
CONNECTICUT MEDICAL INSURANCE COMPANY

POSITION PAPER

RAISED BILL 6687: AN ACT CONCERNING CERTIFICATES OF MERIT

As one of the leading medical malpractice insurers in the state of Connecticut, CMIC must voice its strenuous opposition to Raised Bill 6687. The proponents of the Bill offer this legislation for the ostensible purpose of ameliorating the harsh effects of the recent case of *Bennett v. New Milford Hosp.*, 300 Conn. 1 (2011). It is quite evident, however, that the proposed Bill goes far beyond any ameliorative purpose. This highly partisan bill completely eviscerates the expert report requirement that has been part of Connecticut law since 2005 by removing all meaningful barriers to the qualifications of experts who author these reports.

The following proposed changes will have an inimical effect on Connecticut health care providers and their insurers.

The Bill amends General Statute §52-190a, (“Prior reasonable inquiry and certificate of good faith required in negligence action against a health care provider”), by introducing a new term into the legal lexicon, “*qualified health care provider*.” The definition of “qualified health care provider” in the Bill is tied to General Statute §52-184c(d), the so-called “catch all” provision for expert qualification in civil trials.

Under the existing definition of “similar health care provider,” an expert would generally not qualify to author an expert report in support of a Certificate of Merit unless that expert practiced in the same medical specialty and had certifications similar to those of the defendant provider. Under the new definition, the “catch all” provision of Section 52-184c(d) comes into play and allows *anyone* to qualify as an expert in the court’s discretion. The existing objective standards would be replaced by an entirely subjective standard permitting a person to qualify as long as he or she was someone “who to the satisfaction of the court, possesses sufficient training, experience and knowledge as a result of practice or teaching in a related field of medicine, so as to be able to provide [such] expert testimony as to the prevailing professional standard of care in a given field of medicine.”

The intent of this change is to remove all meaningful qualification requirements for authors of expert reports in support of certificates of merit. This is a serious step backward for the health care providers and insurers in the state of Connecticut who fought long and hard for protections against frivolous lawsuits.

The Connecticut Legislature should be concerned not with removing these protections, but with strengthening them and thereby ensuring that only meritorious claims are brought against Connecticut's health care providers.

The Bill also significantly changes the content requirements for expert opinions that are submitted in support of Certificates of Merit. No longer would these reports be required to include a "detailed basis for the formation of [the expert's] opinion." Instead, the certificate would be required to include only "a detailed statement that identifies one or more breaches of the prevailing professional standard of care." In effect, the Bill would allow mere conclusory statements that are barren of the detail that explains the *bona fides* of the lawsuit. The information set forth in the certificate would be no different than the information set forth by the attorney in the Complaint itself.

The Bill also introduces a "second-bite-at-the-apple" provision. Current law provides that the "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." (Emphasis added.) The proposed Bill would add the proviso, "*provided the claimant has failed to remedy such failure not later than sixty days after being ordered to do so by the court.*" This provision undermines the entire purpose of the Certificate of Merit statute, which is to ensure that there has been a good faith, *pre-suit* inquiry into the merits of the claim. Removing this requirement will lead inevitably to frivolous lawsuits.

The proponents of Raised Bill 6687 claim that this bill is necessary to address the "harsh" effects of the *Bennett* case, but the harsh effects of *Bennett* have already been entirely removed. At the same time that the Connecticut Supreme Court decided *Bennett*, it also decided the case of *Plante v. Charlotte Hungerford Hosp.*, 300 Conn. 33 (2011), which held in effect that the large majority of cases dismissed because of a failure to comply with the requirements of General Statute §52-190a could be refiled in court under the provisions of General Statute §52-592, the so-called "Accidental Failure of Suit Statute." In *Plante*, the Supreme Court held that only "egregious" failures to comply with §52-190a would prevent a plaintiff from being able to utilize the Accidental Failure statute. Under the *Plante* decision, therefore, most plaintiffs are provided with a second chance to correct any inadvertent deficiencies in their original filing and the "harsh" effects of the *Bennett* case are reserved for the few cases that justly deserve harsh treatment. This is not a situation that cries for legislative intervention. The proponents of Raised Bill 6687 appear to be using the *Bennett* decision as a cover to rewrite §52-190a to their liking.

In summary, the passage of Raised Bill 6687 would remove an important obstacle to the filing of frivolous cases in Connecticut courts. It would raise the cost of defending medical malpractice cases and ultimately increase the premiums that health care providers are required to pay for malpractice protection. CMIC urges the rejection of this partisan and ill-considered Bill.

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