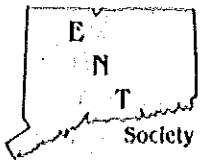

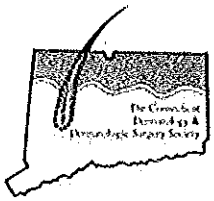
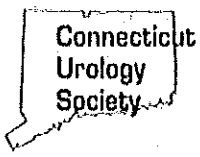

Testimony in Judiciary Committee

On

SB457 An Act Concerning A Cause Of Action For Injury To Person Or Property Based On Negligent Infliction Of Emotional Distress

March 21, 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 in opposition to SB 457.

This bill, if passed, would greatly expand the ability for an individual to bring suit even when the person suffers no actual physical harm. A plaintiff would merely have to show that there was an "unreasonable risk" that an action would cause them emotional distress and they would receive punitive damages and attorney fees. Doctors who are dedicated to the legislative process are chilled by the prospects that they could be sued for being "abrupt or rude" to a patient in the course of a busy, stressful day. The unfortunate reality is that the world is stressed, and healthcare is by definition stressful and anxiety provoking. Physicians cannot always control elements of their working day. Medical emergencies and urgent consultations commonly arise requiring immediate attention which can lead to delays in the patient schedule and prolonged and unexpected wait times. When medical tests or procedures are required, patients need to wait anxiously for results. However, it is unfair to make the physician responsible and vulnerable to being sued for punitive damages and attorney fees in such circumstances. It is the duty of the physician to bring understanding of the disease process, and to discuss and implement treatment options with their patients which oftentimes inherently carry anxiety and emotional pain.

The bill is unnecessary because the law already allows plaintiffs to sue for negligent infliction of emotional distress. *Carrol v. Allstate Ins. Co, 262 Conn.433, 446, 815, A.2d 119,128 (2003*). The only difference between this Bill and existing law is that the Bill increases the damages that can be recovered, namely, it adds punitive damages and attorney Fees in SB457, which is currently not allowed under Connecticut common law and for good reason. In Connecticut punitive damages are only allowed when the defendant's behavior is intentional, reckless or malicious. Simple negligence is not enough.

This Bill also extends the statute of limitations from two years to three years. Currently, an emotional distress claim must be filed within the time limit contained in General Statutes § 52-584, which applies to all personal injury actions. This Bill eliminates the two-year time limit and creates a longer three-year time limit.

The United States Supreme Court has held that punitive damages, in general, should only be awarded if the defendant's behavior is "**reprehensible.**" Obviously, negligent behavior is not sufficiently "reprehensible" to satisfy this constitutional requirement. But if SB457 is passed it would not only challenge a long standing U.S. Supreme Court decision, but would also open the flood gates to employer/employee suits. For example, an employee who is fired from his job, cannot sue for negligent infliction of emotional distress because the tort would have a dramatic chilling effect on employers running their businesses. No matter how incompetent an employee is, getting fired is always distressing. Hence every disgruntled employee could sue for punitive damages and attorney fees with the passage of SB457. And quite frankly just being disciplined or warned about doing a bad job by an employer is distressing to an employee and a case could be built for emotional distress, making the employee the plaintiff.

Furthermore, the common law in Connecticut (and everywhere else in the country) is that the prevailing party in a lawsuit is not entitled to recover attorney fees or the costs of litigation. For example, if a doctor successfully defends himself/herself against a malpractice lawsuit, he/she is not entitled to recover his/her attorney's fees from the plaintiff.

Physicians in Connecticut work hard to improve healthcare in our state despite the mounting regulatory burdens and mandates engulfing them. Lawsuits which lack merit are already present – physicians should not need to shoulder this additional responsibility of emotional distress which often defines the heart of many physician-patient encounters. We ask this committee to reject SB457 and allow the prevailing common law of Connecticut to continue to work for the protection of society and not create a self-employment act for attorneys which will cost the state far more in the long run.