



Testimony in Opposition to House Bill 6687 An Act Concerning Certificates of Merit
Judiciary Committee
April 1, 2013

Senator Coleman, Representative Fox and members of the Judiciary Committee, my name is Dr. Courtland Lewis. I am Chairman of the Connecticut State Medical Society Legislative Committee and a practicing orthopedic surgeon in Farmington. On behalf of the more than 8,500 physicians and physicians-in-training of the Connecticut State Medical Society (CSMS), the Connecticut Chapters of the American College of Surgeons and the American College of Physicians, thank you for the opportunity to present this testimony to you in **STRONG** opposition to **House Bill 6687 An Act Concerning the Certificate of Merit**. This bill turns back the clock on a delicate compromise enacted by the Legislature in Public Act 05-275 as the result of a two-year state review of medical liability reform. This proposal undoes the compromise, and would be a significant step backward in addressing medical liability in Connecticut.

Last session I, and many other physicians and legal professionals, came before this committee to establish how language contained in CGS 52-190a 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. Today I tell you once again that the statute has not resulted in lopsided results in Connecticut courts: in 2012, Connecticut Insurance Department statistics show approximately half of medical liability cases were decided for plaintiffs and half for defendants. We must note that even claims that resulted in no payments had an average cost of \$61,045 to defend, adding to the financial strain on the healthcare system and individual physicians in particular.

HB 6687 makes significant changes to the medical standard for filing a certificate of merit. CGS 52-190a states that in providing an opinion relating to medical negligence, plaintiffs must provide a "detailed basis for the formation of such opinion." HB 6687 lowers that threshold to "one or more breaches of the prevailing professional standard of care." This modification lowers the standard for such certificates to make it easier to claim negligence has occurred.

As part of the medical liability reform compromise enacted in 2005, physicians were assured the expert making the good faith assertion as to the alleged medical negligence was a "similar" health care provider – in other words, a physician practicing in the same specialty as the defendant physician. HB 6687 drastically lowers this standard and simply asks that the health care provider issuing the good-faith assertion be "qualified," a significantly lower standard than currently exists.

As an orthopedic surgeon who actively practices in Connecticut, I have 14 years of formal education, including four years of undergraduate education, four years of medical school, five years of residency in orthopedic surgery, and an additional year of specialized education in

arthritis surgery, a subspecialty of orthopedic surgery. The practice of medicine is becoming increasingly specialized – no longer is an “orthopedist” simply an “orthopedist,” or a “specialist” a “specialist.” For example, a rheumatologist specializing in non-surgical arthritis treatments does not have the same insight, expertise and up-to-date training in total knee replacement as an orthopedist specializing in arthritis surgery. (I would not know that, bearing in mind that the identity of the qualified physician would also be withheld from me under the statute.) By the same token, I as a total joint surgeon would not feel comfortable issuing a certificate for a case against an orthopedist who is a hand specialist or a foot specialist.

Medical liability cases involve highly technical and complicated scientific matters, and many times, it is only physicians practicing in the same specialty or subspecialty who will have the necessary medical education, training and practice experience to offer a sound opinion as to whether a physician breached the standard of care in a particular case.

The Connecticut Supreme Court has interpreted the existing statute in a manner that is true to the original legislation while creating a forgiving climate for plaintiffs in meritorious cases. In situations when an attorney fails to meet the appropriate standard for a certificate of merit, dismissals are without prejudice.

This legislative body undertook the task of a comprehensive review of the medical liability system in 2005. That included appropriate changes to the tort system and the insurance system in the interest of patient safety. Connecticut physicians, myself included, are very concerned that this legislation proposes to tinker with only one portion of that comprehensive reform -- one that is actually working as intended.

Please oppose HB 6687.