciary

Introduced by:

(JUD)

AN ACT CONCERNING CERTIFICATES OF MERIT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-184c of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage and*
3 *applicable to actions filed on or after said date*):

4 (a) In any civil action to recover damages resulting from personal
5 injury or wrongful death occurring on or after October 1, 1987, in
6 which it is alleged that such injury or death resulted from the
7 negligence of a health care provider, as defined in section 52-184b, the
8 claimant shall have the burden of proving by the preponderance of the
9 evidence that the alleged actions of the health care provider
10 represented a breach of the prevailing professional standard of care for
11 that health care provider. The prevailing professional standard of care
12 for a given health care provider shall be that level of care, skill and
13 treatment which, in light of all relevant surrounding circumstances, is
14 recognized as acceptable and appropriate by reasonably prudent
15 similar health care providers.

16 (b) If the defendant health care provider is not certified by the

17 appropriate American board as being a specialist, is not trained and
18 experienced in a medical specialty, or does not hold himself out as a
19 specialist, a "similar health care provider" is one who: (1) Is licensed by
20 the appropriate regulatory agency of this state or another state
21 requiring the same or greater qualifications; and (2) is trained and
22 experienced in the same discipline or school of practice and such
23 training and experience shall be as a result of the active involvement in
24 the practice or teaching of medicine within the five-year period before
25 the incident giving rise to the claim.

26 (c) If the defendant health care provider is certified by the
27 appropriate American board as a specialist, is trained and experienced
28 in a medical specialty, or holds himself out as a specialist, a "similar
29 health care provider" is one who: (1) Is trained and experienced in the
30 same specialty; and (2) is certified by the appropriate American board
31 in the same specialty; provided if the defendant health care provider is
32 providing treatment or diagnosis for a condition which is not within
33 his specialty, a specialist trained in the treatment or diagnosis for that
34 condition shall be considered a "similar health care provider".

35 (d) [Any health care provider may testify as an expert in any action
36 if he: (1) Is a "similar health care provider" pursuant to subsection (b)
37 or (c) of this section; or (2) is not a similar health care provider
38 pursuant to subsection (b) or (c) of this section but,] In addition to a
39 similar health care provider described in subsection (b) or (c) of this
40 section, a "similar health care provider" is one who, to the satisfaction
41 of the court, possesses sufficient training, experience and knowledge as
42 a result of practice or teaching in a related field of medicine, so as to be
43 able to provide [such] expert testimony as to the prevailing
44 professional standard of care in a given field of medicine. Such
45 training, experience or knowledge shall be as a result of the active
46 involvement in the practice or teaching of medicine within the five-
47 year period before the incident giving rise to the claim.

48 Sec. 2. Section 52-190a of the general statutes is repealed and the

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49 following is substituted in lieu thereof (*Effective from passage and*
50 *applicable to actions filed on or after said date*):

51 (a) (1) No civil action or apportionment complaint shall be filed to
52 recover damages resulting from personal injury or wrongful death
53 occurring on or after October 1, 1987, whether in tort or in contract, in
54 which it is alleged that such injury or death resulted from the
55 negligence of a health care provider, unless the attorney or party filing
56 the action or apportionment complaint has made a reasonable inquiry
57 as permitted by the circumstances to determine that there are grounds
58 for a good faith belief that there has been negligence in the care or
59 treatment of the claimant. The complaint, initial pleading or
60 apportionment complaint shall contain a certificate of the attorney or
61 party filing the action or apportionment complaint that such
62 reasonable inquiry gave rise to a good faith belief that grounds exist
63 for an action against each named defendant or for an apportionment
64 complaint against each named apportionment defendant. To show the
65 existence of such good faith, the claimant or the claimant's attorney,
66 and any apportionment complainant or the apportionment
67 complainant's attorney, shall obtain a written and signed opinion of a
68 similar health care provider, as defined in [section 52-184c, which
69 similar health care provider shall be selected pursuant to the
70 provisions of said section] subsection (f) of this section, that there
71 appears to be evidence of medical negligence and [includes a detailed
72 basis for the formation of such opinion] which states one or more
73 specific breaches of the prevailing professional standard of care. Such
74 written opinion shall not be required in any action against a health
75 care provider for assault, lack of informed consent or ordinary
76 negligence unrelated to the rendering of care or treatment.

77 (2) Such written opinion shall not be subject to discovery by any
78 party except for questioning the validity of the certificate. The claimant
79 or the claimant's attorney, and any apportionment complainant or
80 apportionment complainant's attorney, shall retain the original written
81 opinion and shall attach a copy of such written opinion, with the name

82 and signature of the similar health care provider expunged, to such
83 certificate. The similar health care provider who provides such written
84 opinion shall not, without a showing of malice, be personally liable for
85 any damages to the defendant health care provider by reason of
86 having provided such written opinion. Any challenge to the
87 qualifications of the similar health care provider who provides such
88 written opinion shall be made only after the completion of discovery,
89 and shall only be made as part of a challenge to the validity of the
90 certificate.

91 (3) Any consideration of such written opinion shall be based on the
92 copy of the written opinion that is attached to the certificate. In
93 addition to such written opinion, the court may consider other factors
94 with regard to the existence of good faith.

95 (4) If the court determines, after the completion of discovery, that
96 such certificate was not made in good faith and that no justiciable issue
97 was presented against a health care provider that fully cooperated in
98 providing informal discovery, the court upon motion or upon its own
99 initiative shall impose upon the person who signed such certificate or a
100 represented party, or both, an appropriate sanction which may include
101 an order to pay to the other party or parties the amount of the
102 reasonable expenses incurred because of the filing of the pleading,
103 motion or other paper, including a reasonable attorney's fee. The court
104 may also submit the matter to the appropriate authority for
105 disciplinary review of the attorney if the claimant's attorney or the
106 apportionment complainant's attorney submitted the certificate.

107 (b) Upon petition to the clerk of the court where the civil action will
108 be filed to recover damages resulting from personal injury or wrongful
109 death, an automatic ninety-day extension of the statute of limitations
110 shall be granted to allow the reasonable inquiry required by subsection
111 (a) of this section. [This] Such ninety-day extension period shall be in
112 addition to other tolling periods.

113 (c) The failure to obtain and file the written opinion required by

114 subsection (a) of this section [shall] may be grounds for the dismissal
115 of the action, except that no such action may be dismissed for failure to
116 obtain and file such written opinion unless the plaintiff has failed to
117 remedy such failure within thirty days after being ordered to do so by
118 the court.

119 (d) A defendant's motion to dismiss an action based on the failure to
120 obtain or file the written opinion required by subsection (a) of this
121 section shall not be granted unless it is filed within sixty days after the
122 return date of the action brought against the defendant.

123 (e) The written opinion required by subsection (a) of this section
124 shall (1) be used for the sole purpose of demonstrating that the
125 claimant has made a reasonable inquiry as permitted by the
126 circumstances to determine that there are grounds for a good faith
127 belief that there has been negligence in the care or treatment of the
128 claimant with respect to each named defendant, and (2) not limit the
129 allegations in the complaint against any named defendant or limit the
130 testimony of expert witnesses.

131 (f) For the purposes of this section, "similar health care provider"
132 means: (1) A similar health care provider, as defined in subsection (b),
133 (c) or (d) of section 52-184c, as amended by this act, who is selected
134 pursuant to the provisions of said subsections, or (2) a health care
135 provider who would be qualified to testify regarding the prevailing
136 professional standard of care with respect to any defendant that is a
137 corporation or business entity, including, but not limited to, a hospital,
138 as defined in section 19a-490, nursing home, as defined in section 19a-
139 490, or health care center, as defined in section 38a-175, or any other
140 corporation or business entity that employs health care providers from
141 different practice specialties.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage and applicable to actions filed on or after said date</i>	52-184c
Sec. 2	<i>from passage and applicable to actions filed on or after said date</i>	52-190a

Statement of Purpose:

To revise provisions concerning certificates of merit and opinions and testimony of health care providers in medical malpractice actions.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

EXHIBIT 9

JUD Committee Hearing Transcript for 03/04/2011

REP. RITTER: Thank you very much for your time this morning. My name is Betsy Ritter and I'm the State Representative for the 38th District representing the towns of Waterford and Montville. And I am here with my constituent, Mr. Sylvester Traylor. And I would actually like to give my place over to Mr. Traylor to deliver his testimony with your permission.

REP. FOX: Thank you, and you had discussed this with me previously. So thank you.

REP. RITTER: Absolutely. And I thank the committee very much for allowing us to do it in this manner.

REP. FOX: Good morning, Mr. Traylor.

SYLVESTER TRAYLOR: Good morning, Chairman. Chairman Fox, first of all, I would like to thank you for delivering a letter to my Representative Ritter on the day of my wife -- the anniversary of her death. I received your condolence. I want to thank you.

I want to thank Chairman, Cochairmen Coleman as well. Representative, this bill has been a long time coming. The bill number is H.B. ~~6487~~.

I'll tell you briefly what happened to my wife. I took my wife to a psychiatrist in my area and -- because she was suicidal. The doctor said he forgot to give her warnings about the medicine that he had prescribed to her. The medicine was called Effexor.

Not knowing what this medicine was, I saw my wife started to have an increased problem with suicide. So I kept -- continued to call her doctor and say, hey, my wife is getting worse.

Finally, my wife committed suicide. The day after my wife's death, I finally got a return call from her doctor. This was the only call that I ever got from this doctor.

Then I went around to all the attorneys in my area to try and get them to take my case. They said, I needed 2500 to

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5,000 dollars for an expert opinion. I didn't have that money.

So I filed my case myself in the court. I went before a Judge Hurley. By that time I obtained an opinion letter by a Dr. Zonana out of Yale University Medical School, the director of medicine, who confirmed that the doctor should have returned a call. I gave that letter to Judge Hurley and Judge Hurley didn't dismiss my complaint. At that time it was six months into my wife's complaint.

Here it is now five years later, this case is still pending. It went to the appellate court. It went back to the superior court. And now presently it's back in the appellate court over the same issue. I ask today if you can consider retroactively, when this case, this bill, H.B. 6487, be in effect retroactively to -- from the date of the Supreme Court of Connecticut's decision in a case Richard Bennett versus New Milford Hospital, when they gave this issue back to the legislators to make a decision.

Representative Fox, I just want to say, thank you, again. I just saw Representative Hewett came, just came in, and I want to thank him as well. I also talked to him over this issue.

I want to thank all those attorneys who looked into this issue regarding whether or not this case -- some of those attorneys are here today. The law firms are here regarding this issue. This is what they call a legal epidemic. They take their clients to court, but because of little technicalities, because they didn't attach a good-faith certificate to their complaints, their cases have been dismissed even though there are merits to the case.

Judge Hurley, prior to his death, he wanted to assess the merits of my case. So what he did was he asked the defendant's council to provide the court a -- subpoenaed phone records of the doctor to see if he returned any phone calls. After Judge Hurley died, nearly a year later after his death the phone record still wasn't provided. It took another judge to order the defendant to provide the missing medical records to assess the merits of my case.

Finally, a year later we've come to find out not only he didn't return any phone calls, but I was right, according to my complaint, that the only phone call that was made was

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the day after my wife's death, but he had destroyed all of his phone records. This was a criminal offense -- I mean, criminal issue that had -- that he knew that was pending, a pending litigation before the courts, that he should not have destroyed any parts of the medical records.

This again, because of the -- now I'm dealing with new judges in the New London court who don't a different school of thought regarding the good-faith certificate; overshadowed the fact that not only they had in front of them a doctor who had committed malpractice, but the doctor also had committed a crime during litigation. Again, I'm being aggrieved before the judicial system because they're overshadowing my case regarding this, the way the law is structured as it is to date.

So I want to again say, thank you very much for the amendments to this law. I've read it word for word, line by line and I support this bill. You're going to have people who will talk to you today, lobbyists that will object to this bill. I've learned from litigating and trying to figure out why these people are lobbying for this bill not to be changed. I've discovered that this Connecticut is the insurance capital of the world. If you go outside this building you can almost take a 360 degree turn and you're going to see an insurance company.

These people are very powerful and very rich. They're living next door to our judges in the state of Connecticut. They're influencing their thoughts how law should be structured. I'm asking my legislators, I'm asking you all to stand up, now for just me, but everybody out there in the state of Connecticut who don't have a fair trial, a fair chance in court over medical malpractice. Please support this new law.

Thank you.

REP. RITTER: Thank you very much.

REP. FOX: Thank you Mr. Traylor and Representative Ritter.

Are there any questions for Mr. Traylor or Representative Ritter?

Well, I do thank you again for your testimony. I know that you did provide materials to the members of the committee.

We do have other speakers who are scheduled to follow who will testify on both sides of this issue, but I think we'll get a chance to learn more about it and I do appreciate you giving us the opportunity to hear your story.

SYLVESTER TRAYLOR: Thank you.

REP. FOX: Senator Kissel.

SENATOR KISSEL: I'm very sorry. I do have a question, sir. I'm sorry. And I apologize if you went into this because I came in a little late, but with the indulgence of the Chair.

You're saying your medical malpractice suit failed because of some problem with the certificate of merit?

SYLVESTER TRAYLOR: Yes, Representative Kissel. This, initially it didn't fail. I went before Judge Hurley (inaudible) I amended my complaint. I attached it to the complaint before the defendant filed their motion to dismiss. They didn't file the motion to dismiss until six months after the complaint was filed.

Judge Hurley looked at the case and observed the opinion letter that was written by Yale University Medical School Director Dr. Zonana. And Dr. Zonana simplified everything and said -- questioned whether or not the doctor should or should not have returned a call after my wife had increased suicidal effects. Judge Hurley read that and he said, this is a good-faith certificate.

Now what he did was, after that, he looked at the time limit of the defendant's filing their motion to dismiss was late. So he said, no. I'm not dismissing this case.

SENATOR KISSEL: Okay.

SYLVESTER TRAYLOR: He's a pro se. He didn't know.

Now according to my understanding of this, and my understanding being was all I had to do was and inquiry whether or not that was medical malpractice.

So I did the inquiry. I did everything according to the 2005 version of Connecticut Statute 52198. I followed the guidelines, but the defendant was using the 2004 version

saying that I had deliberately attached it to the complaint.

SENATOR KISSEL: So -- and again, just because my colleagues probably have heard this and you're the first to testify, and that's obviously been very lengthy. But just the nub of it is that your case was thrown out at during that time you were a pro se litigator.

SYLVESTER TRAYLOR: Well, like I said, initially it didn't get thrown out. It took five years later. A different judge overturned the first judge's decision.

SENATOR KISSEL: And during that whole time you weren't represented by counsel. You were doing this on your own.

SYLVESTER TRAYLOR: No. The very first time -- yes, I was represented by myself. Then I got an attorney from Grady & Riley, Andrew Pianka who is also the attorney who went all the way to the Connecticut Supreme Court in the case Richard Bennett versus New Milford Hospital.

SENATOR KISSEL: Uh-huh.

SYLVESTER TRAYLOR: Who the court has just recently entered a decision, putting it back in the hands of the legislators to make a decision over this case.

SENATOR KISSEL: Okay. All right. You've got a lot of written testimony here, too. So I'll plow through that, try to figure out where this should land. I guess my overriding concern was if there was any kind of legal malpractice along the way, where perhaps if you had counsel and they didn't provide the adequate certificate of merit, and perhaps that was their fault. And then you could try to seek some sort of, you know, compensation through them.

But it doesn't sound to me like that's the case. And if it is something that the Supreme Court just recently ruled on, it's new territory out there and I appreciate your testimony this morning.

Thank you.

SYLVESTER TRAYLOR: Can I just make one last comment in response to the legal malpractice, sir?

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SENATOR KISSEL: Sure.

SYLVESTER TRAYLOR: I know that that was an argument in legislation on the floor of the House regarding whether or not attorneys are legally obligated to provide finances for an expert opinion. On the floor they even mentioned that they cannot put this, that kind of burden on attorneys to pay for these opinion letters.

My problem was -- and I think I know every legal -- I mean, every medical malpractice attorney in Connecticut. I've knocked on all their doors and the majority of them have said, pay me 2500 to 5,000 dollars to get that expert opinion. Financially I could not at that time.

So I filed it myself. Once I got the expert opinion I got Grady & Riley, to come in as my attorneys. The only reason why Grady & Riley left was after Judge Hurley died there was a different school of thought within the judges.

And they are being controlled by the lobbyists, the insurance companies who are living next door to them. They are being influenced by these two different schools of thought in Connecticut. That's that law as it stands today is, the ambiguity of it, of that letter -- I mean, of the law shows a lot of ambiguity.

The way you wrote this statute today, it eliminates all that ambiguity of the law as it is today. It gives the people of Connecticut back their constitutional rights in the State of Connecticut as well as in the federal courts. Thank you.

REP. FOX: Are there any other questions from members of the committee? Seeing none, thank you very much.

SYLVESTER TRAYLOR: Thank you.

DAVID KATZ: Representative Fox, members of the committee, good morning. My name is Dr. David Katz. I'm the president of the Connecticut State Medical Society and I'm here representing over 7,000 physicians and physicians here in Connecticut.

DAVID KATZ: Thank you. The other bill has to do with House Bill ~~6487~~. We are testifying in opposition to this.

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The proposed legislation undoes the compromise and will significantly step backwards in addressing concerns regarding medical liability that was reached back in 2004, 2005. Language contained in Statute 52-190(a) already establishes comprehensive yet appropriate standards for certificates of merit. This language has proven to be effective and beneficial to the filing and adjudication of civil medical liability claims.

Unfortunately as outlined, our concerns below, the changes before you today erase those standards and lower the thresholds. And specifically the changes to standard for a certificate of merit from a detailed basis for the formation of such opinion to one or more specific breaches of prevailing professional standard of care. We feel this lowers the standard of the original intent.

It also eliminates the necessity for a letter and an informed consent case. Allegations of a breach of the duty of informed consent are inherently malpractice allegations and should be subject to certificate of need requirements.

It provides the challenges to the qualifications of the writer of the certificate of merit -- shall be made only after discovery. This represents a significant change in existing practice. Under current practice, if an alleged malpractice occurs, for a neurosurgeon for instance, but a significant of merit is signed by an orthopedist, the challenge of the qualifications of the signer can be made at the outset of the case.

Under this new legislation, by requiring the completion of discovery before such challenge to a clearly unqualified writer would represent undue burden on the physician defendant.

It also substitutes the word "may" for shall when referring to the dismissal of the case for failure to file -- file a proper certificate of merit. This would render the opinion of letter virtually meaningless in a large number of cases.

Further, the automatic granting of an additional 30 days for failure to obtain and file such a certificate essentially gives the plaintiffs two bites at the apple.

And lastly -- thanks for your patience -- there are changes to this legislation which expand the definition of similar health care provider to allow they be determined by the court for the letter of certificate of merit purposes. This could create the potential for additional litigation at the very outside of the case and as such, again place additional burdens on the physician defendant.

Thank you for the opportunity to present this testimony. Please opposed House Bill ~~6487~~ so that physicians can continue to practice in Connecticut. Thank you for your time.

REP. FOX: Thank you.

Representative Hetherington.

REP. HETHERINGTON: Thank you, Mr. Chairman.

Doctor, would you comment and describe a little bit this process of obtaining the certificate from the Attorney General? And what would be the content of that?

DAVID KATZ: Well, I can only interpret what the law actually says. And it's my understanding that we would have to again get -- we'd have to have the reasons of why we need to cooperate, explain that to the Attorney General and that would help the health care and the health access to the patient and have the attorney general agree, and then proceed.

So I guess it would be the Attorney General creating a safe harbor of antitrust protections for that if he, or she agreed it was a good thing to go forward for a patient care and quality of care, it would allow -- be allowed to proceed. That would be my understanding.

REP. HETHERINGTON: That seems to me to be a further consumer protection which isn't typical in other instances where participants in an industry are allowed to operate. I mean, it seems to me that this is going in extra step. Does that seem so to you?

DAVID KATZ: No. If you want -- if you're suggesting that you give unfettered, open communication where we used to have to be worried about oversight from the judicial branch, you're the lawmaker.

REP. HETHERINGTON: That's right. I'm just thinking about others that you engage with in the course of determining, you know, compensation and so forth for services. And insurance carriers are not subject to antitrust laws generally. Are they?

DAVID KATZ: It sure doesn't seem like that to me, but I am not an attorney.

REP. HETHERINGTON: Okay. Maybe that's too broad a statement, but it --

DAVID KATZ: I think what this tries to approach is the fact that health care reform -- which I think we all agree is something that needs to move forward in the state and the country -- every piece that you see that gets put to the puzzle to make the entire picture come complete involves, you know like I talked about, increasing technology, increasing communication.

All of a sudden, you know, the electronic medical record is out there all the time so that's going to help decrease a duplicity of care and ordering extra tests and help, you know, bring down the cost of medicine and all that kind of stuff. But by its nature the definition is your will now, where people have independent practices, independent businesses, they need to be able to communicate with each other.

Right now we do on a, you know, I get a call for a consultant and we talk about the health issues over the phone, but this, these federal and state changes coming down the road go well beyond that. And that train is going a lot faster than the Department of Justice's train, if it's even going in the right direction as far as being able to get a safe harbor to create the things that everyone says will save our system, and that's what speaks towards.

REP. HETHERINGTON: Yeah. Okay. Thank you.

REP. FOX: Senator Kissel.

SENATOR KISSEL: Thank you very much, Mr. Chairman.

Dr. Katz, great to see you. I think on the bill regarding your ability to form corporative arrangements, I think

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we've been fighting that battle for a number of years, but it strikes me that maybe this year might be the magic year.

Has your organization done any outreach with our new Attorney General George Jepson at all?

DAVID KATZ: Yes. We have.

SENATOR KISSEL: And I'm just wondering if those discussions are ongoing and if they appear fruitful. The point that you're making that I think is most important this year, and I've actually heard it from some other folks in my district, is the electronic records is an expensive proposition. It sounds great. It sounds simple, but it's not.

Many of these records for your patients are paper. They're voluminous and to get all of that into one technological database is not easy. And at the same time, as much as there's still battles in Washington as what's going to happen with health care reform, elements of health care reform have a certain track. And I think you characterized it as a very fast track.

And to my knowledge, you folks have got to start getting prepared now for requirements down the road. Whether it's defunded or not, your obligations still remain in play and you don't have an awful lot of time. You can't wait until the end and see how it unfolds. You have to plan now.

So it strikes me that you're getting a real mixed message right now and I think you characterized it correctly. The legal community has this notion that's there's going to be some sort of antitrust problems going forward. To be quite frank, I really wish in other areas of our economy they would focus on monopolies, but you folks aren't the ones I'm really concerned with right now. And I think that there's so many other safeguards that I can't see that there would be problems in that respect.

So I'm hoping that we comport the legal constructs that you're able to utilize as far as associations and organizations and communication such that you're able to actually comply with the other governmental demands that are being made upon you.

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And so I think your testimony on that proposal is timely and as far as I'm concerned, the time should be this year. Thank you, sir.

DAVID KATZ: Thank you, sir.

VINCENT DeANGELO: In three minutes -- my name is Vincent D'Angelo. I'd like to speak very briefly about two bills. One is the apportionment bill.

And I may have the advantage. I suspect I'm one of the only people in the room who was actually around when this was hammered out 10, 15 years ago. And I would urge you, please don't adopt this bill. The idea of there being a distinction between settled parties, who were paid and people who are just -- and/or released parties and people who are withdrawn -- it was not an accident.

Now maybe, there may be times occasional times when it doesn't work perfectly, but the alternative is to make us keep people in lawsuits when we know there's no valid reason. It would be malpractice for me to withdraw against somebody if I knew that if I withdraw -- now the defendant, remaining defendant or defendants points the finger at that person, the jury now finds that person 10 percent responsible. My client looks at me because their verdict gets reduced by 10 percent, or 15 or 20. And says, what the hell did you? What did you do?

You make it impossible if you pass this bill to withdraw once as -- which is what we should be doing. It's what you want us to do. It's what the court system wants us to do. Once we find out the case has no merit, in our opinion to continue it, where they're so minimally involved, we should withdraw. Pass this bill and you make it impossible.

And I don't know how else to say it. I beg you please pass don't it. That is the worst thing we can do if we don't want to maintain unnecessary litigation because of the possibilities.

With regard to the certificate of merit, I can only say, my practice -- I'm -- I have one associate. I'm probably one of the few of my size, almost a sole practitioner whose practice is almost exclusively medical malpractice. I do not want to seem frivolous lawsuits, but when we get to a point where a physician who could testify at trial is not

deemed good enough to say -- to find a certificate of good faith because of some technicalities, the way we have the statute worded, that's absurd.

We potentially throw people out of court. I now have one I've had five times. This has become a cottage industry on a certificate of good faith. I have a case involving an orthopedic surgeon and an orthopedic PA and orthopedic nurses.

I had an orthopedic surgeon who says, look, this is what they all did wrong. I get a motion to dismiss. Well, he's an orthopedic surgeon. He -- is he supposed to know what orthopedic PAs are supposed to do? Are you kidding me? Is that frivolous? We get it -- and the nurses.

And then when it gets denied -- the motion to reargue. Now that Bennett was decided we get another motion to reconsider. I get these on every case. I'm not talking about frivolous cases. What this bill does, one of the main things it does, you say, look, if you have someone who's qualified to give an expert opinion in court, for God's sakes, isn't that enough to show the case is not frivolous? Isn't it? What more should we have?

Or are we supposed to now start having five, six, seven, eight expert opinions before we even bring the case? And besides which, why would I want one? I have another case where I have a nurse anesthetist and an anesthesiology issue. I have an anesthesiologist. I said, look, they missed up. Here's how: ABCD. I have a complaint that says, ABCD, they both -- then I get a motion to dismiss.

One, not qualified to give -- an anesthesiologist not qualified to give an opinion as to what a nurse anesthetist is supposed to do in a room, in an operating room. Two, it isn't detailed enough. You know the phrasing is different in Subparagraph B than Subparagraph C. Ask the judiciary how many of these motions we're getting.

This has nothing to do with frivolous lawsuits. I don't bring frivolous lawsuits for one very simple reason, they cost me too darn much money. My average case I spend out of my pocket 40 to 50,000 dollars that goes to trial, minimum. You think I'm bringing those for the ha-has?

Now there I've read some cases and there are cases where, you know, people bring them without any good-faith certificate. Those are now the people who are doing 99 percent of the medical malpractice plaintiff's work. There are outliers everywhere in everything we do. And when we try to micromanage this -- and we get it because of whether it's Subsection D, Sub C or B, Sub E or B -- I mean, I always get those confused, frankly. And that's what the Bennett decision held and that's one of the major things this legislation is seeking to propose, not to inundate people with frivolous lawsuits, but to get rid of -- I just -- I don't know what else to say.

It's unfair. My heart always stops every time I get one of those, because usually -- I've won them all, but what am I supposed to tell the client whose wife died? That what? I got the wrong subsection? Or somebody, some judge decided that a nurse anesthetist is not good enough to show good faith that it's not a frivolous lawsuit, that I had an anesthesiologist if I lose one of those? And I don't know what happens when I go up on appeal.

Worse yet, you lose one defendant, down the road what do you do with (inaudible). You've got to try the case once and go up the case on the rest of it? It's absurd.

And no. We're talking here about people who have been seriously hurt, people where we bring with good physicians, good experts and we're getting bombarded with issues about technicalities. This is not about hurting doctors. This is not about bringing suits because I want to bring lawsuits. It's about saying, look, we have serious allegations here and let's not make this a technical, oh, you didn't dot the I; you didn't cross the T.

You know, that's not what most of our cases are about. It's not what most of our judiciary is about. And quite honestly, this is -- these bills get -- with all due respect to the Legislature. I do have a lot of respect -- you have the power to do a lot. Sometimes I'm not always sure it's a good idea if we do it, including the idea of trying to micromanage what the courts do.

The courts are really pretty good at throwing out the real frivolous ones. If there's no good-faith certificate, throw it out.

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But please, I'd urge the adoption of -- I guess its Raised Bill 6487. And I would urge that you would reject any changes to the apportionment bill.

Thank you.

MICHAEL G. RIGG: Good afternoon. My name is Michael Rigg. I'm a lawyer in Connecticut and I regularly represent doctors and hospitals who are sued for medical malpractice and I'm here to oppose Raised Bill 6487.

The main reason I oppose it is because the supreme court has already issued a decision that makes it unnecessary to touch this bill. In the Bennett case, the one that is constantly talked about, the supreme court made it clear that dismissal is without prejudice, and that the plaintiff in that case was entitled to refile the same lawsuit.

They also made it clear that if the statute of limitations has expired, you can refile under the accidental failure of suit statute. In other words, it is absolutely impossible for a meritorious claim not to be brought to court. The fact is that on the same day that Bennett was decided, was also the Plant case. And in the Plant case that involved the accidental failure suit statute as well.

And in that case, the attorney who filed the lawsuit sued two ER physician's, a board-certified psychologist and a licensed crisis worker. And you know who he relied on for his expert? His former client and retired nurse who had worked 22 years in a nursing home. And the supreme court held that his behavior was egregious. And this bill will simply protect bad lawyers so that they can sue good doctors. And because the supreme court has now made it clear that the only way that a plaintiff won't be allowed to bring his or her claim to court is if the behavior is egregious.

So I'd also ask that the committee take notice of the annual report that's issued by the insurance department. Back in 2005 when tort reform was addressed a very important step was taken, was to mandate that the insurance department keep statistics as to lawsuits regarding closed claims.

And what we see in the latest report is that well over 50 percent of claims result in no payment, but the average

defense cost in defending those lawsuits, those non-meritorious lawsuits totaled over \$45 million over the last four and a half years. That's a lot of money that could have been spent caring for patients.

And the University of Connecticut health center has submitted written testimony on this and if this becomes law, this bill, there will be more lawsuits brought against the health center and that will mean more money that taxpayers will be paying to defend against inadequately investigated lawsuits.

This bill also eliminates the detailed written -- the detailed requirement that Senator Kissel, you spoke so eloquently in support of back in 2005. No longer is there going to be a requirement that there has to be a detailed opinion. It can just be a conclusory statement.

What had happened in the Plant case was that the attorney in that case stated that he believed that his expert was, in fact, qualified. And the supreme court explained that the similar health care provider requirement, as it currently exists, in their words, best effectuates the policy of the good-faith statute, which is to eliminate frivolous lawsuits.

Thank you.

SENATOR COLEMAN: Are their questions? Senator Kissel.

SENATOR KISSEL: I want to thank you for that reference to my eloquent speaking in 2005. I'm going to assume you're correct on that.

MICHAEL G. RIGG: I am.

SENATOR COLEMAN: Other questions? Before you leave, I guess I want to approach it from this angle. If the objective of this bill is to allow good lawyers to sue good doctors who may have made a mistake that results in that injury to a patient, what will we have to do from your point of view to this bill?

MICHAEL G. RIGG: Well, you'd have to leave the similar health care provider provision alone. You see, the similar health care provider requirement is simply this, if you accuse a nurse of malpractice, get an opinion from a nurse.

If you accuse an orthopedic surgeon of malpractice get an opinion from an orthopedic surgeon.

If you sue a neurosurgeon for malpractice, get an opinion from a neurosurgeon. A child can understand that requirement. In simple, it's objective and it's fair. The problem that the supreme court pointed out is that if you change the definition and you simply provide the plaintiff's attorney with the discretion to decide, well, I think this person is qualified. What you're going to get is the Plant case.

Because that attorney has done it more than once. He'd been doing it for years. The only difference about that is he finally got caught. And the only reason he got caught was because of the amended version of the good-faith statute. If it hadn't existed that would have gone on. And yet Charlotte Hungerford Hospital had to pay well over a hundred thousand dollars to defend against that frivolous lawsuit and that's the problem.

The whole point of this system is to make sure that the lawsuit has merit and to eliminate the ability of somebody to say, well, I think this person is -- I think this retired nurse is qualified to testify against a psychiatrist. That's the problem.

If you can't get an opinion from a similar health care provider, guess what? You shouldn't file the lawsuit. It's -- this is probably one of the most modest pre-suit statutes in the country. Most states require you to have an opinion on causation. The supreme court said, no you don't, not in Connecticut. You don't have to have an opinion.

And most states mandate the dismissal is with prejudice, but not in Connecticut. It's without prejudice. And most states say, well, if you don't comply with the statute, and the statute of limitations has run, well, then that's too bad. Not in Connecticut. You get a one-year extension of the statute of limitations for filing a lawsuit that doesn't comply with the good-faith statute.

There's simply no situation in which a plaintiff with a meritorious claim will be deprived of his day in court. And I think actually, Senator Kissel, in follow up to your question to the very emotional testimony that I heard before, is well, what about maybe there was malpractice in

the prior case? And that's my point, is that's why it's impossible for there to ever be a situation where a plaintiff will be deprived of his or her day in court because, either the lawsuit simply didn't have merit and never should have been filed in the first place, or it was the attorney who completely messed up and he ought to be held accountable.

So there just isn't going to be a time where an innocent plaintiff is going to be victimized by the statute as it's been authoritatively construed by the supreme court. No. There just is no scenario where that could happen.

So I don't know how to craft it, because this statute originally, as I understand it, was itself a compromise. We don't have (inaudible) but the doctors did get this one concession back in 2005 that the good-faith statute would be strengthened, because prior to 2005 it had been in existence since 1986, but it was totally useless. It didn't do anything.

It would -- under this bill, it would be better for doctors and hospitals just to get rid of the statute than to rip the guts out of it the way that this is written. And one of the unintended consequences -- I assume it's unattended here -- is that by changing the definition of similar health care provider this bill doesn't just change who can testify, it actually changes with the standard of care is.

A doctor literally won't know what the standard of care is until he's sued, because the similar health care provider, the standard of care is judged by who the similar health care provider is. So as I explained before, if you're an orthopedic surgeon, today and you know what the standard of care is. It's what another reasonably prudent orthopedic surgeon would do under similar circumstances.

But if you actually changed the definition of who a similar health care provider is so that it's whomever at some point in -- after a lawsuit is filed as to who is a similar health care provider, a doctor literally doesn't know what the standard -- the legal standard of care is. He knows what the medical standard of care is, but under the law the standard of care is being offered by the language of this bill.

It's also irrational because it says, you have to file a motion to dismiss within 60 days of the return date, but you can't challenge the qualifications of the doctor until after discovery is over. Well, I've never heard of any medical malpractice case or any civil lawsuit in which discovery took less than 60 days. So you have to file the motion to dismiss, but you can't file the motion to dismiss. That's what this bill says.

So I really don't know how to fix this, this bill. I mean, I think the bill should -- I think the statute should be strengthened to require an opinion on causation. That, to me, it doesn't make sense, that there's nothing that requires an opinion on causation.

The other thing is the way that this, the law is currently written is the plaintiff doesn't need to get an opinion that satisfies the standard of evidence at the time of trial. He only needs to get an expert who can say, there appears to be evidence of medical negligence. That's all they have to do. That's a very low standard.

They don't even have to have somebody who will say, I believe with a reasonable degree of medical probability -- which would be the standard at the time of trial -- just that there appears to be evidence of medical negligence. That's the current law. The only thing that's really required is just get an opinion from somebody who's in the same peer group as that physician, as that person. I think that doctors are entitled to have somebody who is in their area judging them.

The Bennett case involved a situation where the attorney sued an ER physician, so naturally he went out and got an opinion from a surgeon. That's what he did. And the supreme court said, even though you did that you still get to a second bite of the apple. You can go back and fix it. You get to refile the lawsuit.

So I'm not sure what this is in response to, what the injustice is. Because the supreme court has made it clear there won't be an injustice. They recognize that there could be a harsh consequence which is why they interpreted it as being a dismissal without prejudice.

SENATOR COLEMAN: Well, I guess I appreciate the comments that you make and the passion with which you make those

comments. It seems to be the case on both sides of the issue.

MICHAEL G. RIGG: One thing that I would point out is I'm a defense lawyer and when lawsuits are filed, if it's a frivolous lawsuit, I get paid anyway. The more lawsuits that are filed, the better it is for me. It's against my economic interests for there to be fewer lawsuits.

I'm not being paid to be here. I wasn't asked to be here, but I do have to pay the increasing costs of my health insurance, and I believe that it is caused by the increasing amount of lawsuits that shouldn't be filed.

I've heard attorneys -- and there's some very good plaintiff's attorneys here and they, they'll say, well, the Plant case, that's an anomaly. No. It isn't. There are lots of frivolous lawsuits that are filed in Connecticut because they've been able to hide behind the fact that you're not entitled to find out the identity of the expert. And that's what the attorney in the Plant case did successfully for a long time. It took a long time for that to finally happen, but finally we've established the precedent that this is unacceptable, that you can't do this and that you won't be able to maintain your lawsuit.

So this, this bill will undo the salutary benefit of the Plant decision so that it's clear that attorneys cannot file lawsuits that are not properly investigated. And they -- and if it turns out that there's a technical aspect that results in a dismissal, don't worry. You can refile, even if the statute of limitations has expired because the accidental failure suit statute has been in existence for decades to protect against that injustice. That's why it exists.

So the entire statutory scheme, I think, should be considered including the accident -- the way the supreme court has interpreted the accidental failure of suit statute in this context.

SENATOR COLEMAN: As I recall, the purpose of the certificate of merit was to prevent frivolous lawsuits. And even if a plaintiff is permitted to refile, how does that -

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The delay in moving the case forward seems to me to be not entirely relevant to the meritoriousness of the suit. To say that a suit will be dismissed because of some technicality regarding the certificate of merit is not a problem because the party can come back at some point later and simply refile, seems to me to be beyond the whole purpose and basis of the certificate of merit as I recall the debate and discussion regarding the implementation of the certificates of merit.

MICHAEL G. RIGG: Well, I guess it depends on your view of a technicality. I think having somebody who is completely unqualified --

SENATOR COLEMAN: The objective is to determine whether the suit has merit or not, whether it's a frivolous suit or not. If it's frivolous I agree with you, you know, it shouldn't go forward. If there is merit to the complaint, you know, then it should lie. Then it should be permitted to progress without delay.

MICHAEL G. RIGG: Right. Well, I agree, but the question is how do you determine that it -- that the lawsuit has merit. And the way that that's done is that by requiring people to get an opinion from a similar health care provider.

Get an opinion. You're going to accuse a psychiatrist, for example, of malpractice, then you get an opinion from a psychiatrist, not a nurse.

SENATOR COLEMAN: Okay. Are there other questions? Seeing none, thank you for in testimony.

MICHAEL G. RIGG: Thank you.

ANGELO ZIOTAS: Good afternoon, Representative Fox and members of the committee. Thank you. I'm Angelo Ziotas. I reside in New Canaan, Connecticut and practice law at the firm of Silver, Golub & Teitell in Stamford. And I'm here to speak in favor of Bill ~~6187~~, the bill that's been referenced a couple of times regarding certificates of merit.

I should say at the outset the testimony from Attorney Rigg, I agree with in only one respect and that's -- Senator Kissel I was here in 2005. You did you speak eloquently at that time. And there was a lot of

eloquent speakers who referenced this bill. And none of them intended the certificate of merit bill to be interpreted that way the appellate and supreme court have done in Bennett.

I am going to speak a bit about Bennett because that really is the reason for our supporting this bill. We currently have a situation under the current supreme court decision where an expert witness who is qualified to testify at trial, that a Connecticut physician violated the standard of care cannot sign a certificate of merit to start a lawsuit against that physician. The appellate court described as illogical and we agree.

The illogic in that decision extends to the absurd extent that the defendant doctor in Bennett could not have signed a certificate of merit against himself. And I want to make sure that that's clearly understood in my testimony. The defendant doctor in Bennett was not board certified in emergency medicine. The plaintiffs believed him to be based upon their pre-suit investigation to be a specialist in emergency medicine.

On the basis of those two facts Dr. Lowes, the defendant in Bennett, is not qualified under this law as interpreted by our courts. So we do think that it needs some modification to address that illogic.

And I do want to address another point that has come up. That illogic could not have been anticipated. I think Senator Kissel, you raised the issue with one of our witnesses whether an attorney could have made an error. The attorneys in Connecticut, the lawyers that are members of our association could not have anticipated that the statute was going to be interpreted in the way that it has been until the Bennett decision.

And so it's something that I think the lawyers in our state really do need to have this clarified in a way that makes sense and what this bill seeks to do is to marry the two statutes which address the qualifications of an expert to offer good faith.

And I really do take exception to one of the comments that was made earlier. This statute is not, as it's currently interpreted by our courts, so simple that a child could follow it. I really do take exception to that. It does need

to be addressed in a way that would allow lawyers and litigants to submit good-faith certificates and keep meritorious cases within the system.

Thank you.

REP. FOX: Thank you, Attorney Ziotas.

Any questions?

Senator Kissel.

SENATOR KISSEL: Thank you for your kind words.

Thank you, Mr. Chairman.

In a nutshell, what actually is happening now in the field right now six years after our reforms? Because we really did think that we made a good reform that was balanced. You know, for the folks, the defense counsel, you know, we thought it was fair to them as well.

But it seems like -- and you had indicated in the court cases, but I'm just wondering in your actual day-to-day practice what has driven up the frustration level such that, you know, you're all here now saying, we took a great shot at it, but it is now sort of evolved into a point where we need to revisit it?

ANGELO ZIOTAS: Senator Kissel, thank you for that question, because it also allows me to also address what Chairman Fox asked of Attorney Santoro about how frequently these are coming up.

When we were here last year, and this bill got through the committee unanimously and kind of got stuck at the end of the session and didn't get all the way through, we had looked at the numbers and there were hundreds of these motions to dismiss that have been filed since the statute was passed. And I don't think any of the people that testified on behalf of the bill in '05 -- I was here, I testified. I heard the testimony -- we were not trying to create a system that was going to lead to motion after motion after motion in delaying these cases. Those hundreds of motions constitute, depending on how you look at it, half or more of the cases that have been filed since this bill was put into effect.

And it really is -- there are differences and I can appreciate Attorney Santoro indicating that there are differences in aggressiveness of certain firms. There's a firm in New Haven that I have frequently on the other side of malpractice cases. They never file. There's a firm in Bridgeport and a firm in Hartford that files them in every case. Whether I have the Harvard top surgeon in the field that their client is board certified in, that they claim the certificate is not detailed enough.

So it is something that does need some clarification to avoid all of the problems that that we have at the outset of the cases. It's not something that's just kind of on the margins. What you're talking about half or more of the cases we need some brighter line rules that do not allow for the motion after motion.

What Mr. Rigg talked about it terms of being able to refile and the accidental failure suit statute, we don't want that to be the basis of litigation. The first witness today may, under the Bennett decision now, have the right to refile after the whole case ends, but do we want him litigating about the death of his wife ten years afterwards?

I think if we can clarify this now -- it took some time. We knew this was a problem right away. We came back. We spoke with the chairs of the committee at the time and they said, you know, let it work its way out a little bit. Then we ended up with Bennett one. We had hopes for Bennett two and the supreme court did not clarify this in a way that addresses the beginning of the case.

SENATOR KISSEL: Thank you. And please give my best to Attorney Teitell, too.

ANGELO ZIOTAS: Thank you, Senator.

REP. FOX: Thank you.

Representative Hetherington.

REP. HETHERINGTON: Thank you, Mr. Chairman.

(Inaudible) I just want to say, welcome to you. You're a constituent from New Canaan and I'm very happy to see you and thanks for coming up.

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ANGELO ZIOTAS: Thank you, sir.

REP. SHABAN: Thank you, Mr. Chair.

You guys obviously have more background on this because I was not here in 2005. And I don't -- although I'm an attorney I don't do med-mal work.

But I don't see -- and maybe because I missed the point -- the inherent instability of the bill or the statute as it's written now to say that all right. This defendant couldn't have written a certificate for himself. Ergo, that's illogical and we've got to rewrite the whole thing.

I view it more as having read it, you know, in the past and again today, just a policy decision, of this is the initial speed bump we want to put on malpractice cases. And if, you know, if in every situation it's imperfect, well, that's -- maybe that's just life. I mean, could you fill me in? Am I missing something?

ANGELO ZIOTAS: And I apologize for being brief, Representative. The written submissions that we laid out, we did try to address the statutory scheme in a little bit more detail.

The illogic that we see is, the statute has Mr. Rigg said, was designed to allow plaintiffs to file suits when there is a reasonable basis for believing negligence occurred. You never know when you file a lawsuit everything that you're going to know after the lawsuit starts.

I get to depose the defendant. I find out what they really think is going on. There's usually records missing that I don't get until I've deposed the defendant. So we get a lot more information once the lawsuit is filed. Then you get to court and you have to prove beyond a reasonable doubt with a competent expert that the defendant violated the standard of care.

Well, it seems like logically the requirements on expert at the end should be stricter than they are at the beginning. What we have under this bill right now is a doctor who could testify at the end can't sign the letter at the beginning. And the problem with that, it was not the policy that was intended.

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You know, there are lots of speed boats that were discussed, but the example I used last year when I testified before this bill was, you have doctors around the country with different specializations doing the same thing. Neck surgery, if you need a cervical fusion in the United States, half the time you're going to see an orthopedic surgeon. Dr. Yu at Yale does them. Then you could see a neurosurgeon in Hartford to do the same procedure.

Well, there's a limited number of doctors in the country who will help plaintiffs in lawsuits. And it's really illogical and unfair to take out that other half that do the same thing, that treat the same patients, that know what the standard of care -- that could testify at trial from those pool of doctors that can sign the certificate of merit.

And Representative Shaban, I really want to you to understand that we -- when we start these cases, my firm has got a lot of resources. We do a lot of this. We can't get a Connecticut doctor to talk with us about these cases. We've got to go out-of-state. And the out-of-state doctors, if we're talking about neurosurgeons, the American Academy of Neurological Surgeons has a policy of limiting their experts from working with plaintiffs. They have an express written policy that makes it harder for us to get experts.

So in order to really make this logical and fair, keeping those two things together is all we're asking for.

REP. SHABAN: But at trial that expert is subject to voir dire, it's subject to cross-examination, is subject to the usual evidentiary teasing, if you will. Whereas the -- in the certificate, it's really just getting an apples to apples piece of paper that says, all right. You know, doctor, practice area X, practice area X, thumbs up. Okay. We can move on. I mean, I'm -- and I'm not trying to argue with you. I just see -- I don't see that your comparison is being, you know, eye to eye on that problem.

ANGELO ZIOTAS: Well, it is in the sense of the certificates always are on the papers. That's all it is now. And so what I am envisioning under the example that I've used last year, and then again now, is the certificate would say as ours do the first paragraph, Dr. So-and-so is board certified in, let's say, orthopedic medicine.

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The defendant is a neurosurgeon, however he performs X number of these surgeries a year at a major medical institution. That's giving the court the four corners of the certificate, the basis for evaluating that. And clearly under this initial evaluation, it's giving the judge every bit as much as another sentence that says, he's a neurosurgeon.

So that all we're asking is, it's not a complete inquiry at that stage. We don't want it to be. We don't want a trial when you first start the lawsuit. There's got to be discovery. You've got to get down the road. We want to get past this part.

And there's nothing about this bill that would keep a judge from throwing out the Plant case. That's the problem that I see with Mr. Rigg's hyperbolic testimony last year and this year. A nurse whose properly identified in a good-faith certificate is not allowed under this Raised Bill to offer opinion against a psychologist. It just -- it doesn't happen.

So I, you know, I understand those objections. We don't like frivolous cases. We have a complete disagreement in terms of how many of them there are, but this bill does not change the Plant case.

REP. FOX: Thank you. And I asked the question earlier as to whether -- how the motions to dismiss are handled, because you're responding to the motions to dismiss. Are they often either done on the papers or done in oral argument on a short calendar? Is that how you see it happening?

ANGELO ZIOTAS: They are typically done that way, Representative Fox. I mean, I, you know, I do see after Bennett it became a slightly different universe.

You know, as much as we've heard that it's easy to get these experts who check the boxes the same way, my firm has had situations like the neurosurgeon orthopedic example. And in those cases, those motions, we had our doctor ready to fly in. I mean, you know, look. If the motion --

A motion to dismiss makes a plaintiff's lawyer break out in a sweat. You do not want a significant case thrown out of court at that stage. It's the worst thing in the world for your client. Your client ends up in a situation that this

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gentleman first testified today did, with a meritorious case. I believe he had a case with a Yale physician who's willing to say the doctor committed malpractice, and he couldn't go forward with that suit.

So look, a motion to dismiss is a serious thing. Typically it was done of the papers, but look, there certainly circumstances if I thought my expert qualified under 52184(c) sub D, until Bennett got clarified we were looking to bring them in.

REP. FOX: That's my recollection from last year, because some of these cases -- the motion to dismiss -- a lot of these cases, you have to do your initial investigation, so they're filed close to the statute. If a dismissal is mandatory without any recourse, I can imagine how that would certainly cause concern and you'd want to have whatever you need to have available for whatever procedure it is in order to combat that.

ANGELO ZIOTAS: And Mr. Traylor had a Yale doctor, so he could bring him down from New Haven. In most of our cases, we're flying them in from Boston or someplace else in order to get them to testify.

REP. FOX: Any other questions for Attorney Ziotas?

Representative Fritz.

REP. FRITZ: As the cochairman of the medical malpractice working group (inaudible) took us two years. The first bill that we did was vetoed by Rowland and we walked around the capitol all in the light uniforms cheering for the doctors. We forgot all about the victims.

The intention of the certificate of merit, if I recall, was clearly to stop frivolous lawsuits, but now what we're hearing is because of this lawsuit, the court's interpretation has taken it to another level.

I will share with you my one fear in all of this. I think the certificate of merit is a good thing. It may be not a good process. Maybe we need to spell it out more, define it more, make it so that there's no (inaudible). But I still think it's necessary because of frivolous lawsuits, because you know how litigious we are.

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At the end of the day my fear is we're opening a can of worms and how do we prevent it? I mean, people are still out there screaming about tort reform and when we say to them, this is what happens, this is what we addressed, we've tried to make it better for you, they don't want to know it because (inaudible) some years ago. They still need tort reform and they have their own definition.

So how do we preserve what we did and all the good that we did without destroying it? You tell me. You're the lawyer.

ANGELO ZIOTAS: Thank you for asking such an easy question, Representative Fritz.

It is a hard thing to answer. My main response is I don't think we can let fear of people wanting the wrong thing to

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A VOICE: (Inaudible.)

ANGELO ZIOTAS: I have. I have. And I'm here all the time and I've seen it. But I don't think we should let that prevent us from fixing something we know is wrong.

I'll be there to fight against all those other things if they come up. I realize that in concept, tort reform sounds like a great thing, but there's no person who backs away from tort reform more quickly than a prior advocate who has become injured through medical negligence.

The most vociferous clients that I've represented over the years are physicians who have been injured or had a family member injured and they expect the system to treat them fairly when it happens. And it's up to all of us to ensure the system treats everybody else fairly.

REP. FOX: Thank you. And just so I'm clear, you're not purposing -- I don't think anyone has proposed getting rid of the certificate of merit. It's clarifying what our intent was when we initially did this.

ANGELO ZIOTAS: That's exactly right, Representative. I mean, I, you know, as I said at the beginning of my comments, it is not in the interest of my association, my firm, frankly, my clients to have frivolous cases. I am perfectly willing to have a certificate of merit that weeds out the bad cases.

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I just don't want one that allows good cases with experts to be dismissed and to have to wait five years for an accidental failure suit claim to be filed.

REP. FOX: Any other questions?

Thank you for the testimony.

ANGELO ZIOTAS: Thank you. Thank you.

JEAN REXFORD: Good afternoon, distinguished members of the Judiciary Committee. I Jean Rexford and I'm Executive Director of the Connecticut Center for Patient Safety. And I actually wasn't going to testify until late last night and I thought unless I speak the health care consumer, which we all are, will not be represented.

If a nurse or a doctor were to be injured while at work not only would that be reported to OSHA, but they would have health insurance, disability insurance and while injured, have some protections. But a patient can be injured in a hospital and it is a very different story.

First, let's look at the statistics. I'm a veteran of the med-mal battle too, and we didn't have all the information six years ago, five years ago that we have now. There are two recent studies that are a dramatic, substantiating scope of medical error.

HealthGrades has just released a new study confirming the growing evidence of preventable death. HealthGrades is a leading independent ratings organization, and over an 11 year period, has reviewed more than 140 million Medicare patient records. They estimate that there have been over 500,000 preventable deaths of just Medicare patients in that time.

The other study -- this was amazing -- was in October, 2010. The Office of Inspector General of the U.S. Department of Human -- Health and Human Services published the results of a well researched study that confirms that our Medicare patients are facing a real crisis in our hospitals. The study concluded that of the nearly 1 million Medicare beneficiaries discharged from hospitals in October, 2009, about one in seven experienced an adverse event inside that hospital. physician reviewers determined that 44 percent of those harmful events were preventable.

Invisible no more: Widower encouraged after testifying on medical malpractice bill

By Karen Florin

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Tim Martin/The Day

Sylvester Traylor of Quaker Hill is suing his wife's psychiatrist, claiming that he played a role in her suicide.

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Sylvester Traylor, who has been waging a legal battle with limited resources since his wife committed suicide seven years ago, said he no longer feels like "the invisible plaintiff."

That's because he has now testified before a legislative committee that is considering a bill to make it easier for people like him to file medical malpractice lawsuits.

Traylor, 49, of New London, sued his wife's psychiatrist, Dr. Bassam Awwa, after Roberta Mae Traylor committed suicide on March 1, 2004. Traylor claims his wife had suicidal thoughts after taking antidepressants, and that Awwa ignored nine of his phone calls seeking help.

Mrs. Traylor, a manager at the former Filene's department store, backed her car into the garage at the couple's home on Vauxhall Street Extension and let the engine run, according to Traylor. The state Office of the Chief Medical Examiner ruled that she committed suicide via carbon monoxide poisoning. She was 46.

"I loved her in life," Traylor said during an interview this week. "I tried to get her help. Now I'm fighting for her in death."

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Awwa's practice, Connecticut Behavioral Health Associates, has offices in

New London, Norwich and Stonington. He is affiliated with the Lawrence & Memorial and William W. Backus hospitals. He has been licensed since 1983 and is in good standing, according to the state Department of Public Health.

"There is absolutely no merit to any of the allegations he (Traylor) has raised," said Awwa's attorney, Donald E. Leone Jr. of Norwich.

Since he brought the lawsuit in 2006, Traylor has had sporadic legal representation, but has been "pro se," or representing himself, for much of the time. He has worked at Foxwoods Resort Casino and as a photographer, but is currently unemployed and said he has been having health problems. The court file in his case contains hundreds of legal motions, many written by Traylor. The case is before the state Appellate Court.

His initial complaint has spurred others, including charges of misconduct against judges and attorneys. Traylor is well known in New London Superior Court, where he has spent countless hours in the law library, clerk's office and courtrooms. Still, he said, at times he has felt invisible.

That changed last week when he testified before the Judiciary Committee about a law that requires plaintiffs in medical malpractice cases to attach a "certificate of good faith" from a medical expert with similar credentials to their complaints. Traylor obtained the certificate, but said his case was dismissed "on a technicality" because the letter was not attached to his initial complaint. The bill would make it more difficult for judges to dismiss cases so easily.

"In 2005 they revised this law and ever since then these defense lawyers have flooded courts with motions to dismiss, and judges are dismissing legitimate cases," Traylor said.

Traylor said he testified well beyond his allotted three minutes and that he broke down and cried at one point. While at the Capitol, he said he received support from lawmakers, including state Reps. Betsy Ritter, D-Waterford, and Ernest Hewett, D-New London. He said a lobbyist for the Connecticut Trial Lawyers Association encouraged him, as did many attorneys who represent plaintiffs in medical malpractice suits.

"I was so surprised at how many people knew of my situation," he said.

Physicians generally charge between \$2,000 and \$10,000 to review a case and provide a certificate of good faith, which courts require as a way to determine whether a case has merit. Traylor said he received a letter from Dr. Howard Zonana, a Yale University psychiatrist and professor, but that his case was dismissed "on a technicality" because the letter was not properly attached to his original complaint.

Traylor said he sat down with Zonana and six other psychiatrists to review the case before Zonana issued the certificate. The Yale doctor wrote in an Oct. 18, 2006,

letter that after reviewing Mrs. Traylor's treatment records and other information, Awwa's failure to call Traylor "played a proximate role in the death of the patient as it would have added to concerns re suicidality and prompted more active intervention by the physician."

The proposed law revises the 2005 statute that was intended to help courts weed out frivolous malpractice cases by requiring those who would bring such lawsuits to get an opinion from a medical expert who works in the same field.

"The original intent of the statute was not such a bad thing," said Kelly E. Reardon of The Reardon Law Firm. "The idea of trying to prevent frivolous medical malpractice suits from being filed is a legitimate one. But there have been so many issues that have arisen over the past five years as to how to implement it."

Also, she said, conflicting state Supreme Court decisions have come down since the law was passed, and language that requires plaintiffs to get certificates from a "similar health care provider" is problematic.

Traylor said he is hopeful the legislation passes so that other so-called "pro se litigants" who want to file malpractice lawsuits are not hindered by technicalities.

"All of these people's rights to file a medical malpractice case are being violated," he said.

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