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Testimony of
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EASTERN CONNECTICUT HEALTH NETWORK (ECHN)

Submitted to the
Judiciary Committee
Wednesday, March 7, 2012 – Public Hearing

Oppose SB 243: An Act Concerning Certificates of Merit

As President and CEO of Eastern Connecticut Health Network (ECHN) and as Secretary of the Connecticut Hospital Association's Executive Committee and Chairman of its Committee on Government Relations, **I am writing to express our strong opposition to Senate Bill 243 – An Act Concerning Certificates of Merit**.

ECHN is a not-for-profit community-based healthcare system that serves the residents of eastern Connecticut. Our health system includes Manchester Memorial Hospital; Rockville General Hospital; Woodlake at Tolland Rehabilitation and Nursing Center; John A. DeQuattro Cancer Center; wellness centers and a series of medical practices.

The medical malpractice reform law enacted in 2005 is achieving to some extent what it was intended to do for health care providers like ECHN and our physicians: limit the number of frivolous medical malpractice lawsuits against our physicians and allied health professionals.

Specifically, Public Act 05-275 requires that an attorney filing suit must attach to the certificate of merit a written opinion from an expert in the field. It requires that the expert offering the opinion to be a "similar healthcare provider" to the defendants. Lastly, if the plaintiff bringing the complaint fails to obtain the mandatory written opinion prior to filing the lawsuit, it will be rightfully dismissed.

Unfortunately, SB 243 would undo all that has been accomplished in recent years to eliminate meritless health care complaints and unjustified jackpot payouts.

In particular, we have serious concerns regarding the language in SB 243 that dramatically expands the types of professionals permitted to give pre-suit expert

opinion to include any person who might be deemed an expert at the time of the trial instead of experts who, as similar healthcare providers, necessarily have the same specialty or training as the defendant. This means any expert would be allowed to provide a pre-suit opinion, regardless of whether the expert was a "similar healthcare provider," and selection would depend on the plaintiff's attorney's subjective assessment of who is a qualified expert.

In other words, it's like relying on a dermatologist to provide the pre-suit expert opinion in a complaint filed against a neurosurgeon.

SB 243 would also remove the sanction of possible dismissal – a sanction that essentially assures compliance – for failure to obtain a good faith certificate. The bill would instead merely allow those who do not comply with their pre-suit obligations to submit the certificate within 30 days after filing suit. A pre-suit obligation that can be performed after the suit is filed is meaningless, and makes the process discretionary.

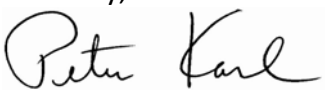
Thanks to legislative action five years ago, healthcare providers have witnessed a decline in frivolous lawsuits; a lower number of claims paid out; less strain on our healthcare system's resources that are wasted on unnecessary discovery proceedings; much-needed relief from skyrocketing premiums that we endured in the late 1990s and early 2000s; and a better healthcare environment in Connecticut to attract and retain first-rate physicians.

Medical malpractice statistics for Connecticut are still alarming. According to the *Kaiser Family Foundation*, 109 claims medical malpractice claims were paid out in Connecticut in 2010 for a total of $58 million. This means, in 2010, the average medical malpractice claim paid out was $535,000 per claim.

ECHN's mission is to improve our communities' well-being by providing high-quality, compassionate health care. The less money ECHN unnecessarily spends on unwarranted, expensive claims and payouts, the more money we will have to reinvest in our healthcare system. In turn, this will help us remain a first-class non-profit community-based health system for our patients and their families.

Again, ECHN respectfully urges you to oppose SB 243 because the reform law currently on the books serves its purpose. Thank you for your consideration of my testimony and the testimony of other Connecticut hospital leaders.

Sincerely,



Peter J. Karl
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