



General Assembly

January Session, 2009

Raised Bill No. 1091

LCO No. 4499

04499_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING COMPLAINTS PENDING IN THE
DEPARTMENT OF PUBLIC HEALTH AGAINST PHYSICIANS AND
OTHER HEALTH CARE PROVIDERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-14 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) The Department of Public Health shall have the following
4 powers and duties with regard to the boards and commissions listed in
5 subsection (b) of this section which are within the Department of
6 Public Health. The department shall:

7 (1) Control the allocation, disbursement and budgeting of funds
8 appropriated to the department for the operation of the boards and
9 commissions;

10 (2) Employ and assign such personnel as the commissioner deems
11 necessary for the performance of the functions of the boards and
12 commissions;

13 (3) Perform all management functions including purchasing,

14 bookkeeping, accounting, payroll, secretarial, clerical and routine
15 housekeeping functions;

16 (4) Adopt, with the advice and assistance of the appropriate board
17 or commission, and in accordance with chapter 54, any regulations
18 which are consistent with protecting the public health and safety and
19 which are necessary to implement the purposes of subsection (a) of
20 section 2c-2b, this chapter, and chapters 368v, 369 to 375, inclusive, 378
21 to 381, inclusive, 383 to 388, inclusive, 398 and 399;

22 (5) Develop and perform all administrative functions necessary to
23 process applications for licenses and certificates;

24 (6) Determine the eligibility of all applicants for permits, licensure,
25 certification or registration, based upon compliance with the general
26 statutes and administrative regulations. The department may deny the
27 eligibility of an applicant for a permit or for licensure by examination,
28 endorsement, reciprocity or for reinstatement of a license voided
29 pursuant to subsection (f) of section 19a-88, or may issue a license
30 pursuant to a consent order containing conditions that must be met by
31 the applicant if the department determines that the applicant:

32 (A) Has failed to comply with the general statutes and
33 administrative regulations governing his profession;

34 (B) Has been found guilty or convicted as a result of an act which
35 constitutes a felony under (i) the laws of this state, (ii) federal law or
36 (iii) the laws of another jurisdiction and which, if committed within
37 this state, would have constituted a felony under the laws of this state;

38 (C) Is subject to a pending disciplinary action or unresolved
39 complaint before the duly authorized professional disciplinary agency
40 of any state, the District of Columbia, a United States possession or
41 territory, or a foreign jurisdiction;

42 (D) Has been subject to disciplinary action similar to an action
43 specified in subsection (a) of section 19a-17 by a duly authorized

44 professional disciplinary agency of any state, the District of Columbia,
45 a United States possession or territory, or a foreign jurisdiction;

46 (E) Has committed an act which, if the applicant were licensed,
47 would not conform to the accepted standards of practice of the
48 profession, including but not limited to, incompetence, negligence,
49 fraud or deceit; illegal conduct; procuring or attempting to procure a
50 license, certificate or registration by fraud or deceit; or engaging in,
51 aiding or abetting unlicensed practice of a regulated profession,
52 provided the commissioner, or his designee, gives notice and holds a
53 hearing, in accordance with the provisions of chapter 54, prior to
54 denying an application for a permit or a license based on this
55 subparagraph; or

56 (F) Has a condition which would interfere with the practice of his
57 profession, including, but not limited to, physical illness or loss of skill
58 or deterioration due to the aging process, emotional disorder or mental
59 illness, abuse or excessive use of drugs or alcohol, provided the
60 commissioner, or his designee, gives notice and holds a hearing in
61 accordance with the provisions of chapter 54, prior to denying an
62 application for a permit or a license based on this subparagraph;

63 (7) Administer licensing examinations under the supervision of the
64 appropriate board or commission;

65 (8) Develop and perform all administrative functions necessary to
66 process complaints against persons licensed by the department;

67 (9) Consent to the approval or disapproval by the appropriate
68 boards or commissions of schools at which educational requirements
69 shall be met;

70 (10) Conduct any necessary review, inspection or investigation
71 regarding qualifications of applicants for licenses or certificates,
72 possible violations of statutes or regulations, and disciplinary matters.
73 In connection with any investigation, the Commissioner of Public

74 Health or said commissioner's authorized agent may administer oaths,
75 issue subpoenas, compel testimony and order the production of books,
76 records and documents. If any person refuses to appear, to testify or to
77 produce any book, record or document when so ordered, a judge of
78 the Superior Court may make such order as may be appropriate to aid
79 in the enforcement of this section;

80 (11) With respect to any review, inspection or investigation under
81 subdivision (10) of this subsection concerning a complaint brought by
82 a patient or a patient's representative alleging incompetence,
83 negligence, fraud or deceit by a person subject to regulation or
84 licensing by any board or commission described in subdivisions (1) to
85 (5), inclusive, (7), (8), (12) to (14), inclusive, or (16) of subsection (b) of
86 this section:

87 (A) Provide information to the patient or the patient's
88 representative, at least monthly, on the status of the review, inspection
89 or investigation;

90 (B) Permit the patient or the patient's representative to provide
91 testimony prior to any finding of no probable cause or a dismissal on
92 other grounds;

93 (C) Permit the patient or the patient's representative to attend and
94 provide testimony at any hearing held with respect to the review,
95 inspection or investigation;

96 (D) Notify the patient or the patient's representative of the
97 provisions set forth in subparagraphs (A) to (C), inclusive, of this
98 subdivision, not later than ten days after the complaint is brought;

99 (E) Provide not less than ten days' notice to the patient or the
100 patient's representative of the opportunity to provide testimony
101 pursuant to subparagraph (B) or (C) of this subdivision, when
102 applicable; and

103 (F) Notify the patient or the patient's representative of the final

104 decision with respect to such review, inspection or investigation not
105 later than seven calendar days after such final decision is made;

106 [(11)] (12) Conduct any necessary investigation and follow-up in
107 connection with complaints regarding persons subject to regulation or
108 licensing by the department;

109 [(12)] (13) Perform any other function necessary to the effective
110 operation of a board or commission and not specifically vested by
111 statute in the board or commission;

112 [(13)] (14) Contract with a third party, if the commissioner deems
113 necessary, to administer licensing examinations and perform all
114 attendant administrative functions in connection with such
115 examination.

116 (b) The department shall have the powers and duties indicated in
117 subsection (a) of this section with regard to the following professional
118 boards and commissions:

119 (1) The Connecticut Medical Examining Board, established under
120 section 20-8a;

121 (2) The Connecticut State Board of Examiners for Optometrists,
122 established under subsections (a) to (c), inclusive, of section 20-128a;

123 (3) The Connecticut State Board of Examiners for Nursing,
124 established under section 20-88;

125 (4) The Dental Commission, established under section 20-103a;

126 (5) The Board of Examiners of Psychologists, established under
127 section 20-186;

128 (6) The Connecticut Board of Veterinary Medicine, established
129 under section 20-196;

130 (7) The Connecticut Homeopathic Medical Examining Board,

131 established under section 20-8;

132 (8) The Connecticut State Board of Examiners for Opticians,
133 established under subsections (a) to (c), inclusive, of section 20-139a;

134 (9) The Connecticut State Board of Examiners for Barbers and
135 Hairdressers and Cosmeticians, established under section 20-235a;

136 (10) The Connecticut Board of Examiners of Embalmers and Funeral
137 Directors established under section 20-208;

138 (11) Repealed by P.A. 99-102, S. 51;

139 (12) The State Board of Natureopathic Examiners, established under
140 section 20-35;

141 (13) The State Board of Chiropractic Examiners, established under
142 section 20-25;

143 (14) The Connecticut Board of Examiners in Podiatry, established
144 under section 20-51;

145 (15) The Board of Examiners of Electrologists, established under
146 section 20-268; and

147 (16) The Connecticut State Board of Examiners for Physical
148 Therapists.

149 (c) No board shall exist for the following professions that are
150 licensed or otherwise regulated by the Department of Public Health:

151 (1) Speech and language pathologist and audiologist;

152 (2) Hearing instrument specialist;

153 (3) Nursing home administrator;

154 (4) Sanitarian;

- 155 (5) Subsurface sewage system installer or cleaner;
- 156 (6) Marital and family therapist;
- 157 (7) Nurse-midwife;
- 158 (8) Licensed clinical social worker;
- 159 (9) Respiratory care practitioner;
- 160 (10) Asbestos contractor and asbestos consultant;
- 161 (11) Massage therapist;
- 162 (12) Registered nurse's aide;
- 163 (13) Radiographer;
- 164 (14) Dental hygienist;
- 165 (15) Dietitian-Nutritionist;
- 166 (16) Asbestos abatement worker;
- 167 (17) Asbestos abatement site supervisor;
- 168 (18) Licensed or certified alcohol and drug counselor;
- 169 (19) Professional counselor;
- 170 (20) Acupuncturist;
- 171 (21) Occupational therapist and occupational therapist assistant;
- 172 (22) Lead abatement contractor, lead consultant contractor, lead
173 consultant, lead abatement supervisor, lead abatement worker,
174 inspector and planner-project designer;
- 175 (23) Emergency medical technician, emergency medical technician-
176 intermediate, medical response technician and emergency medical

177 services instructor;

178 (24) Paramedic;

179 (25) Athletic trainer; and

180 (26) Perfusionist.

181 The department shall assume all powers and duties normally vested
182 with a board in administering regulatory jurisdiction over such
183 professions. The uniform provisions of this chapter and chapters 368v,
184 369 to 381a, inclusive, 383 to 388, inclusive, 393a, 395, 398, 399, 400a
185 and 400c, including, but not limited to, standards for entry and
186 renewal; grounds for professional discipline; receiving and processing
187 complaints; and disciplinary sanctions, shall apply, except as otherwise
188 provided by law, to the professions listed in this subsection.

189 (d) Except as provided in section 20-13e, as amended by this act, all
190 records obtained by the department in connection with any
191 investigation of a person or facility over which the department has
192 jurisdiction under this chapter, other than a physician as defined in
193 subdivision (5) of section 20-13a, shall not be subject to disclosure
194 under section 1-210 for a period of one year from the date of the
195 petition or other event initiating such investigation, or until such time
196 as the investigation is terminated pursuant to a withdrawal or other
197 informal disposition or until a hearing is convened pursuant to chapter
198 54, whichever is earlier. A complaint, as defined in subdivision (6) of
199 section 19a-13, shall be subject to the provisions of section 1-210 from
200 the time that it is served or mailed to the respondent. Records which
201 are otherwise public records shall not be deemed confidential merely
202 because they have been obtained in connection with an investigation
203 under this chapter.

204 Sec. 2. Section 20-13e of the general statutes is repealed and the
205 following is substituted in lieu thereof (*Effective October 1, 2009*):

206 (a) The department shall investigate each petition filed pursuant to

207 section 20-13d, in accordance with the provisions of [subdivision (10)]
208 subdivisions (10) and (11) of subsection (a) of section 19a-14, as
209 amended by this act, to determine if probable cause exists to issue a
210 statement of charges and to institute proceedings against the physician
211 under subsection (d) of this section. Such investigation shall be
212 concluded not later than eighteen months from the date the petition is
213 filed with the department and, unless otherwise specified by this
214 subsection, the record of such investigation shall be deemed a public
215 record, in accordance with section 1-210, at the conclusion of such
216 eighteen-month period. Any such investigation shall be confidential
217 and no person shall disclose his knowledge of such investigation to a
218 third party unless the physician requests that such investigation and
219 disclosure be open, except that the department shall provide
220 information to the patient or the patient's representative pursuant to
221 subdivision (11) of subsection (a) of section 19a-14, as amended by this
222 act. If the department determines that probable cause exists to issue a
223 statement of charges, the entire record of such proceeding shall be
224 public unless the department determines that the physician is an
225 appropriate candidate for participation in a rehabilitation program in
226 accordance with the provisions of sections 19a-12a and 19a-12b. The
227 petition and all records of any physician determined to be eligible for
228 participation in a rehabilitation program prior to June 11, 2007, shall
229 remain confidential during the physician's participation and upon
230 successful completion of the rehabilitation program, in accordance
231 with the terms and conditions agreed upon by the physician and the
232 department. If at any time subsequent to the filing of a petition and
233 during the eighteen-month period, the department makes a finding of
234 no probable cause, the petition and the entire record of such
235 investigation shall remain confidential, except as provided in
236 subdivision (11) of subsection (a) of section 19a-14, as amended by this
237 act, unless the physician requests that such petition and record be
238 open.

239 (b) As part of an investigation of a petition filed pursuant to
240 subsection (a) of section 20-13d, the Department of Public Health may

241 order the physician to submit to a physical or mental examination, to
242 be performed by a physician chosen from a list approved by the
243 department. The department may seek the advice of established
244 medical organizations or licensed health professionals in determining
245 the nature and scope of any diagnostic examinations to be used as part
246 of any such physical or mental examination. The examining physician
247 shall make a written statement of his or her findings.

248 (c) If the physician fails to obey a department order to submit to
249 examination or attend a hearing, the department may petition the
250 superior court for the judicial district of Hartford to order such
251 examination or attendance, and said court or any judge assigned to
252 said court shall have jurisdiction to issue such order.

253 (d) Subject to the provisions of section 4-182, no license shall be
254 restricted, suspended or revoked by the board, and no physician's
255 right to practice shall be limited by the board, until the physician has
256 been given notice and opportunity for hearing in accordance with the
257 regulations established by the commissioner.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	19a-14
Sec. 2	<i>October 1, 2009</i>	20-13e

Statement of Purpose:

To: (1) Permit a patient, or the patient's representative, to obtain information about the status of the patient's complaint against a health care provider filed with the Department of Public Health or a regulatory board within the department, and (2) allow the patient, or the patient's representative, to provide testimony regarding such complaint prior to a final decision on the complaint.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]