

OPPOSE SB 243 An Act Concerning Certificates of Merit

In 2005, the General Assembly passed Public Act 05-275, An Act Concerning Medical Malpractice, in an attempt to address concerns with the availability and affordability of medical liability insurance for physicians. The resulting statute strengthened what is known as the “good faith certificate” by requiring:

- The attorney filing suit, attach a written opinion of an expert in the field.
- The expert to be a “similar healthcare provider” to the defendant.
- The expert provide a detailed basis for the formation of the opinion that there appeared to be evidence of medical negligence.
- The case to be dismissed if a plaintiff failed to obtain the required opinion prior to filing the suit.

PA 05-275 permits plaintiff attorneys to redact the identity of the expert to address concerns regarding the ability to find willing experts. This coupled with the appropriate requirements for filing a good faith certificate has been effective and in reducing the filing of frivolous law suits.

SB 243 only undercuts the compromise enacted by the legislature as part of a two-year review of medical liability reform. SB 243:

- Eliminates the need for a detailed basis for the formation of an opinion.
 - Replaces it with a lower threshold requiring that only one or more specific breaches of the standard of care be stated.
- Allows any expert who may testify at trial to satisfy the certificate of merit requirement - BUT at TRIAL before a “non-similar healthcare provider” can testify as an “expert”, the trial judge conducts an evidentiary hearing to determine if the expert is appropriately qualified to testify. There is no such scrutiny of the qualifications of the alleged “expert” who signs the certificate of merit. The pre-suit determination tht the expert is ‘qualified’ is made solely by the plaintiff’s attorney and cannot be challenged until trial, 2-3 years later. This undermines the whole purpose of thwarting meritless cases BEFORE they get into the system.
- Eliminates the automatic dismissal of cases filed without the necessary certificate of merit AND automatically gives plaintiffs a minimum of 60 additional days to file the newly watered down certificate. THIS automatic 60+days is in addition to the automatic 90 day extension already in place to give plaintiffs additional time to procure an expert opinion.

The Supreme Court has interpreted existing statutes in a manner that preserves the original legislation while creating a forgiving climate for plaintiffs in meritorious cases:

- Dismissals are without prejudice;
- Meritorious cases can easily be revived under the Accidental Failure of Suit statute.

CSMS and our 7,000+ physician members strongly believe that if the General Assembly is going to look at one section of the state’s tort law, it should look at the whole system and consider proposals such as health courts and other measures that would ensure access and cost control to the system.

SB 243 eliminates rational and important thresholds that must be met prior to moving forward with a medical liability complaint.

CT State Medical Society
CT Hospital Assn
Hartford County Medical Assn
New Haven County Medical Assn
Fairfield County Medical Assn
New London County Medical Assn
Middlesex County Medical Assn
Tolland County Medical Assn
Windham County Medical Assn
Litchfield County Medical Assn
Waterbury Medical Society
Women’s Health Connecticut
Bristol Hospital

CT Chapter American College of Physicians
CT Chapter American College of Surgeons
CT State Society of Anesthesiologists
CT College of Emergency Physicians
CT Academy of Family Physicians
CT Society of Orthopedic Surgeons
CT Ear, Nose and Throat Society
CT Dermatology and Dermatologic Surgery Society
CT Society of Eye Physicians
CT Urology Society
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CT Chapter American Academy of Pediatrics
CT Council of Child and Adolescent Psychiatry
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