CONNECTICUT HOSPITAL ASSOCIATION

TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
JUDICIARY COMMITTEE
Monday, April 1, 2013

HB 6687, An Act Concerning Certificates Of Merit and SB 1154, An Act Concerning The Accidental Failure Of Suit Statute

The Connecticut Hospital Association (CHA) appreciates the opportunity to submit testimony concerning **HB 6687, An Act Concerning Certificates Of Merit**, and **SB 1154, An Act Concerning The Accidental Failure Of Suit Statute**. CHA opposes these bills.

Connecticut's hospitals are more than facts and figures, and dollars and cents. Hospitals, at their core, are all about people. All of our lives have, in some way, been touched by a hospital: through the birth of a child, a life saved by prompt action in an emergency room, or the compassionate end-of-life care for someone we love. Or perhaps our son, daughter, husband, wife, or friend works for, or is a volunteer at, a Connecticut hospital.

Hospitals provide care to all people regardless of their ability to pay. Connecticut hospitals are the ultimate safety net providers, and their doors are always open.

Every day, healthcare professionals in hospitals see the consequences and health implications for individuals and families who lack access to care and coverage. Emergency departments are filled with individuals who cannot find a physician to care for them because they are uninsured or underinsured – or they are Medicaid beneficiaries and few physicians will accept the low rates paid by Medicaid. Throughout Connecticut, our emergency rooms are treating both those who have delayed seeking treatment because of inadequate or no coverage, and those who have no other place to receive care.

As frontline caregivers, Connecticut hospitals support initiatives that improve access to safe, high-quality care and expand access to coverage, and oppose initiatives that may have the opposite effect.

Currently, as a result of rising medical liability insurance costs, funds have been diverted from patient care and quality improvement, and there has been a reduction in the number and availability of physicians in specialty service areas. These rising costs, combined with a challenging economic environment and a dramatically evolving healthcare delivery and reimbursement system, make it imperative for legislators to oppose measures such as HB

6687 and SB 1154. These measures would increase medical malpractice costs and, in turn, healthcare costs.

Under Connecticut law, tort cases that involve technical or scientific fields require expert testimony. Medical malpractice cases involve the need to understand sophisticated medical devices and equipment, and intricate processes and procedures conducted by teams of practitioners with years of specialized training. Given the complexity of these cases, the cost to both bring and defend them, and the significant expenditure of limited judicial resources to administer them, legislators have adopted measures to ensure that there is a reasonable basis for filing such cases, and that all parties are treated equitably.

For medical liability cases, Connecticut has developed a statutory framework to ensure that the experts used are sufficiently qualified. As part of this system, Connecticut law contains a requirement that a party, or the party's lawyer, perform and certify a pre-suit analysis to ensure that the claim is filed in good faith. This pre-suit process is documented by a "good faith certificate," along with a brief written explanation of the expert's review, stating that the expert believes that there appears to be evidence of medical negligence. Failure to include a good faith certificate with a complaint makes the claim subject to possible dismissal.

HB 6687, An Act Concerning Certificates Of Merit, would significantly weaken the good faith certificate process. The bill would dramatically expand the types of professionals permitted to give pre-suit expert opinions to include any person who might be deemed an expert at the time of trial, not experts who, as similar healthcare providers, necessarily have the same specialty or training as the defendant. Such a change would roll back important decisions that this legislative body made in 2005—decisions that created objective criteria for expert qualifications currently used for pre-suit good faith letters. This bill would replace a well-reasoned and balanced system with one that would instead depend on the plaintiff's attorney's subjective assessment of who is a qualified expert.

In 2005, the General Assembly purposefully made changes to the good faith certificate statute to require that a pre-suit evaluation be performed by a similar healthcare provider. As noted in the legislative history, the goal of those changes was to reduce ongoing problems "caused by plaintiffs misrepresenting or misunderstanding physicians' opinions as to the merits of their action," to "ensure that there is a reasonable basis for filing a medical malpractice case under the circumstances," and to "eliminate some of the more questionable or meritless cases" filed under the standard that existed prior to 2005. This statutory design was examined and upheld by the Connecticut Supreme Court, which afforded appropriate deference to legislators' comments and other testimony found in the legislative record.

HB 6687 would remove the objective standards applicable to qualified experts—standards that guarantee that the healthcare provider knows the standard of care for the defendant provider who treated the condition that is the subject of the complaint. We ask that you preserve this essential element of the pre-complaint inquiry by opposing HB 6687.

In addition, **SB 1154, An Act Concerning The Accidental Failure Of Suit Statute**, would move us further away from realizing the intended goals and impact of the 2005 reform

measures because it will dilute, and perhaps eliminate, the force of the good faith certificate law by its express inclusion in Section 52-592. CHA opposes this because making all failures to comply with the good faith certificate automatically curable as "accidental failures of suit" will render the entire good faith certificate law useless. SB 1154 is essentially an end run around Section 52-190a.

CHA agrees that the current state of the law in Connecticut, as outlined by our Supreme Court, allows that the accidental failure of suit statute *might* apply to the failure to include a good faith certificate. Connecticut's Supreme Court was precise when it explained that the accidental failure of suit statute applies only in limited circumstances when it intersects with the filing (or failure to file) a good faith certificate. Specifically, and in multiple cases, the Supreme Court has stated that:

> "when a medical malpractice action has been dismissed pursuant to § 52–190a (c) for failure to supply an opinion letter by a similar health care provider required by § 52–190a(a), a plaintiff may commence an otherwise time barred new action pursuant to the matter of form provisions of [General Statutes] § 52–592(a) only if that failure was caused by a simple mistake or omission, rather than egregious conduct or gross negligence attributable to the plaintiff or his attorney."

Morgan v. Hartford Hospital, 301 Conn. 388, 399-400 (2011); quoting Plante v. Charlotte Hungerford Hospital, 300 Conn. 33, 46–47 (2011).

SB 1154 far exceeds this relief and would effectively eliminate compliance with the good faith certificate statute. The measures implemented in 2005, which require a meaningful, pre-suit inquiry, should not be dismantled. We urge you to oppose HB 6687 and SB 1154.

Thank you for your consideration of our position.

For additional information, contact CHA Government Relations at (203) 294-7310.