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**Connecticut State Medical Society Testimony in Opposition to Senate Bill 457 An Act
Concerning A Cause Of Action For Injury To A Person Or Property On Negligent
Infliction Of Emotional Distress**
Judiciary Committee
March 21, 2016

Senator Coleman, Representative Tong and members of the Judiciary Committee, on behalf of the physicians and physicians in training of the Connecticut State Medical Society (CSMS) thank you for the opportunity to testify in opposition to **Senate Bill 457 An Act Concerning A Cause of Action for Injury to Person or Property Based on Negligent Infliction of Emotional Distress**. We opposed this legislation as it is once again a perfect example of a piece meal approach to changes in our tort system that will only worsen the medical practice climate in Connecticut that is already suffering because of a broken medical liability system. In a state where we struggle to attract and keep physicians, losing the best and brightest at an alarming rate, weakening an already frail malpractice system will serve only to drive remaining physicians, including specialists in short supply, out of Connecticut to states where liability protections are greater and such protections are reflected in lower malpractice premiums.

Connecticut courts have already well-established case law on the cause of negligent infliction of emotional distress. The court system in our state is amply equipped to handle such claims and has done so in several high-profile and well-regarded cases over the years. As with other tort claims, it is up to the court to examine the specific facts and circumstances of each individual case brought and apply these facts and circumstances to the criteria necessary to prove a claim for negligent infliction of emotional distress. The court examining the claim can apply limitations on recovery where necessary and place restrictions on the extent of the claim brought. A law with broad implications to cause more harm than good is not needed.

Senate Bill 457 raises serious concerns given its broad scope. At the outset, and as already noted, establishing a claim of negligent infliction of emotional distress requires looking carefully at the individual facts and circumstances of each potential case. It requires a careful examination of the circumstances surrounding the claim and the alleged damages as a result of the claim.

Senate Bill 457 uses very subjective legal standards such as “unreasonable risk” and “should have realized.” The exact definition of these standards has been the subject of substantial litigation and the answer to whether these standards have been sufficiently proven once again relies on the facts and circumstances of each individual claim. As such it is not prudent to codify this tort into litigation. The court system is the better place to litigate and decide the facts and circumstances of each individual case.

In addition, Senate Bill 457 provides that any action brought under this section must be brought within three years. Connecticut’s statutes of limitations vary given the claim, but in many circumstances, including those claims related to negligence and medical malpractice, the statute of limitations is two years. The legislature has carefully contemplated and established these statutory limitations and any Bill that would, in any circumstances, extend the statute of limitations must be viewed as suspect. This language would circumvent long-held and clearly established statutory limitations, and as such, this Bill should not be passed.

The complexities of the legal nuances of this bill are best left to the attorneys; we are physicians. As physicians, our primary focus is on our patients and the quality care we provide to our patients. Passage of Senate Bill 457 will negatively impact the physician community and the care we provide to our patients. It will increase exposure by physicians to expanded damage awards and, as a result, will increase liability premiums. As a state, we cannot afford ANY increase in liability premiums for physicians. We are struggling to maintain and attract physicians in this state. Piecemeal changes to the liability system, without looking at the liability system in totality, only further hurts the liability climate in Connecticut, causing the exodus of physicians from this state and prevents us from attracting any physicians to the state to provide care to those already experiencing significant delays in care.

We respectfully request you to take no action on Senate Bill 457 at this time and work with physicians and other stakeholders to develop innovative tort reforms including Health Courts, Liability safe harbors for the practice of Evidence Based Medicine (EBM), alternative dispute resolution mechanisms, early offer and compensation programs and any other viable approach, rather than codifying a tort that is best left to the court system.