



State of Connecticut

HOUSE OF REPRESENTATIVES STATE CAPITOL

REPRESENTATIVE PRASAD SRINIVASAN
THIRTY-FIRST ASSEMBLY DISTRICT

RANKING MEMBER
PUBLIC HEALTH COMMITTEE

LEGISLATIVE OFFICE BUILDING, ROOM 4200
300 CAPITOL AVENUE
HARTFORD, CT 06106-1591

MEMBER
EDUCATION COMMITTEE
FINANCE, REVENUE AND BONDING COMMITTEE

CAPITOL: (860) 240-8700
FAX: (860) 240-0207
Prasad.Srinivasan@housegop.ct.gov

April 1, 2013

Thank you Representative Fox, Senator Coleman, and members of the Judiciary Committee for affording me the opportunity to provide testimony regarding HB 6687, "An Act Concerning Certificates of Merit," and SB 1154 "An Act Concerning the Accidental Failure of Suit Statute."

Healthcare as we are well aware of is in crisis. Healthcare access is a concern for each and every one of us. The physician population in Connecticut is aging. We have the highest number of doctors above the age of 50. We have been very unsuccessful in attracting younger physicians to Connecticut. The affordable healthcare act will make healthcare access even more challenging.

Healthcare costs are a major concern. As we know the healthcare costs are spiraling. These are the challenges that we have to face and make every attempt to seek a reasonable solution. There is however one part of the healthcare system that has been stable for a few years now. We have accomplished that with the Certificate of Merit (COM). House Bill 6687 will drastically destabilize what is now stable by opening up unnecessary and frivolous lawsuits. We will be going backwards. We will be going to the old days, and they were definitely not the "good ole days".

It was in response to a crisis, that back in 2005 that the COM was strengthened. There is a reason why the COM was strengthened back then. The medical malpractice claims were escalating. The annual increase in medical malpractice insurance was greater than 90%. In order to reduce their medical malpractice premiums many physicians particularly obstetricians, neurosurgeons and other specialties began limiting their scope of practice. I am sure you know a lot of obstetricians and gynecologists decided to only practice the gynecology part of their practice because they could not afford to be in the health care arena of delivering babies. A very sad state of affairs. This crisis led to a significant improvement of our COM. In this legislation back in 2005 the COM statute required that a plaintiff first obtain a written opinion by a similar healthcare provider before he or she files a law suit. This definition of a similar healthcare provider was well known to the legal community and it is simple to understand. If a lawsuit is filed against a cardiologist the written opinion has to be from another cardiologist. An

opinion from an internist will not be adequate. Similarly if a law suit is filed against an orthopedic surgeon the written opinion has be from another orthopedic surgeon, not a general surgeon, not an anesthesiologist. The current language is very simple.

The COM is fair. To accommodate concerns that it may be unable to find experts who were willing to publicize their criticisms, the amendment also permitted attorneys *to expunge the identity of the expert* who supplied the pre-suit written opinion.

The COM works. Physicians are practicing to their full scope of their specialties. Insurance premiums for physicians have stabilized. Most important if the case were dismissed it is dismissed without prejudice. An attorney can re-file the same lawsuit that complies with COM and even if and when the statute of limitations has expired, the attorney can refile under the Accidental Failure of Suit statute. What we have now is simple to understand, it is fair and it works.

HB 6687 eliminates the requirement that a plaintiff obtain an opinion from a "similar health care provider" and, instead, allows an opinion by a "qualified health care provider". Allowing an attorney to rely on either a "similar health care provider" or "any other health care provider" who the attorney believes "may" be allowed to testify results in a watered down standard to provides no real assurance that meritless lawsuits will not be filed. HB 6687 is confusing. In this day of specialized medicine, super specialized medicine, who will testify against an invasive cardiologist? Would it be a cardiologist or someone who knows invasive cardiology? Who will testify against an interventionist radiologist, another radiologist or someone who knows all the nuances of interventional radiology? Medicine has advanced, become super specialized and a similar healthcare provider cannot be substituted with a qualified medical provider.

HB 6687 still preserves the secrecy of the expert's identity by allowing the attorney to "expunge" the expert's identity from the opinion letter. (See lines 32-34 of HB 6687). So the effect is that the attorney, who hires the expert, is the only who knows the qualifications. This is far from being fair.

One more concern about the Bill is that, even when an attorney deliberately chooses not to comply with the written opinion requirement, the lawsuit is not dismissed. A judge must issue an order giving the plaintiff 60 days to get an opinion letter. (See lines 63-64 of the Bill). This 60 day period is in addition to the 90-day extension of the statute of limitations that they already get. (See lines 52-57 of the Bill). After getting the benefit of that extension, a plaintiff can still file a suit without the required opinion and receive another 60 days to get the opinion. This could go on and on and on. This is costly and unnecessary.

III. THE ACCIDENTAL FAILURE OF SUIT STATUTE ALREADY ALLOWS AN ATTORNEY TO REFILE A DISMISSED LAWSUIT.

It is unclear to me what purpose SB 1154 could possibly serve. The reason is because the Accidental Failure of Suit statute allows a plaintiff to refile a medical malpractice suit even though the lawsuit is dismissed. Specifically, the Courts have said that an attorney can refile under the Accidental Failure of Suit statute if after the dismissal of the original lawsuit. The appropriate safeguards are there.

I share your concerns for our constituents, the residents of Connecticut. Is it possible with all of the legal maneuvering a meritorious case will not have their proper day in court? And the answer is very simple, absolutely no. A denial by the current COM standards does not in any way prevent the case from going forward. It does not limit in any way to go to court and ask for a full trial. So when this dismal happens with the COM if the plaintiff feels that it was inappropriate and they need their day in court they can be heard. They can re-file the lawsuit. This is important for all of us to know that a denial by the COM statues does not limit them from proceeding forward.

On the one hand we need to contain costs, we want to keep our doctors practicing, we want to keep health care accessible but at what costs? Are we going to do that by not giving a person his or her day in court. The answer is absolutely no. The COM is one way to eliminate, to flush out the non meritorious cases that come up over and over again. But when a person has a case and there are bound to be, they will be heard, they will have their day in court. The COM as it stands is simple, is fair and it works. It flushes out the non-meritorious litigations without in any way compromising or covering up negligence when it truly has occurred. We need to address healthcare access and healthcare costs and leave what is working alone. I want to thank you for giving me this opportunity to testify today. I will be more than glad to answer any of your questions or concerns.

