YALE NEW HAVEN HEALTH

TESTIMONY OF
YALE NEW HAVEN HEALTH SYSTEM
BEFORE THE
JUDICIARY COMMITTEE
Monday, April 1, 2013

HB 6687, AN ACT CONCERNING CERTIFICATES OF MERIT and
SB 1154, AN ACT CONCERNING THE ACCIDENTAL FAILURE OF SUIT STATUTE

Yale New Haven Health System (YNHHS), Connecticut's leading healthcare system with more than 18,000 employees serving more than 93,000 inpatients and 1.3 million outpatients per year, appreciates the opportunity to submit testimony in opposition to **HB 6687, An Act Concerning Certificates of Merit** and **SB 1154, An Act Concerning The Accidental Failure of Suit Statute**.

We are aware that the Connecticut Hospital Association (CHA) has submitted testimony objecting to the passage of both of these bills, and we are in agreement with its oppositions. YNHHS objects to the passage of these bills for the following reasons:

YNHHS agrees that injured patients should be reimbursed for losses suffered due to medical negligence. YNHHS – through Yale-New Haven, Bridgeport and Greenwich Hospitals, Northeast Medical Group and other affiliated organizations – provides comprehensive, cost-effective, advanced patient care characterized by safety, quality and service. YNHHS providers continually monitor performance on more than 120 metrics related to patient care, safety and clinical quality, *and that is where our focus needs to be.* The proposed legislation will increase health care costs and ultimately harm the public when limited healthcare resources necessary to improve patient care, safety and clinical quality are spent defending claims that, had they been properly investigated before filing, would have proven to be without merit.

Current law encourages pretrial resolution of meritorious claims. The "similar healthcare provider" requirement as it stands today serves as a gatekeeping function that eliminates frivolous lawsuits, thereby allowing for a more focused identification of the issues on those cases with merit. In this manner, the current law has been effective in bringing the parties together to resolve meritorious claims. Furthermore, experienced and knowledgeable plaintiff attorneys routinely perform the requisite pre-suit investigation properly, and exhibit no difficulty in finding similar healthcare providers to offer opinions supportive of their positions on meritorious claims.

The adoption of this bill will reverse a more than 25 year history of the General Assembly's efforts to rein in frivolous lawsuits. In 1986, the General Assembly enacted CGS 52-184c, which established that plaintiffs' lawyers could not prevail in a medical malpractice action unless a similar healthcare provider offered testimony at trial that the defendant

healthcare provider's care did not meet the standard of care. While this was a salutary reform, it did not prevent the filing of frivolous actions, because the plaintiffs' lawyers were not required to obtain the expert opinion before filing suit. This defect was corrected in 2005 with the passage of CGS 52-190a, which requires that plaintiffs' lawyers obtain the support of a similar healthcare provider prior to filing suit. The proposed bill will gut these reforms.

The proposed bill modifies the objective criteria of who qualifies as a "similar healthcare provider" for a new, watered-down and purely subjective standard of a "qualified" health care provider. This proposed modification, far from bringing an early resolution to frivolous medical malpractice lawsuits, will ensure that such lawsuits survive long enough to create the expense and confusion that CGS 52-190a was enacted to avoid. This ultimately impacts time and costs that are better served addressing those patients whose cases have merit.

The addition of 60 days' time after a court order for plaintiff to remedy a failure to file the required written opinion will further increase litigation costs, burden the courts with additional motions, and lead to inconsistent results. This additional time negates the need for pre-suit inquiry, allowing for a post suit investigation which nullifies the purpose of the statute as drafted in 2005. This extension is in addition to the 90 days the court already grants plaintiffs, effectively elongating the statute of limitations potentially to an arbitrary time after a judge's decision. A bright line test is preferable for both the courts and the litigants on both sides, because all parties will have advance notice of the requirements for filing a medical malpractice case.

In addition, **SB 1154, An Act Concerning The Accidental Failure Of Suit Statute**, is an attempt to circumvent and dilute the good faith certificate law. This bill will only serve to impede careful reform of the statute that was made in 2005. We do not want the good work achieved by the Legislature to be undone.

On behalf of YNHHS, we respectfully recommend the Committee reject these bills to best serve the public's interest in the delivery of health care by providers whose time and efforts are best devoted to their patients -- not to the defense of *non-meritorious* law suits.

Thank you for your considering our position.