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**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 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 which will diminish the credibility of the expert witness. 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. The current statute for qualification of Certificate of Merit is consistent with the standards used to qualify and verify an expert for the trial itself. This legal standard is in place to provide meritorious expert testimony and not allow the process to begin with an unqualified person professing a certificate of merit causing a waste of the courts time and much wasteful expenditure.

The proposed language will 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 relating to 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.

Another 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 not only add to the costs of frivolous suits, prolong the already lengthy time period but do nothing to promote a fair and equitable legal system.

The orthopaedic surgeons oppose these changes request this Committee seek to make Certificate of Merit stronger by requiring that at the time of filing, complete disclosure of who the expert is and the training and education they have to ensure that they meet the requirements for proceeding with the case 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 would help in retaining Yale and University of Connecticut graduating residents, most of whom do not stay in our State due in part to the malpractice environment.

With significant malpractice reforms in many other states, Connecticut's Certificate of Merit is comparatively modest 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. Thank you for your time.

Sincerely,

F. Scott Gray, M.D.  
Connecticut Orthopaedic Society – Secretary Treasurer  
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