

Good Faith Certificate (Medical Malpractice Action)

A Guide to Resources in the Law Library

- "No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a **reasonable inquiry** as permitted by the circumstances to determine that there are **grounds for a good faith belief** that there has been negligence in the care or treatment of the claimant." CONN. GEN. STATS. § 52-190a(a) (2007). [Emphasis added].
- **CERTIFICATE:** "The complaint, initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant or for an apportionment complaint against each named apportionment defendant. To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant's attorney, shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. Such written opinion shall not be subject to discovery by any party except for questioning the validity of the certificate. The claimant or the claimant's attorney, and any apportionment complainant or apportionment complainant's attorney, shall retain the original written opinion and shall attach a copy of such written opinion, with the name and signature of the similar health care provider expunged, to such certificate. The similar health care provider who provides such written opinion shall not, without a showing of malice, be personally liable for any damages to the defendant health care provider by reason of having provided such written opinion. In addition to such written opinion, the court may consider other factors with regard to the existence of good faith. If the court determines, after the completion of discovery, that such certificate was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court upon motion or upon its own initiative shall impose upon the person who signed such certificate or a represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. The court may also submit the matter to the appropriate authority for disciplinary review of the attorney if the claimant's attorney or the apportionment complainant's attorney submitted the certificate." CONN. GEN. STATS. § 52-190a(a)(2007). [Emphasis added].

- **AUTOMATIC NINETY-DAY EXTENSION:** “Upon petition to the clerk of the court where the action will be filed, an automatic ninety-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods.” CONN. GEN. STATS. § 52-190a(b)(2007).
- **DISMISSAL OF ACTION:** “(c) The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action.” CONN. GEN. STATS. § 52-190a(c)(2007).
- "Our Supreme Court has held that the filing of a good faith certificate may be viewed as essential to the legal sufficiency of the plaintiff's complaint. Id.[*LeConche v. Elligers*, 215 Conn. 701, 711, 579 A.2d 1 (1990)] Thus, a plaintiff's failure to file a certificate 'renders the complaint subject to a motion to strike pursuant to Practice Book 152 (1) [now 10-39] for failure to state a claim upon which relief can be granted.' Id." *Yale University School of Medicine v. McCarthy*, 26 Conn. App. 497, 502, 602 A.2d 1040 (1992).
- **Purpose:** " The purpose of this precomplaint inquiry is to discourage would-be plaintiffs from filing unfounded lawsuits against health care providers and to assure the defendant that the plaintiff has a good faith belief in the defendant's negligence." *Ibid.*, 501-502.

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Certificate of Good Faith

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the certificate of good faith required in negligence actions against health care providers.

SEE ALSO:

Automatic ninety-day extension of statute of limitations

DEFINITION :

- **Good Faith Certificate:** “ The complaint, initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant or for an apportionment complaint against each named apportionment defendant.” CONN. GEN. STATS. § 52-190a(a)(2007).
- **Good Faith:** “ To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant's attorney, shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion.” Ibid..
- **Consequences of filing a false certificate:** "If the court determines after the completion of discovery, that such certificate was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court upon motion or upon its own initiative, shall impose upon the person who signed such certificate, a represented party or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. The court may also submit the matter to the appropriate authority for disciplinary review of the attorney if the claimant's attorney submitted the certificate." Ibid.
- **Health Care Provider:** "means any person, corporation, facility or institution licensed by this state to provide health care or professional services, or an officer, employee or agent thereof acting in the course and scope of his employment." CONN. GEN. STATS. § 52-184b(a) (2003).
- "A motion to strike is the proper method of challenging a party's failure to include such a good faith certificate. See *LeConche v. Elligers*, 215 Conn. 701, 711, 579 A.2d 1 (1990)." *King v. Sultar*, 253 Conn. 429, 451, 754 A.2d 782 (2000).

STATUTES:

- CONN. GEN. STATS. (2007)

- § 52-184c. Standard of care in negligence actions against health care provider. Qualifications of expert witnesses.
- § 52-190a. Prior reasonable inquiry and certificate of good faith required in negligence action against health care provider

LEGISLATIVE:

- 2005 CONN. ACTS 275 § 2

COURT RULES:

- CONN. PRACTICE BOOK (2007 ed.)
 - § 13-2. Written opinions of health care providers concerning evidence of medical negligence, as provided by General Statutes § 52-190a, shall not be subject to discovery except as provided in that section.

FORMS:

- Form 101.13. *Certificate of Reasonable Inquiry*, 2 JOEL M. KAYE AND WAYNE D. EFFRON, CONNECTICUT PRACTICE SERIES, CIVIL PRACTICE FORMS (4th ed. 2004). *See pocket part.*

CASES:

- Mastrone v. St. Vincent's Medical Center, No. CV055000477 (Super. Ct. J.D. Bridgeport, May 23, 2006), 41 Conn. L. Rptr. 375 (July 17, 2006). Certificate of Good Faith.
- King v. Sultar, 253 Conn. 429, 451, 754 A.2d 782 (2000). "By contrast, there is nothing in either the text of the statute or its underlying purpose to suggest that the legislature intended to require a would-be intervenor, under the facts of this case, to file a good faith certificate. In addition, the plaintiff conceded at oral argument that he had found no legislative history to support such a construction. We conclude that the purpose of § 52-190a has been fulfilled in this case because the plaintiff has filed a certificate of good faith, as required by § 52-190a, and the city asserts no new claims against the defendant, but merely seeks apportionment of the damages. Thus, we conclude that the city was not required to file a certificate of good faith pursuant to § 52-190a in order to intervene in this case."
- Gabrielle v. Hospital Of St. Raphael, 33 Conn. App. 378, 384, 635 A.2d 1232 (1994) cert. den. 228 Conn. 928. "The lack of a certificate of good faith is not a jurisdictional defect and thus does not deprive the court of subject matter jurisdiction Our cases explain that the failure to attach a certificate of good faith pursuant to 52-190a subjects the case to a motion to strike the complaint pursuant to Practice Book 152(1) [now 10-39] for failure to state a claim upon which relief can be granted, but that the defect is curable by a timely amendment filed pursuant to Practice Book 157 [now 10-44] or Practice Book 175 [now 10-59]."
- LeConche v. Elligers, 215 Conn. 701, 708, 579 A.2d 1 (1990). "The statute [Conn. Gen. Stats. § 52-190a], however, clearly requires a factual inquiry by the court regarding the sufficiency of the precomplaint investigation. That inquiry is to be undertaken after the completion of discovery."

TEXTS & TREATISES:

- 3A JOEL M. KAYE ET AL., CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
 - Authors' Comments following Form 101.13 and 808.4
- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996).
 - § 16-3(d). Good faith certificate
- 2 DANIEL C. POPE, CONNECTICUT ACTIONS AND REMEDIES: TORT LAW

(1996).

§ 37:18. Requirement of good faith and certificate

LEGAL PERIODICALS:

- Thomas B. Scheffey, Article, *Defense: 'Guillotine' Law Needs Sharpening*, 30 CONNECTICUT LAW TRIBUNE 1 (APRIL 19, 2004) (NO. 16).

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Automatic Ninety-Day Extension of Statute of Limitations

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to automatic ninety-day extension of statute of limitations granted to allow the reasonable inquiry in negligence actions against health care providers.

SEE ALSO:

[Certificate of Good Faith](#)

DEFINITION :

- **Ninety-day extension of statute of limitations:** "Upon petition to the clerk of the court where the action will be filed, an automatic ninety-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods." CONN. GEN. STATS. § 52-190a(b) (2007).
- **Statute of Limitations:** "No action to recover damages for injury to the person, or to real or personal property, caused by negligence, or by reckless or wanton misconduct, or by **malpractice of a physician, surgeon, dentist, podiatrist, chiropractor, hospital or sanatorium**, shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained of, except that a counterclaim may be interposed in any such action any time before the pleadings in such action are finally closed." CONN. GEN. STATS. § 52-584 (2007). [Emphasis added].

STATUTES:

- CONN. GEN. STATS. (2007)
§ 52-190a(b). *Automatic ninety-day extension of the statute of limitations.*
§ 52-584. Limitation of action for injury to person or property caused by negligence, misconduct or malpractice
§ 52-555. Actions for injuries resulting in death

COURT RULES:

CONN. PRACTICE BOOK (2007 ed.). § 13-2. "Written opinions of health care providers concerning evidence of medical negligence, as provided by General Statutes § 52-190a, shall not be subject to discovery except as provided in that section."

FORMS:

[Petition to Clerk for automatic ninety day extension](#)

RECORDS & BRIEFS:

- CONN. APPELLATE COURT RECORDS AND BRIEFS (March/April 1996), Girard v. Weiss, 43 Conn. App. 397, 682 A.2d 1078 (1996).

CASES:

- Rockwell v. Quintner, 96 Conn. App. 221, 232, 899 A.2d 738 (2006). "To demonstrate his entitlement to summary judgment on timeliness grounds, the defendant, through his affidavit, needed to establish that there was no viable question of fact concerning the plaintiff's obligation to have brought her action within two years and ninety days of discovering the injuries allegedly caused by the defendant's treatment or, in any event, no later than three years and ninety days from the negligent treatment itself. See General Statutes §§ 52-584, 52-190a (b); Barrett v. Montesano, 269 Conn. 787, 796, 849 A.2d 839 (2004) (holding automatic ninety day extension provided by § 52-190a [b] applicable to both two year discovery and three year repose provisions of § 52-584).."
- Barrett v. Bessie, 269 Conn. 787, 790-791, 849 A.2d 839 (2004). "On appeal, the plaintiffs claim that the trial court improperly held that the ninety day extension provided by § 52-190a (b) did not apply to the repose section of § 52-584, but, rather, applied only to the two year discovery provision of the statute. They contend that the three year repose section is part of the statute of limitations and is therefore extended by § 52-190a. The defendants argue in response that the exception provided by § 52-190a should be strictly construed in favor of protecting defendants from stale claims and that the term 'statute of limitations' excludes the statute of repose contained in § 52-584. We agree with the plaintiffs."
- Bruttomesso v. N.E. Conn. Sexual Assault Crisis Serv., 242 Conn. 1, 2-3, 698 A.2d 795 (1997). "We conclude that because neither the defendant, Northeastern Connecticut Sexual Assault Crisis Services, Inc., a corporation organized and existing under the laws of the state of Connecticut, nor its employees is licensed or certified by the department of public health, the defendant does not fall within the statutory definition and, consequently, the plaintiffs cannot rely upon the extension of the statute of limitations provided by § 52-190a (b) to save their action, which was brought beyond the two year limitation of General Statutes § 52-584,[fn4] from being time barred."
- Girard v. Weiss, 43 Conn. App. 397, 418, 682 A.2d 1078 (1996). Section 52-190a (b) grants an automatic ninety day extension of the statute, making it clear that the ninety days is in addition to other tolling periods.
- Gabrielle v. Hospital OF St. Raphael, 33 Conn. App. 378, 385, 635 A.2d 1232 (1994). "Nothing in the language of 52-190a(b) supports a claim that the General Assembly intended to permit the use of a late filed petition for an automatic extension as a vehicle to revive an already expired statute of limitations. To reach such a result would require that we torture the clear language of both statutes."
- Tautic v. Pattillo, 41 Conn. Supp. 169, 169, 561 A.2d 988 (1988). "The defendant has moved to dismiss this medical malpractice action on the ground that the plaintiffs' attorney's 'certificate of good faith,' filed with the complaint, fails to comply with the requirements of General Statutes § 52-190a (a). He claims that counsel's mere assertion therein

that he has 'made a reasonable inquiry as permitted by the circumstances [which] gave rise to a good faith belief that grounds exist for an action against [this] defendant' is insufficient under the statute unless the 'inquiry' included a consultation with another physician whose opinion was the basis for the attorney's good faith belief that grounds existed for the bringing of this action."

TEXTS & TREATISES:

- 3A JOEL M. KAYE ET AL., CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
Authors' Comments following Form 101.13 and 808.4
- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996).
§ 16-3(d). Good faith certificate
- 2 DANIEL C. POPE, CONNECTICUT ACTIONS AND REMEDIES: TORT LAW (1996).
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Figure 1 Petition to Clerk for automatic ninety day extension

PETITION TO THE CLERK

Pursuant to Connecticut General Statutes Section 52-190a(b), the undersigned hereby petitions for the AUTOMATIC ninety (90) day extension of the Statute of Limitations regarding the course of treatment given to _____ and affecting _____ and any other plaintiffs yet to be identified on or about November 13, 1996; to allow reasonable inquiry to determine that there was negligence in the care and treatment of _____ by _____ Hospital and/or its servants, agents, and/or employees ; PHYSICIANS _____ and/or their servants, agents and/or employees ; _____ , M.D. and/or her servants, agents and/or employees and other health care providers and other professional corporations of health care providers, and their servants, agents and/or employees as yet to be determined.

Signed

* Source: Records and Briefs, Barrett v. Danbury Hospital, 232 Conn. 242 (1995).

Table 1 Unreported Connecticut Cases

Unreported Connecticut Cases

<p><u>Mastrone v. St. Vincent's Medical Center</u>, No. CV05 500 04 77 (May 23, 2006) 41 Conn. L. Rptr. 375, 2006 WL 1530107 (Conn. Super. 2006).</p>	<p>“Neither party disputes that § 52-190a governs the requirements of the apportionment complaint. The parties mainly disagree about whether St. Vincent’s, at the time that St. Vincent’s filed its apportionment complaint was required to conform to the newly enacted requirements of § 52-190a. Public Acts 2005, No. 05-275, § 2 became ‘[e]ffective October 1, 2005, and [is] applicable to <i>actions</i> filed on or after [October 1, 2005]. (Emphasis added.) St. Vincent’s argues that although the legislature clearly differentiated between actions and apportionment complaints in the body of the act, in language specific to applicability of the act, it is limited to ‘actions.’”</p>
<p><u>Villa v. Sport Hill Chiropractic</u>, No. 398722 (Nov. 28, 2003), 2003 WL 22962103 (Conn. Super. 2003), 2003 Conn. Super. LEXIS 3337.</p>	<p>The court need not determine whether a failure to make the reasonable inquiry required by § 52-190a(a) after being afforded an extension of time to do so under § 52-190a(b) vitiates the extension. This is because the defendant has failed to adduce any evidence that the plaintiff failed to make such a reasonable inquiry. As for the plaintiff’s failure to attach the good faith certificate to his original complaint, that default was cured subsequent to the granting of the defendant’s motion to strike when the plaintiff filed an amended complaint with the good faith certificate annexed. "The lack of a certificate of good faith is not a jurisdictional defect and thus does not deprive the court of subject matter jurisdiction. <i>LeConche v. Elligers</i>, [215 Conn. 701, 713, 579 A.2d 1 (1990)]. Our cases explain that the failure to attach a certificate of good faith pursuant to § 52-190a subjects the case to a motion to strike the complaint pursuant to Practice Book § 152(1) [now Practice Book § 10-39] for failure to state a claim upon which relief can be granted, but that the defect is curable by a timely amendment filed pursuant to Practice Book § 157 [now Practice Book § 10-44] or Practice Book § 175 [now Practice Book § 10-59]. <i>Id.</i>, 711; <i>Yale University School of Medicine v. McCarthy</i>, [26 Conn. App. 497, 502, 602 A.2d 1040 (1992)]." (Footnotes omitted.) <i>Gabrielle v. Hospital of St. Raphael</i>, 33 Conn. App. 378, 384, 635 A.2d 1232, cert. denied, 228 Conn. 928, 640 A.2d 115 (1994).</p> <p>Thus, the statute of limitations was extended from August 23, 1999 to November 23, 2002. Since service of process was made on the defendant on November 19, 2002, this action was brought within the three-year period prescribed by General Statutes § 52-584. [Cont’d]</p>

Unreported Cases [cont'd]

Brittain v. Hospital of Saint Raphael, No. CV98-00413933 (Apr. 25, 2001), 2001 WL 528124 (Conn. Super. 2001), 2001 Conn. Super. LEXIS 1174.

The purpose of § 52-190a's good faith certificate is to evidence a plaintiff's good faith derived from a precomplaint inquiry. *LeConche v. Elligers*, 215 Conn. 701, 711 (1990). It serves as an assurance to a defendant that a plaintiff has in fact made a reasonable precomplaint inquiry leading to a good faith belief in the defendants' negligence. *Id.* The presence of the certificate is not a jurisdictional requirement. *Id.* Moreover, the statute, by its terms, permits the inquiry to be made by either the attorney or party filing the action. § 52-190a(a). The legislative purpose behind the statute is to discourage the filing of baseless lawsuits against health care providers. *Id.*, 710. Accordingly, the "essence of the thing to be accomplished" by § 52-190a is to mandate an appropriate precomplaint inquiry rather than the filing of the certificate itself. *Id.*, 710.

Given this statutory purpose, the fact that the attorney's petition incorrectly named the administrator of Diane Kent's estate does not invalidate the petition. Nor does the attorney's precomplaint petition, which is permitted by § 52-190a, implicate the issues of standing raised by the Hospital. Standing concerns the authority of a party to get his or her complaint before the court. *Isaac v. Mount Sinai Hospital*, 4 3 Conn. App. 598, 601 (1985). While Karen Brittain's legal authority as administrator is crucial to her standing to bring the lawsuit filed on June 11, 1998, it is not a condition precedent to Attorney Lichtenstein's statutory authority to seek a ninety day extension of the statute of limitations to conduct an inquiry regarding the merits of a potential malpractice suit for alleged negligent treatment of Diane Kent.

In addition, the fact that the Hospital was not named initially as a potential defendant likewise does not invalidate the extension petition. In *Lucid v. Arthritis Center of Conn.*, Superior Court judicial district of Waterbury at Waterbury, Docket No. 153804 (October 10, 2000, Wiese, J.), the court ruled that "[t]he attorney filing a petition for an extension of time need not name the health care provider against whom the attorney may expect to file an action. . . . Were the rule to be that an attorney seeking an extension . . . was required to name in his petition every defendant against whom his reasonable inquiry might indicate liability, there is little doubt but that the medical malpractice bar would, with Pavlovian predictability, name every health care provider anywhere in the geographical [area]. . . ." (Citation omitted.) *Lucid v. Arthritis Center of Conn.*, supra, Superior Court, Docket No. 153804, quoting *Falzone v. Hoos*, Superior Court, judicial district of New Haven at New Haven, Docket No. 368957 (March 27, 1998, Levin, J.) (21 Conn.L.Rptr. 587). This interpretation promotes the purpose of the statute, namely, to prevent frivolous and unfounded medical malpractice claims against health care providers.

In summary, the court finds that pursuant to the order of the clerk granting Attorney Lichtenstein's petition, the statute of limitations for actions arising out of the death of Diane Kent was extended for ninety days. Accordingly, the action filed by Karen Brittain, Administratrix of the estate of Diane Kent was timely filed. The Hospital's motion for summary judgment as to Karen Brittain's claims is denied.