



House of Representatives

General Assembly

File No. 674

January Session, 2013

House Bill No. 6687

House of Representatives, May 1, 2013

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, 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 Section 52-190a of the general statutes is repealed and the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 that 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] under
56 subsection (a) of this section. This period shall be in addition to other
57 tolling periods.

58 (c) The failure to obtain and file the written opinion required [by]
59 under subsection (a) of this section shall be grounds for the dismissal
60 of the action, provided the claimant has failed to remedy such failure
61 not later than sixty days after being ordered to do so by the court.

62 (d) For the purposes of this section, "qualified health care provider"
63 means a similar health care provider, as defined in subsection (b) or (c)
64 of section 52-184c, or any other health care provider who may testify as
65 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:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
UConn Health Center	GF - Cost	Potential	Potential

Municipal Impact: None

Explanation

The bill broadens the manner in which attorneys may determine a good faith belief that a claimant received negligent medical care or treatment.

Should the provisions of the bill lead to an increase in the number of malpractice cases that are litigated, the University of Connecticut Health Center (UCHC) may realize additional legal and medical malpractice costs. The extent of these costs cannot be known in advance. However, for purposes of illustration, UCHC has incurred legal costs of \$1.8 million over a recent four year period defending malpractice claims that ultimately resulted in no payment to the claimant.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 6687*****AN ACT CONCERNING CERTIFICATES OF MERIT.*****SUMMARY:**

This bill expands the types of health care providers who may provide a prelitigation opinion letter (sometimes called certificate of merit) concerning evidence of negligent medical care in malpractice cases.

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 issue in the malpractice case).

Under current law, the failure to obtain and file the opinion letter is grounds for the case to be dismissed. The bill gives claimants 60 days to remedy this failure, after being ordered to do so by the court, before the case is dismissed for these reasons.

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

HEALTH CARE PROVIDERS QUALIFIED TO SUBMIT CERTIFICATE OF MERIT

By law, before filing a medical malpractice or apportionment complaint (see BACKGROUND), an attorney or claimant must obtain a written, signed opinion from another health care provider that there appears to be evidence of medical negligence. A copy of the opinion letter, with the author's name expunged, must be attached to the required good faith certificate that must accompany the complaint.

Under current law, the opinion letter must be from a "similar health

care provider.” Generally, similar health care providers are those trained and experienced in the same specialty or discipline as the defendant, and certified in the same specialty if applicable (see BACKGROUND).

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 opinion letter requirement 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 state Supreme Court decisions have interpreted the statute that this bill amends (CGS § 52-190a). For example, 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."

Also, 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."

Related Bill

sSB 1154 (File 617), reported favorably by the Judiciary Committee, allows someone whose malpractice case was dismissed for failure to meet the certificate of merit requirement to file a case again under the accidental failure of suit statute.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 28 Nay 16 (04/12/2013)