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Testimony of Martin J. Gavin, President & CEO of Connecticut Children's Medical Center  
to the Judiciary Committee  
Regarding HB 6687, An Act Concerning Certificates Of Merit and  
SB 1154, An Act Concerning The Accidental Failure Of Suit Statute

April 1, 2013

Senator Coleman, Representative Fox, Members of the Judiciary Committee, thank you for the opportunity to share my concerns regarding *HB 6687, An Act Concerning Certificates Of Merit*, and *SB 1154, An Act Concerning The Accidental Failure Of Suit Statute*. Connecticut Children's Medical Center opposes these bills.

Connecticut Children's is the only hospital in the state that cares exclusively for children and it is a critical asset to all of us in Connecticut. As a center for vital research, a pioneer in new treatments, a trailblazer in advanced technology, and a teacher of future pediatric professionals, Connecticut Children's is advancing the health and wellness of all of our children, and fostering a healthier future for our state. As frontline caregivers, Connecticut hospitals support initiatives that improve access to safe, high-quality care and expand access to coverage, and oppose initiatives that may have the opposite effect.

Currently, as a result of rising medical liability insurance costs, funds have been diverted from patient care and quality improvement, and there has been a reduction in the number and availability of physicians in specialty service areas. These rising costs, combined with a challenging economic environment and a dramatically evolving healthcare delivery and reimbursement system, make it imperative for legislators to oppose measures such as HB 6687 and SB 1154. These measures would increase medical malpractice costs and, in turn, healthcare costs.

Under Connecticut law, tort cases that involve technical or scientific fields require expert testimony. Medical malpractice cases involve the need to understand sophisticated medical devices and equipment, and intricate processes and procedures conducted by teams of practitioners with years of specialized training. Given the complexity of these cases, the cost to both bring and defend them, and the significant expenditure of limited judicial resources to administer them, legislators have adopted measures to ensure that there is a reasonable basis for filing such cases, and that all parties are treated equitably.

For medical liability cases, Connecticut has developed a statutory framework to ensure that the experts used are sufficiently qualified. As part of this system, Connecticut law contains a requirement that a party, or the party's lawyer, perform and certify a pre-suit analysis to ensure

that the claim is filed in good faith. This pre-suit process is documented by a “good faith certificate,” along with a brief written explanation of the expert's review, stating that the expert believes that there appears to be evidence of medical negligence. Failure to include a good faith certificate with a complaint makes the claim subject to possible dismissal.

*HB 6687, An Act Concerning Certificates of Merit*, would significantly weaken the good faith certificate process. The bill would dramatically expand the types of professionals permitted to give pre-suit expert opinions to include any person who might be deemed an expert at the time of trial, not experts who, as similar healthcare providers, necessarily have the same specialty or training as the defendant. Such a change would roll back important decisions that this legislative body made in 2005—decisions that created objective criteria for expert qualifications currently used for pre-suit good faith letters. This bill would replace a well-reasoned and balanced system with one that would instead depend on the plaintiff's attorney's subjective assessment of who is a qualified expert.

In 2005, the General Assembly purposefully made changes to the good faith certificate statute to require that a pre-suit evaluation be performed by a similar healthcare provider. As noted in the legislative history, the goal of those changes was to reduce ongoing problems “caused by plaintiffs misrepresenting or misunderstanding physicians' opinions as to the merits of their action,” to “ensure that there is a reasonable basis for filing a medical malpractice case under the circumstances,” and to “eliminate some of the more questionable or meritless cases” filed under the standard that existed prior to 2005. This statutory design was examined and upheld by the Connecticut Supreme Court, which afforded appropriate deference to legislators' comments and other testimony found in the legislative record.

HB 6687 would remove the objective standards applicable to qualified experts—standards that guarantee that the healthcare provider knows the standard of care for the defendant provider who treated the condition that is the subject of the complaint. We ask that you preserve this essential element of the pre-complaint inquiry by opposing HB 6687.

In addition, *SB 1154, An Act Concerning The Accidental Failure Of Suit Statute*, would move us further away from realizing the intended goals and impact of the 2005 reform measures because it will dilute, and perhaps eliminate, the force of the good faith certificate law by its express inclusion in Section 52-592. Connecticut Children's opposes this because making all failures to comply with the good faith certificate automatically curable as “accidental failures of suit” will render the entire good faith certificate law useless. SB 1154 is essentially an end run around Section 52-190a.

Connecticut Children's agrees that the current state of the law in Connecticut, as outlined by our Supreme Court, allows that the accidental failure of suit statute *might* apply to the failure to include a good faith certificate. Connecticut's Supreme Court was precise when it explained that the accidental failure of suit statute applies only in limited circumstances when it intersects with the filing (or failure to file) a good faith certificate. Specifically, and in multiple cases, the Supreme Court has stated that: “when a medical malpractice action has been dismissed pursuant to § 52-190a (c) for failure to supply an opinion letter by a similar health care provider required by § 52-190a(a), a plaintiff may commence an otherwise time barred new action pursuant to the

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matter of form provisions of [General Statutes] § 52-592(a) only if that failure was caused by a simple mistake or omission, rather than egregious conduct or gross negligence attributable to the plaintiff or his attorney.” *Morgan v. Hartford Hospital*, 301 Conn. 388, 399-400 (2011); quoting *Plante v. Charlotte Hungerford Hospital*, 300 Conn. 33, 46-47 (2011).

SB 1154 far exceeds this relief and would effectively eliminate compliance with the good faith certificate statute. The measures implemented in 2005, which require a meaningful, pre-suit inquiry, should not be dismantled.

We urge you to oppose HB 6687 and SB 1154. Thank you for consideration of our position. If you have questions or need additional information, please contact Jane Baird, Connecticut Children’s Director of Government Relations, at 860-837-5557 or [jbaird@connecticutchildrens.org](mailto:jbaird@connecticutchildrens.org).