



General Assembly

February Session, 2010

Amendment

LCO No. 3698

SB0024803698SD0

Offered by:
SEN. MCDONALD, 27th Dist.

To: Subst. Senate Bill No. 248 File No. 246 Cal. No. 189

**"AN ACT CONCERNING ADVERSE EVENTS AT HOSPITALS AND
OUTPATIENT SURGICAL FACILITIES."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 19a-14 of the 2010 supplement to the general
4 statutes is repealed and the following is substituted in lieu thereof
5 (*Effective October 1, 2010*):

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

10 (1) Control the allocation, disbursement and budgeting of funds
11 appropriated to the department for the operation of the boards and
12 commissions;

13 (2) Employ and assign such personnel as the commissioner deems

14 necessary for the performance of the functions of the boards and
15 commissions;

16 (3) Perform all management functions including purchasing,
17 bookkeeping, accounting, payroll, secretarial, clerical and routine
18 housekeeping functions;

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

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

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

35 (A) Has failed to comply with the general statutes and
36 administrative regulations governing [his] the applicant's profession;

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

41 (C) Is subject to a pending disciplinary action or unresolved
42 complaint before the duly authorized professional disciplinary agency
43 of any state, the District of Columbia, a United States possession or

44 territory, or a foreign jurisdiction;

45 (D) Has been subject to disciplinary action similar to an action
46 specified in subsection (a) of section 19a-17 by a duly authorized
47 professional disciplinary agency of any state, the District of Columbia,
48 a United States possession or territory, or a foreign jurisdiction;

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

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

67 (7) Administer licensing examinations under the supervision of the
68 appropriate board or commission;

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

71 (9) Consent to the approval or disapproval by the appropriate
72 boards or commissions of schools at which educational requirements
73 shall be met;

74 (10) Conduct any necessary review, inspection or investigation
75 regarding qualifications of applicants for licenses or certificates,
76 possible violations of statutes or regulations, and disciplinary matters.
77 In connection with any investigation, the Commissioner of Public
78 Health or [said] the commissioner's authorized agent may administer
79 oaths, issue subpoenas, compel testimony and order the production of
80 books, records and documents. If any person refuses to appear, to
81 testify or to produce any book, record or document when so ordered, a
82 judge of the Superior Court may make such order as may be
83 appropriate to aid in the enforcement of this section;

84 (11) Conduct any necessary investigation and follow-up in
85 connection with complaints regarding persons subject to regulation or
86 licensing by the department;

87 (12) With respect to any complaint filed with the department on or
88 after October 1, 2010, alleging incompetence, negligence, fraud or
89 deceit by a person subject to regulation or licensing by any board or
90 commission described in subdivision (1) to (5), inclusive, (7), (8), (12) to
91 (14), inclusive, or (16) of subsection (b) of this section:

92 (A) Upon request of the person who filed the complaint, provide
93 such person with information on the status of the complaint;

94 (B) Upon request of the person who filed the complaint, provide
95 such person with an opportunity to review, at the department, records
96 compiled as of the date of the request pursuant to any investigation of
97 the complaint, including, but not limited to, the respondent's written
98 response to the complaint, except that such person shall not be entitled
99 to copy such records and the department (i) shall not disclose (I)
100 information concerning a health care professional's referral to,
101 participation in or completion of an assistance program in accordance
102 with sections 19a-12a and 19a-12b, that is confidential pursuant to
103 section 19a-12a, (II) information not related to such person's specific
104 complaint, including, but not limited to, information concerning
105 patients other than such person, or (III) personnel or medical records

106 and similar files the disclosure of which would constitute an invasion
107 of personal privacy pursuant to section 1-210, except for such records
108 or similar files solely related to such person; (ii) shall not be required to
109 disclose any other information that is otherwise confidential pursuant
110 to federal law or state statute, except for information solely related to
111 such person; and (iii) may require up to ten business days written
112 notice prior to providing such opportunity for review;

113 (C) Prior to resolving the complaint with a consent order, provide
114 the person who filed the complaint with not less than ten business
115 days to submit a written statement as to whether such person objects
116 to resolving the complaint with a consent order;

117 (D) If a hearing is held with respect to such complaint after a finding
118 of probable cause, provide the person who filed the complaint with a
119 copy of the notice of hearing issued pursuant to section 4-177, which
120 shall include information concerning the opportunity to present oral or
121 written statements pursuant to subsection (b) of section 4-177c; and

122 (E) Notify the person who filed the complaint of the final
123 disposition of such complaint not later than seven business days after
124 such final disposition;

125 ~~[(12)]~~ (13) Perform any other function necessary to the effective
126 operation of a board or commission and not specifically vested by
127 statute in the board or commission;

128 ~~[(13)]~~ (14) Contract with a third party, if the commissioner deems
129 necessary, to administer licensing examinations and perform all
130 attendant administrative functions in connection with such
131 examination.

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

135 (1) The Connecticut Medical Examining Board, established under

- 136 section 20-8a;
- 137 (2) The Connecticut State Board of Examiners for Optometrists,
138 established under subsections (a) to (c), inclusive, of section 20-128a;
- 139 (3) The Connecticut State Board of Examiners for Nursing,
140 established under section 20-88;
- 141 (4) The Dental Commission, established under section 20-103a;
- 142 (5) The Board of Examiners of Psychologists, established under
143 section 20-186;
- 144 (6) The Connecticut Board of Veterinary Medicine, established
145 under section 20-196;
- 146 (7) The Connecticut Homeopathic Medical Examining Board,
147 established under section 20-8;
- 148 (8) The Connecticut State Board of Examiners for Opticians,
149 established under subsections (a) to (c), inclusive, of section 20-139a;
- 150 (9) The Connecticut State Board of Examiners for Barbers and
151 Hairdressers and Cosmeticians, established under section 20-235a;
- 152 (10) The Connecticut Board of Examiners of Embalmers and Funeral
153 Directors established under section 20-208;
- 154 (11) Repealed by P.A. 99-102, S. 51;
- 155 (12) The State Board of Natureopathic Examiners, established under
156 section 20-35;
- 157 (13) The State Board of Chiropractic Examiners, established under
158 section 20-25;
- 159 (14) The Connecticut Board of Examiners in Podiatry, established
160 under section 20-51;
- 161 (15) The Board of Examiners of Electrologists, established under

162 section 20-268; and

163 (16) The Connecticut State Board of Examiners for Physical
164 Therapists.

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

167 (1) Speech and language pathologist and audiologist;

168 (2) Hearing instrument specialist;

169 (3) Nursing home administrator;

170 (4) Sanitarian;

171 (5) Subsurface sewage system installer or cleaner;

172 (6) Marital and family therapist;

173 (7) Nurse-midwife;

174 (8) Licensed clinical social worker;

175 (9) Respiratory care practitioner;

176 (10) Asbestos contractor and asbestos consultant;

177 (11) Massage therapist;

178 (12) Registered nurse's aide;

179 (13) Radiographer;

180 (14) Dental hygienist;

181 (15) Dietitian-Nutritionist;

182 (16) Asbestos abatement worker;

183 (17) Asbestos abatement site supervisor;

- 184 (18) Licensed or certified alcohol and drug counselor;
- 185 (19) Professional counselor;
- 186 (20) Acupuncturist;
- 187 (21) Occupational therapist and occupational therapist assistant;
- 188 (22) Lead abatement contractor, lead consultant contractor, lead
189 consultant, lead abatement supervisor, lead abatement worker,
190 inspector and planner-project designer;
- 191 (23) Emergency medical technician, advanced emergency medical
192 technician, emergency medical responder and emergency medical
193 services instructor;
- 194 (24) Paramedic;
- 195 (25) Athletic trainer;
- 196 (26) Perfusionist; and
- 197 (27) On and after July 1, 2011, a radiologist assistant, subject to the
198 provisions of section 20-74tt.

199 The department shall assume all powers and duties normally vested
200 with a board in administering regulatory jurisdiction over such
201 professions. The uniform provisions of this chapter and chapters 368v,
202 369 to 381a, inclusive, 383 to 388, inclusive, 393a, 395, 398, 399, 400a
203 and 400c, including, but not limited to, standards for entry and
204 renewal; grounds for professional discipline; receiving and processing
205 complaints; and disciplinary sanctions, shall apply, except as otherwise
206 provided by law, to the professions listed in this subsection.

207 (d) Except as provided in section 20-13e, as amended by this act, all
208 records obtained by the department in connection with any
209 investigation of a person or facility over which the department has
210 jurisdiction under this chapter, other than a physician as defined in
211 subdivision (5) of section 20-13a, shall not be subject to disclosure

212 under section 1-210 for a period of one year from the date of the
213 petition or other event initiating such investigation, or until such time
214 as the investigation is terminated pursuant to a withdrawal or other
215 informal disposition or until a hearing is convened pursuant to chapter
216 54, whichever is earlier. A complaint, as defined in subdivision (6) of
217 section 19a-13, shall be subject to the provisions of section 1-210 from
218 the time that it is served or mailed to the respondent. Records [which]
219 that are otherwise public records shall not be deemed confidential
220 merely because they have been obtained in connection with an
221 investigation under this chapter. Records disclosed to a person who
222 files a complaint pursuant to subdivision (12) of subsection (a) of this
223 section that are otherwise confidential shall not be deemed public
224 records merely because they have been disclosed pursuant to said
225 subdivision (12).

226 Sec. 502. Section 20-13e of the general statutes is repealed and the
227 following is substituted in lieu thereof (*Effective October 1, 2010*):

228 (a) The department shall investigate each petition filed pursuant to
229 section 20-13d, in accordance with the provisions of [subdivision]
230 subdivisions (10) and (11) of subsection (a) of section 19a-14, as
231 amended by this act, to determine if probable cause exists to issue a
232 statement of charges and to institute proceedings against the physician
233 under subsection (d) of this section. Such investigation shall be
234 concluded not later than eighteen months from the date the petition is
235 filed with the department and, unless otherwise specified by this
236 subsection, the record of such investigation shall be deemed a public
237 record, in accordance with section 1-210, at the conclusion of such
238 eighteen-month period. Any such investigation shall be confidential
239 and no person shall disclose his knowledge of such investigation to a
240 third party unless the physician requests that such investigation and
241 disclosure be open, except that the department shall provide
242 information to the person who filed the complaint pursuant to
243 subdivision (12) of subsection (a) of section 19a-14, as amended by this
244 act. If the department determines that probable cause exists to issue a
245 statement of charges, the entire record of such proceeding shall be

246 public unless the department determines that the physician is an
247 appropriate candidate for participation in [a rehabilitation] an
248 assistance program in accordance with the provisions of sections 19a-
249 12a and 19a-12b. The petition and all records of any physician
250 determined to be eligible for participation in [a rehabilitation] an
251 assistance program prior to June 11, 2007, shall remain confidential
252 during the physician's participation and upon successful completion of
253 the [rehabilitation] assistance program, in accordance with the terms
254 and conditions agreed upon by the physician and the department. If at
255 any time subsequent to the filing of a petition and during the eighteen-
256 month period, the department makes a finding of no probable cause,
257 the petition and the entire record of such investigation shall remain
258 confidential, except as provided in subdivision (12) of subsection (a) of
259 section 19a-14, as amended by this act, unless the physician requests
260 that such petition and record be open.

261 (b) As part of an investigation of a petition filed pursuant to
262 subsection (a) of section 20-13d, the Department of Public Health may
263 order the physician to submit to a physical or mental examination, to
264 be performed by a physician chosen from a list approved by the
265 department. The department may seek the advice of established
266 medical organizations or licensed health professionals in determining
267 the nature and scope of any diagnostic examinations to be used as part
268 of any such physical or mental examination. The examining physician
269 shall make a written statement of his or her findings.

270 (c) If the physician fails to obey a department order to submit to
271 examination or attend a hearing, the department may petition the
272 superior court for the judicial district of Hartford to order such
273 examination or attendance, and said court or any judge assigned to
274 said court shall have jurisdiction to issue such order.

275 (d) Subject to the provisions of section 4-182, no license shall be
276 restricted, suspended or revoked by the board, and no physician's
277 right to practice shall be limited by the board, until the physician has
278 been given notice and opportunity for hearing in accordance with the

279 regulations established by the commissioner.

280 Sec. 503. (NEW) (*Effective July 1, 2010*) (a) There shall be mandatory
281 mediation for all civil actions brought to recover damages resulting
282 from personal injury or wrongful death, whether in tort or in contract,
283 in which it is alleged that such injury or death resulted from the
284 negligence of a health care provider. Each such civil action for which a
285 valid certificate has been filed pursuant to section 52-190a of the
286 general statutes shall be referred to mandatory mediation pursuant to
287 subsection (b) of this section, unless the civil action is referred to
288 another alternative dispute resolution program agreed to by the
289 parties. Mandatory mediation under this section shall be conducted for
290 the purpose of achieving a prompt settlement or resolution of the civil
291 action. For the purposes of this section, "health care provider" means a
292 provider, as defined in subsection (b) of section 20-7b of the general
293 statutes, an institution, as defined in section 19a-490 of the general
294 statutes, or any other health care provider described in subsection (a)
295 of section 52-184b of the general statutes.

296 (b) Prior to the close of pleadings in such civil action, the presiding
297 judge of the civil session of the court of the judicial district in which
298 the action is pending shall refer the action to mandatory mediation or
299 any other alternative dispute resolution program agreed to by the
300 parties. The duration of the referral shall not exceed one hundred
301 twenty days unless the court, for good cause shown, extends the
302 duration of the referral. The court shall stay the time periods within
303 which all further pleadings, motions, requests, discovery and other
304 procedures must be filed or undertaken, including, but not limited to,
305 filings under section 52-192a of the general statutes, except with
306 respect to any apportionment complaint under section 52-102b of the
307 general statutes.

308 (c) Mediation under this section shall begin as soon as practicable,
309 but not later than twenty business days after the date the action is
310 referred under subsection (b) of this section. The first mediation
311 session shall be conducted by the presiding judge or, at the discretion

312 of the presiding judge, a different judge of the superior court or a
313 senior judge or judge trial referee. At the first mediation session, the
314 judge, senior judge or judge trial referee conducting the mediation
315 session shall determine whether the action can be resolved at such
316 mediation session, or, if the action cannot be resolved at that mediation
317 session, whether the parties agree to participate in further mediation. If
318 the action is not resolved at the first mediation session and the parties
319 do not agree to further mediation, mandatory mediation under this
320 section shall end. If the action is not resolved at the first mediation
321 session and the parties agree to further mediation, the presiding judge
322 of such civil session shall refer the action for mediation before an
323 attorney who has experience as an attorney related to such civil actions
324 and who has been a member of the bar of the state of Connecticut for
325 at least five years. Upon such referral, mediation shall begin as soon as
326 practicable, but not later than twenty business days after the referral.
327 Fifty per cent of the cost of such mediation shall be paid by the
328 plaintiffs, and fifty per cent of the cost of such mediation shall be
329 apportioned among all defendants who are parties to the mediation.

330 (d) Each party to such action, and a representative of each insurer
331 that may be liable to pay a claim on behalf of a defendant pursuant to
332 such action, shall appear in person at each mediation session, unless
333 participation by telephone or electronic means is permitted by the
334 judge, senior judge, judge trial referee or mediator.

335 (e) If such mediation does not settle or conclude the civil action, and
336 if all parties in attendance at such mediation agree, the mediator and
337 all such parties may file a stipulation with the court setting forth any
338 matter or conclusion that the parties and the mediator believe may be
339 useful or relevant to narrow the issues, expedite discovery or assist the
340 parties in preparing the civil action for trial.

341 (f) The judges of the Superior Court may adopt such rules as they
342 deem necessary for the conduct of mediation pursuant to this section.
343 Such rules shall be adopted in accordance with section 51-14 of the
344 general statutes."