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April 4, 2013

The Honorable Eric D. Coleman
Chair
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

The Honorable Gerald Fox, III
Chair
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: American Medical Association Opposition to House Bill 6687 and Senate Bill 1154

Dear Chairman Coleman and Chairman Fox:

On behalf of the American Medical Association (AMA) and our physician and student members, I am writing to you today to **oppose House Bill (H.B.) 6687 and Senate Bill (S.B.) 1154**. As you may know, the AMA has been working for years to reform the medical liability system at both the federal and state levels. The current medical liability system reduces patients' access to health care – particularly high risk procedures. It hinders patients' communication with their physicians, adds to the cost of patients' health care expenses, and forces patients to go through additional tests and procedures due to a system that encourages physicians to practice defensive medicine.

The current medical liability system has a detrimental effect on physician practices, as well. According to results from a 2010 AMA report, 61 percent of physicians age 55 and older have been sued at some point during their careers and nearly 40 percent have been sued two or more times. Among surgeons age 55 and older, nine out of 10 have been sued. Even more remarkably, 51 percent of obstetricians and gynecologists under age 40 have been sued.

These statistics are even more alarming after reviewing how such claims are resolved. According to a 2006 *New England Journal of Medicine* article, researchers found that no injury had occurred in three percent of the claims that they reviewed and in another 37 percent, there had been no error. Further, according to Physician Insurers Association of America data, 64 percent of the claims against physicians that closed in 2010 were dropped, withdrawn or dismissed. These data highlight the need for strong certificate of merit statutes to help eliminate meritless lawsuits before they enter the litigation process and add costs to a health care system that is already strained.

During the most recent medical liability crisis, medical liability premiums skyrocketed in many parts of the United States. Among the states most adversely affected was Connecticut, where premiums reached some of the highest in the nation. There has been some relief in recent years from the crisis; however, that is not the case in Connecticut. Although some states have experienced modest decreases in premiums, Connecticut premiums have remained high. According to a Kaiser Family Foundation report, Connecticut ranks in the top ten in average claim payment at \$495,393 which further depicts the negative liability climate that Connecticut physicians face. Currently, some Connecticut obstetricians and gynecologists face annual premiums of over \$170,000.

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Page 2

Turning to H.B. 6687, it is the AMA's position that it would be a major mistake for a state to reverse course with any of its medical liability provisions – especially at a time of transition for the health care system – which could lead to new or expanded liability theories. We have long supported certificate of merit statutes, and a key provision in these laws is the expert witness requirement. Medical liability cases involve highly technical and complicated scientific matters. Many times, physician specialists and subspecialists are the only ones who will have the necessary medical education, training and practice experience to be able to offer a sound opinion regarding whether or not a physician breached the standard of care in a particular case.

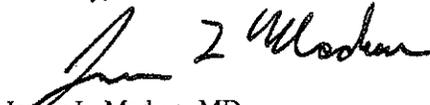
For example, orthopaedic surgeons have up to 14 years of formal education, including four years of undergraduate education, four years of medical school, five years of residency in orthopaedic surgery and one optional year of specialized education in foot and ankle orthopaedics, a subspecialty of orthopaedic surgery. After establishing a licensed practice, an orthopaedic surgeon may demonstrate mastery of orthopaedic knowledge by passing both written and oral examinations given by the American Board of Orthopaedic Surgery. Physicians in other specialties and subspecialties also participate in similar rigorous education and training. Based on the highly technical nature of many medical liability lawsuits, the AMA contends that physicians offering their medical opinion regarding the standard of care in such a lawsuit should be asked to opine only within their specialty expertise. This is good public policy and creates a fair process for physicians.

An even greater concern is that non-physician providers may be called on to offer their opinion on the standard of care in a medical liability lawsuit against a physician. Non-physician providers play an important role in our nation's health care system, but they do not have the medical education, training and practice experience to be qualified to opine on whether or not a physician breached the standard of care. Such a change to Connecticut's certificate of merit requirement would be a step backward as the state seeks to create a fair system for all parties involved.

Also of concern is Senate Bill (S.B.) 1154, which would amend Connecticut's failure of suit statute (C.G.S. 52-952a) to allow a plaintiff whose lawsuit was dismissed based on failure to file a certificate of good faith as required by C.G.S. 52-190a, to commence a new action. If adopted, we believe that this change would undermine the intent of C.G.S. 52-190a and cause additional expense and burden to Connecticut's medical liability system.

In closing, thank you for your consideration of our comments. For all of the reasons discussed above, we urge you to **oppose H.B. 6687 and S.B. 1154**. If you have questions or need further information, please contact Kristin Schleiter, JD, LLM, Senior Legislative Attorney, Advocacy Resource Center, at kristin.schleiter@ama-assn.org or (312) 464-4783.

Sincerely,



James L. Madara, MD

cc: Members of the Joint Committee on Judiciary
Connecticut State Medical Society