



**Testimony on Senate Bill 247 AAC A Cause of Action for Loss of Consortium by a Minor Child
with Respect to the Death of a Parent
Judiciary Committee
February 29, 2016**

Senator Coleman, Representative Tsong and members of the Judiciary Committee, my name is Michael Rigg. I am an attorney. Most of my practice focuses on the defense of health care professionals in medical malpractice lawsuits. I am privileged to speak on behalf of the more than 1000 physicians in the specialties of Otolaryngology, Ophthalmology, Dermatology and Urology regarding SB 247, which would greatly increase the financial exposure to physicians in medical malpractice actions.

Malpractice insurance premiums in Connecticut are already some of the highest in the country. SB 247 will greatly increase the damages that can be awarded in wrongful death actions against physicians because every serious illness or injury to a patient who is also a parent will engender a claim for loss of consortium on behalf of each of his or her minor children, and the expense of settling or litigating such claims will be sizable. Unlike most states, Connecticut's wrongful death statute is a "survival" statute in that the executor of the deceased person "stands in the shoes" of the decedent and the jury awards the decedent money damages for "loss of life's enjoyments," as well as other economic and noneconomic losses. As a result, the decedent's minor children already benefit from a jury's award to a deceased parent because they are beneficiaries of their parent's estate.

Creating an additional damages claim for loss of parental consortium in wrongful death lawsuits will create a significant risk of double recovery. When a close relationship between two people is disrupted, it is difficult to differentiate between the loss suffered by each. Thus, to permit a child to recover for loss of a deceased parent's companionship while at the same time requiring the jury to award damages to the deceased parent for loss of the child's companionship creates a substantial risk of double recovery because of the difficulty of distinguishing the respective losses of the parent and child. Ultimately, the child recovers twice. Once for his or her parent's death by inheriting the damages awarded to the deceased parent and once for his or her own independent consortium claim.

The cost of practicing medicine in Connecticut is already too high. The Legislature is currently grappling with the cost of health care for Medicaid patients and state employees. If damage awards and settlements continue to escalate in Connecticut, and they will if a second award for consortium claims is created, malpractice insurance premiums will increase dramatically making Connecticut an even less attractive State in which to practice medicine.

Did you know that Connecticut's malpractice verdict awards are some of the highest in the nation?

Despite all of the line items on the opposite page that are used to calculate non-economic damages the Trial Bar is seeking more.

This year they are looking for:

Parental Consortium

In the past they have wanted:

**Tolling of the Statute of Limitations for Minors
Accidental Failure of Suit
Certificate of Merit**

Connecticut will continue to pay the price by losing our physician population and reducing quality and access to care if we do not act now.

What Connecticut Really Needs is an Overhaul and Comprehensive Tort Reform

Please ask the Judiciary Committee to consider establishing a Task Force to study Tort Reform in Connecticut and NOT address this large issue piece meal.

OPPOSE S.B. #247 (RAISED) AN ACT CONCERNING A CAUSE OF ACTION FOR LOSS OF CONSORTIUM BY A MINOR CHILD WITH RESPECT TO THE DEATH OF A PARENT.

Allowable Damages in Medical Malpractice Cases in CT

Economic Damages:

- Past and future medical/therapy expenses
- Home care costs
- Cost of home modifications to accommodate disability
- Past and future lost wages/loss of earning capacity
- Funeral expenses – wrongful death

Non-Economic Damages:

- pain and suffering – past and future
- mental and emotional distress – past and future
- permanent injury – for life expectancy
- loss of life's enjoyment – past and future
- lost chance of successful treatment/outcome
- increased risk of future harm
- fear of increased risk of future harm – for life expectancy
- loss of life – wrongful death (separate from loss of life's enjoyment)
- scarring and disfigurement – for life expectancy
- loss of consortium – spouse
- loss of consortium – minor children for injured parents
- bystander emotional distress by family members (under certain circumstances)

PLUS - 8% pre-judgement interest (typically adds 30-40% to judgements)
10% post-judgement interest