



# Charlotte Hungerford Hospital

540 LITCHFIELD STREET, PO BOX 988, TORRINGTON, CT 06790-0988 (860)496-6666

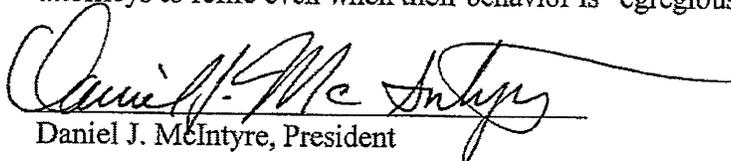
The Charlotte Hungerford Hospital appreciates the opportunity to submit testimony regarding HB 6687, An Act Concerning Certificates of Merit, and SB 1154, An Act Concerning the Accidental Failure of Suit statute. The hospital opposes both bills.

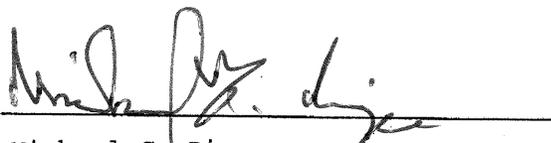
By way of background, the Charlotte Hungerford Hospital was the victim of misconduct by an attorney who violated the Certificate of Merit (COM) statute. Eventually, the case made its way to the Supreme Court. The name of that case is Plante v. Charlotte Hungerford Hospital, 300 Conn. 33 (2011). The Court in the Plante case agreed that the misconduct of the attorney who filed the suit was “blatant and egregious” and held that a blatant and egregious violation of the COM law precluded the attorney from attempting to take advantage of the Accidental Failure of Suit statute, which allows a suit that was dismissed under the COM law to be refiled “only when the trial court finds as a matter of fact that the failure in the first action to provide an opinion letter that satisfies § 52-190a (a) was the result of mistake, inadvertence or excusable neglect, *rather than egregious conduct or gross negligence* on the part of the plaintiff or his attorney.” Plante, 300 Conn. 56 (emphasis added).

HB 6687 eliminates the requirement that an attorney filing a medical malpractice suit must obtain an opinion from a “similar health care provider” and allows the attorney to obtain an opinion from someone who the attorney feels is “qualified.” Under the COM statute the identity of the expert is expunged and, therefore, it will be impossible for a court to verify whether the expert is truly qualified. The “similar health care provider” requirement is an objective standard that simply requires the expert to be in the same specialty as the health care provider who is accused of malpractice. For example, if a plaintiff accuses a neurologist of malpractice, the plaintiff must obtain an opinion from another neurologist. If the plaintiff accuses a registered nurse of malpractice, an opinion from another nurse is needed.

HB 6687 also eliminates dismissal as the appropriate remedy. Under this new provision, even if an attorney egregiously fails to comply with the COM statute, the judge may not dismiss the lawsuit. The attorney is to be given an additional 60 days to get the opinion letter in addition to the 90-day extension of the statute of limitations that the COM already provides.

SB 1154 appears to be an attempt to overrule the decision in Plante, which established a very generous standard for attorneys who sue physicians and hospitals. The Supreme Court’s decision in Plante allows an attorney who fails to comply with the COM statute to refile the lawsuit if the noncompliance was the result of “mistake, inadvertence or excusable *neglect*.” Only if the behavior is “egregious” or “grossly negligent” is the attorney precluded. Allowing attorneys to refile even when their behavior is “egregious” will undermine the COM statute.

  
Daniel J. McIntyre, President



Michael G. Rigg  
Attorney for Charlotte Hungerford Hospital