



EM

Testimony of Connecticut Orthopaedic Society, Presented by F. Scott Gray, MD

In Opposition of *House Bill 6687 An Act Concerning Certificate of Merit*

Judiciary Committee April 1, 2013

Senator Coleman, Representative Fox and distinguished Members of the Judiciary Committee, thank you for the opportunity to present this testimony to you in strong opposition to House Bill 6687, An Act Concerning Certificate of Merit.

I am Dr. Scott Gray, Secretary Treasurer for the Connecticut Orthopaedic Society representing over 230 orthopaedic surgeons in Connecticut and I am a board certified orthopaedic surgeon with a subspecialty in Foot and Ankle Surgery and in private practice in Danbury, Connecticut.

I am here today to represent the collective voice of my colleagues in opposition to the proposed changes to An Act Concerning Certificate of Merit. These changes will diminish the credibility of the Certificate of Merit. If these meaningful qualifications to the definition of similar healthcare provider are removed, it would be a serious step backwards and would create a legal environment that would increase non-meritorious lawsuits and claims. This current statute is in place to provide merit, which is why it is called a certificate of merit. It thus does not allow process to begin with an unqualified person professing a certificate of merit thus wasting the courts time and causing much wasteful expenditure directly affecting health care costs in our state.

This proposed provision would eliminate the requirement that a board- certified, similarly trained health care provider be an expert in the first place. In effect, it leaves the defendant with the potential of a non- related specialist rendering a decision that does not require details to determine if there is the appearance of negligence in order to move the case forward. These proposed provisions will add to the costs of health in Connecticut with an increase in the filing of frivolous suits, and do nothing to promote a fair and equitable legal system. The professional integrity of your physician caregivers will be trampled.

The proposed language will also disband the requirement of a detailed basis for an expert's opinion which defeats the purpose of requiring an expert report in the first place. Like the standard upheld by Connecticut's Supreme Court and similar statutes in over 40 states, both maintain the integrity of the law by ensuring that testimony against a physician needs to be provided by an expert who is board-certified and similarly qualified in the field of practice of the defendant physician. In fact, Florida went a step further last year by instituting an out of

state certificate requirement for expert witnesses practicing outside their state which provides a simple but effective vetting process for out of state witnesses- verifying their licensing status, while garnering revenue for the State .

Data from the Connecticut Medical Insurance Company for 2006 through 2010, which has previously been presented, indicates that out of the 405 CMIC policy holder malpractice cases, only two of the Company's seven filed motions to dismiss by challenge to the Certificate of Merit, were granted and only one was upheld indicating the effectiveness of the current statute for all involved parties and illustrates if a suit has merit it will be brought forward. Our physician members are not looking to stop lawsuits from happening but to maintain legitimate standards. Plaintiffs lawyers complained in 2005 that they could not find Connecticut physicians to profess a COM easily thus redacting the identity of the physician was an accepted compromise. We now feel that this should be revisited.

The orthopaedic surgeons in CT oppose these changes and request this Committee seek to make the Certificate of Merit stronger by requiring that at the time of filing, complete disclosure of who the expert is and what training and education they have to ensure that they meet the requirements for professing a certificate of merit and maintain the current statute provision that requires a detailed basis for the formation of a medical negligence opinion in order to move forward. This would be an important step in addressing the current malpractice crises in our State as identified by the American Medical Association and American Academy of Orthopedic surgeons both whom label CT as a malpractice crisis state. Currently Yale and University of Connecticut graduating orthopedic residents do not stay in our State due in part to the malpractice environment.

Connecticut's Certificate of Merit is comparatively modest to other states malpractice reforms and to gut or weaken it now by eliminating important and justified thresholds threatens the vibrancy of medical practice and healthcare delivery in our State. The way to make sure that good care is provided, physician recruitment improves and mistakes are corrected is to have properly qualified and equally trained physicians evaluate concerns regarding rendered care. Thank you for your time.

Sincerely,

F. Scott Gray, M.D.
Connecticut Orthopaedic Society – Secretary Treasurer
Connecticut Family Orthopedics, Danbury, CT

CONNECTICUT ORTHOPAEDIC SOCIETY
26 RIGGS AVENUE
WEST HARTFORD, CONNECTICUT 06107
phone (860)690-1146 - fax (860)561-5514 -
www.ctortho.org