



Legislative Testimony
Joint Committee on Public Health
Bill No. 6287
An Act Concerning Reports of Impaired Health Care Providers

Senator Gerratana, Representative Ritter, Senator Crisco, Representative Riley, Senator Markley, Representative Srinivasan and members of the Joint Committee on Public Health, my name is Maureen Sullivan Dinnan. I am the executive director of the Health Assistance interVention Education Network for Connecticut Health Professionals, which was created in 2007 following the passage of Connecticut General Statute Section 19a-12a. HAVEN is the assistance program for healthcare professionals facing the challenges of physical illness, mental illness, chemical dependence, or emotional disorder. I thank you for the opportunity to present this written testimony in support of the concept of Bill No. 6287, An Act Concerning Reports of Impaired Health Professionals and to submit proposed revised language.

At the present time, only physicians, physician assistants, and hospitals are mandated to report to the Department of Public Health a physician or physician assistant who is or may be unable to practice with skill or safety for reasons of impairment. See, Conn. Gen. Stat. Sec. 20-12f and Conn. Gen. Stat. Sec. 20-13d. When the impairment is attributed to a health or wellness issue, the physician or physician assistant may be reported to HAVEN in lieu of reporting to the department. See, Conn. Gen. Stat. Sec. 19a-12a (j)(1)(2). In the event that the professional is not compliant with the terms of participating with HAVEN, then HAVEN is required by law to notify the department.

Each year HAVEN must submit a report to the Public Health Committee regarding the numbers of professionals in HAVEN and to make a statement that the professionals who are allowed to practice are expected to do so safely. In 2014, HAVEN assisted more than 370 professionals. Approximately 32% of the referred professionals were physicians. Yet, physicians represent only 11.58% of the licensed health care professionals in the State of Connecticut. The increased percentage of physician referrals is not because physicians are a disproportionate risk. In fact, some studies estimate that nurses have a higher risk for substance use disorders. We believe that more physicians are directed into assistance because of the legal obligation to make a report of a physician who is suspected to be impaired or to have an impairing condition.

Almost every week, calls are placed to HAVEN asking if an individual is legally responsible to report a professional, such as a dentist, nurse, social worker, or emergency medical service provider. When it is explained that there is no legal obligation to report such professionals, but rather there is an ethical responsibility within professional codes of ethics to report, the referral is typically not made. We will often hear, "Then, we won't make the report, as we are afraid of repercussions and we will address our problem by terminating from our facility or group." The suffering health care provider is free to

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go to another employer and to continue to provide care to patients despite concern for impairment. One nurse went to three hospitals and diverted at each hospital before a referral was made to HAVEN. For those professionals and especially dentists and veterinarians in solo practices, a concerned employee who makes the inquiry may elect to quit, while the professional continues to practice. While we should be concerned about the professional's risk for self-harm¹, it is impossible to estimate the risk to patient safety.

Another example is a call was made to HAVEN because an emergency medical provider was suspected of injecting an anesthetic agent. Although a drug test confirmed that he was practicing while under the influence, diversion from hospital stock could apparently not be proven.² When told there was no legal obligation to report the professional, the employer made the decision to terminate without referring for assistance. Now, this professional is available for hire and the employer is prohibited from disclosing its concern to a prospective employer. Clearly, something needs to be done.

Healthcare professionals suffer from physical illness, mental illness, and substance use disorders at the same rate as the general population. More than 50% of health care professionals are more than fifty years of age. Decreases in physical acuity and cognitive decline are part of the natural course of aging. For substance use alone, it is accepted that 10 to 15% of the population will suffer from substance use disorders over their lifetime. There is no immunity conferred upon our providers by education and training. While we accept that 10 to 15% of health professionals over the course of their careers will suffer from substance abuse, we believe 1.5% of dentists, 2% of physicians and as much as 6% of nurses may be actively practicing today with a condition that is impairing. This means more than a thousand professionals are practicing who may be unable to do so safely. Without mandated reporting, we know we are serving only a small percentage of those in need. Even with mandated reporting, we know that many professionals will not access needed care.³ However, the likelihood of identifying more professionals will be greatly enhanced.⁴

Although HAVEN supports the proposed bill's attempt to address the discrepancy in the statutes which limits mandated reporting to physicians and physician assistants, the proposed language is overly broad and vague. HAVEN asks the Public Health Committee to consider the attached revisions to this bill which provide clarity and consistency within existing statutes. The attached language makes clear that (1) mandated reporting will apply to all professionals who may benefit from a confidential health and wellness program; (2) the report is to be made to the department of public health within thirty days; (3) when appropriate, a referral may be made to HAVEN and such report will satisfy the mandated reporting requirement; (4) the revised language

¹ Health care professionals are believed to be a higher risk for suicide than members of the general population. In addition, the health care professional often believes that he understands the medication, overestimates his ability to control the medication and so, may take greater risks resulting in over dose.

² When diversion from a facility's stock, supplies, or equipment is suspected, the pharmacist will report to the Department of Consumer Protection (DCP). Conn. Gen. Stat. Sec. 21a-262. After investigation by DCP, DCP may transfer its investigation to the Department of Public Health.

³ To date, the Department of Public Health does not appear to have enforced the mandated reporting statute as to physician and physician assistants.

⁴ HAVEN receives no state funding. In order to maintain and adequately meet the demand for increased services, funding must be addressed.

mirrors the reporting requirements currently applicable to physicians and physician assistants; (5) a health care professional must self-report an arrest that arises out of substance abuse or mental health/behavioral health⁵; (6) consistent with current law and practice, qualified immunity applies to such reports. See, Conn. Gen. Stat. 19a-20.⁶

I would like to again thank the Committee for allowing us to submit testimony on behalf of HAVEN, the health assistance program for Connecticut health professionals. HAVEN would welcome the opportunity to work with legislators regarding the language of this bill. Should you have any questions we would be happy to make ourselves available at your convenience.

Respectfully submitted:



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⁵ Conn. Gen. Stat. Sec. 20-131 provides in relevant part that the Office of the Chief State's Attorney shall notify the Department of Public Health immediately, in writing when criminal charges are brought against a physician licensed by the department for (1) reckless endangerment within the scope of the physician's medical practice, (2) manslaughter, or (3) murder... HAVEN is unaware of similar requirements for other professionals. There is no requirement to report alcohol or drug related offenses.

⁶ See also, Chada v. Charlotte Hungerford Hospital, et.al., 260 Conn. 933 (2002)

AN ACT CONCERNING REPORTS OF IMPAIRED HEALTH CARE PROVIDERS

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

Section 19a-12c (NEW)

(a) As used in this section, health care professional, department and assistance program shall be as defined in Connecticut General Statute Section 19a-12a.

(b) Any health care professional or hospital shall within thirty days, and any individual may, file a petition when the health care professional, hospital or individual has any information which appears to show that a health care professional is or may be unable to practice with skill or safety for any of the following reasons: (1) physical illness or loss of motor skill, including but not limited to, deterioration through the aging process; (2) emotional disorder or mental illness; (3) abuse or excessive use of drugs, including alcohol, narcotics or chemicals; (4) illegal, incompetent or negligent conduct in the practice of medicine or healthcare; (5) possession, use, prescription for use, or distribution of controlled substances or legend drugs, except for therapeutic or other medically proper purposes; (6) misrepresentation or concealment of a material fact in the obtaining or reinstatement of a license to practice medicine or healthcare; or (7) violation of any provision or regulation established under the chapter or regulation applicable to such healthcare professional. Petitions shall be filed with the Department of Public Health on forms supplied by the department, shall be signed and sworn and shall set forth in detail the information which appears to show that the professional may be unable to practice with skill or safety.

(c) Any health care professional or hospital that refers a healthcare professional for intervention to the assistance program as defined in Section 19a-12(a)(5) shall be deemed to have satisfied the obligations imposed on the person or hospital with respect to the healthcare professional's ability to practice with reasonable skill or safety due to chemical dependency, emotional or behavioral disorder, or physical or mental illness.

(d) A health care professional who has been the subject of an arrest arising out of the possession, use, prescription for use, or distribution of controlled substances or legend drugs or alcohol, mental illness, or behavioral or emotional disorder, shall within thirty days notify the department. The health care professional shall be deemed to satisfy this obligation if the health care professional seeks intervention with the assistance program as defined in Section 19a-12(a)(5).

(e) A health care professional shall report to the department any disciplinary action similar to an action specified in subsection (a) of section 19a-17 taken against him by a duly authorized professional disciplinary agency of any state, the District of Columbia, a United States

possession or territory, or a foreign jurisdiction, within thirty days of such action. Failure to so report may constitute a ground for disciplinary action under section 19a-17.

(f) No health care professional, hospital or individual making a petition or providing information to the department or assistance program shall, without a showing of malice, be liable for damage or injury to the practitioner. The assistance program shall also not be liable for damage or injury to the practitioner without a showing of malice. The health care professional, hospital, individual, or assistance program shall be entitled to indemnification and defense in the manner set forth in section 5-141d with respect to a state officer or employee.