****

The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion. In no event will any such motions be accepted before the “officially released” date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.
****

CHARLES RAY JONES *v.* CONNECTICUT MEDICAL EXAMINING BOARD
(SC 18843)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Vertefeuille, Js.

Argued March 14—officially released August 13, 2013

Elliott B. Pollack, with whom was *Megan Y. Carannante*, for the appellant (plaintiff).

Henry A. Salton, assistant attorney general, with whom, on the brief, were *George Jepsen*, attorney general, and *Tanya Feliciano DeMattia*, assistant attorney general, for the appellee (defendant).

Opinion

ZARELLA, J. The issue presented in this case is what standard of proof should be applied in physician disciplinary proceedings before the defendant, the Connecticut Medical Examining Board (board). The plaintiff, Charles Ray Jones, a physician, claims that the Appellate Court incorrectly concluded that the preponderance of the evidence standard applied in his disciplinary hearing before the board and should have concluded that the clear and convincing evidence standard of proof was applicable. The board asserts that the Appellate Court correctly determined that the preponderance of the evidence standard applied at the proceeding before it because the board is an administrative agency and, therefore, is subject to the provisions of the Uniform Administrative Procedure Act (UAPA); General Statutes § 4-166 et seq.; under which the preponderance of the evidence is the default standard of proof. We agree with the board and affirm the judgment of the Appellate Court.

In its opinion, the Appellate Court set forth the following relevant facts and procedural history. "The plaintiff is a physician and surgeon licensed to practice medicine in Connecticut. The [board] is a state agency within the meaning of the [UAPA] . . . . On August 29, 2005, the [D]epartment [of Public Health] presented the [board] with a statement of charges against the plaintiff's license pursuant to General Statutes (Rev. to 2005) § 19a-17[1] and General Statutes § 20-13c.[2] The two counts contained therein alleged that the plaintiff violated the applicable standard of care in various respects in his treatment of two . . . children.

"As the [trial] court found . . . a three member medical hearing panel . . . [consisting] of two physicians and one layperson thereafter conducted eleven days of hearings over a fourteen month period. The [board] then reviewed the panel's proposed decision and, in a December 18, 2007 memorandum of decision, made the following findings. The plaintiff holds a Connecticut physician and surgeon license. On or about December 17, 2003, the plaintiff consulted by telephone with the mother of [S and E, the two children], who were living in Nevada.[3] At that time, the plaintiff diagnosed E [with] gestational Lyme disease. The plaintiff took several other actions prior to first examining the children on May 21, 2004. On January 5, 2004, the plaintiff prescribed Doxycycline for E's Lyme disease. On March 18, 2004, the plaintiff prescribed Zithromax for S. On March 26, 2004, the plaintiff made recommendations to the principal of S's school for S's education based on a provisional diagnosis of late stage Lyme disease.

"At the May 21, 2004 examination, the plaintiff [diagnosed] E [as having] possible gestational Lyme disease. The plaintiff treated both children with a continuous

prescription of Amoxicillin until March, 2005, and then continuously with Omnicef. After the May 21, 2004 exam[ination], the plaintiff did not examine the children until April 11, 2005, nor did he make any arrangements for another physician to monitor their medication. At the April 11, 2005 examination, the plaintiff ordered a series of tests for Lyme disease . . . . All tests were negative except, in the case of S, for Mycoplasma [fermentans] and a weakly positive titer for [Group A] Streptococcus . . . antibodies and, in the case of E, a positive antibody finding for Epstein-Barr Virus.

"The [board] found that the plaintiff [had] violated the standard of care [with respect to his treatment of] both children in that he (1) prescribed an antibiotic to a patient he did not know and had never examined; (2) prescribed antibiotics for nearly [one] year without repeat examinations and without any arrangement with another physician to monitor the patient for the side effects of long-term antibiotic therapy; and (3) diagnosed a disease in both children when the exposure risk was extremely low, the medical history was nonspecific, the signs and symptoms were nonspecific, and the laboratory tests were negative. In addition, in the case of S, the [board] found that the plaintiff violated the standard of care by making an educational recommendation for a child he did not know and had never examined. The [board] also found, without specifying whether it was a violation of the standard of care, that the plaintiff failed to reconsider the diagnosis of Lyme disease for S and E in light of the negative . . . tests obtained in April, 2005.

"As a result of these findings, the [board] ordered a reprimand, imposed fines totaling $10,000, and placed the plaintiff on probation for two years. In addition, the [board] required the appointment of a physician monitor to conduct regular reviews of the plaintiff's patient records and meetings with the plaintiff. . . . On January 2, 2008, the plaintiff filed a motion for reconsideration [in which he alleged] that a member of the panel . . . was biased against [him]. The [board] denied the motion in a brief ruling [primarily on the ground] that the alleged bias did not relate to the [board's] findings and conclusions . . . .

"The plaintiff subsequently commenced an administrative appeal of [the board's] decision in the Superior Court. Following a hearing, the court determined that the record lacked substantial evidence to support the [board's] findings that the plaintiff diagnosed E with gestational Lyme disease during a telephone consultation on December 17, 2003, and that the plaintiff's care [of] E deviated from the applicable standard of care [when he prescribed] an antibiotic to a patient that he did not know and never had examined. The [trial] court affirmed the decision of the [board] in all other respects and remanded the matter to the [board] for further

proceedings pursuant to General Statutes § 4-183 (j)." (Citation omitted; footnotes altered; internal quotation marks omitted.) *Jones* v. *Connecticut Medical Examining Board*, 129 Conn. App. 575, 577–80, 19 A.3d 1264 (2011).

The plaintiff appealed to the Appellate Court from the trial court's judgment, claiming, inter alia, that the trial court incorrectly had concluded that the applicable standard of proof in disciplinary proceedings before the board was the preponderance of the evidence, rather than clear and convincing evidence, and that a member of the hearing panel was biased against the plaintiff, depriving him of his due process right to an impartial tribunal.[4] Id., 577. The Appellate Court disagreed and affirmed the trial court's judgment. Id., 586, 593.

The plaintiff thereafter sought certification to appeal, which we granted, limited to the following question: "Did the Appellate Court properly conclude that the [D]epartment of [P]ublic [H]ealth was required to prove its case in proceedings before the . . . board by a preponderance of the evidence, rather than by clear and convincing evidence?" *Jones* v. *Connecticut Medical Examining Board*, 302 Conn. 921, 28 A.3d 338 (2011).[5]

The plaintiff claims that the Appellate Court incorrectly determined that the present case was controlled by this court's holding in *Goldstar Medical Services, Inc.* v. *Dept. of Social Services*, 288 Conn. 790, 821, 955 A.2d 15 (2008) (*Goldstar*). Specifically, the plaintiff maintains that, although the UAPA applied in both *Goldstar* and the present case, the nature of the hearing and the interest at stake in the present case requires the application of a heightened standard of proof. The board, by contrast, contends that the standard of proof outlined in *Goldstar* is appropriate and should not be disturbed when, as in the present case, there is no indication that the legislature intended to impose a heightened standard of proof beyond that which applies generally to administrative proceedings under the UAPA. We agree with the board.

The determination of the appropriate standard of proof presents a question of law, over which our review is plenary. See *Braffman* v. *Bank of America Corp.*, 297 Conn. 501, 515–16, 998 A.2d 1169 (2010) ("The question of whether a trial court has held a party to a less exacting standard of proof than the law requires is a legal one. . . . Accordingly, our review is plenary." [Citation omitted; internal quotation marks omitted.]).

Under the UAPA, " '[a]gency' means each state board, commission, department or officer authorized by law to make regulations or to determine contested cases, but does not include either house or any committee of the General Assembly, the courts, the Council on Probate Judicial Conduct, the Governor, Lieutenant Gover-

nor or Attorney General, or town or regional boards of education, or automobile dispute settlement panels established pursuant to section 42-181 . . . ." General Statutes § 4-166 (1). It is uncontested that the board is an administrative agency within the meaning of § 4-166 (1); e.g., *Pet* v. *Dept. of Health Services*, 228 Conn. 651, 653 n.3, 638 A.2d 6 (1994); and disciplinary proceedings before the board are therefore subject to the provisions of the UAPA.

The UAPA does not itself set forth a standard of proof applicable to administrative proceedings. In *Goldstar*, however, we considered the appropriate standard of proof under such circumstances, evaluating both federal administrative precedent; see *Goldstar Medical Services*, *Inc*. v. *Dept. of Social Services*, supra, 288 Conn. 819–20; and the status of the preponderance of the evidence standard as "the ordinary civil standard of proof . . . ." (Internal quotation marks omitted.) Id., 819. The administrative proceeding at issue in *Goldstar* occurred before the Commissioner of Social Services (commissioner). See id., 798. Using the preponderance of the evidence standard, the commissioner found that the plaintiffs, who were Medicaid providers, had committed fraud and therefore suspended them from the Medicaid program and ordered restitution. See id., 798–99, 818. We disagreed with the plaintiffs' claim in *Goldstar* that the standard of proof should have been clear and convincing evidence, concluding instead that, "[i]n the absence of state legislation prescribing an applicable standard of proof . . . the preponderance of the evidence standard is the appropriate standard of proof in administrative proceedings . . . ." Id., 821.

In *Goldstar*, we also observed that the preponderance standard is the default rule applicable in federal administrative proceedings, including those in which sanctions include the potential loss of a professional license. Specifically, we explained that "[t]he United States Supreme Court has held that the preponderance of the evidence standard traditionally applies in administrative cases in the absence of a legislative directive to the contrary. See *Herman & MacLean* v. *Huddleston*, 459 U.S. 375, 389–90, 103 S. Ct. 683, 74 L. Ed. 2d 548 (1983) (adopting preponderance standard for fraud allegations in administrative hearing); *Steadman* v. *Securities & Exchange Commission*, 450 U.S. 91, 95, 102, 101 S. Ct. 999, 67 L. Ed. 2d 69 (1981) (upholding use of preponderance of evidence standard in Securities and Exchange Commission administrative proceedings concerning alleged violations of antifraud provisions where possible sanctions included order permanently barring individual from practicing profession) . . . ." (Citation omitted.) *Goldstar Medical Services*, *Inc*. v. *Dept. of Social Services*, supra, 288 Conn. 819–20.

In establishing the procedures governing physician disciplinary proceedings before the board, the legisla-

ture has not seen fit to establish a heightened standard of proof, which counsels in favor of upholding the default standard of proof for administrative proceedings as articulated in *Goldstar*. Nevertheless, the plaintiff maintains that our holding in *Goldstar* is inapplicable to cases involving physician discipline because of the importance of the interests at stake in a proceeding that may result in the revocation of a physician's license to practice medicine. Relying primarily on the United States Supreme Court's due process analysis in *Mathews* v. *Eldridge*, 424 U.S. 319, 334–35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), and *Addington* v. *Texas*, 441 U.S. 418, 423–25, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979), as applied in *Nguyen* v. *Dept. of Health*, 144 Wn. 2d 516, 524–34, 29 P.3d 689 (2001), cert. denied sub nom. *Washington Medical Quality Assurance Commission* v. *Nguyen*, 535 U.S. 904, 122 S. Ct. 1203, 152 L. Ed. 2d 141 (2002), and other state cases, the plaintiff claims that the use of the preponderance of the evidence standard of proof at a physician disciplinary proceeding constitutes a due process violation under the fourteenth amendment to the United States constitution. We disagree.

As the United States Supreme Court has explained, "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the [d]ue [p]rocess [c]lause of the [f]ifth or [f]ourteenth [a]mendment." *Mathews* v. *Eldridge*, supra, 424 U.S. 332. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey* v. *Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner," and, specifically, to be heard "before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction . . . ." (Internal quotation marks omitted.) *Mathews* v. *Eldridge*, supra, 333.

To evaluate the constitutional adequacy of administrative procedures, we apply the three part test set forth by the United States Supreme Court in *Mathews*, which balances (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Id., 335.

Although the United States Supreme Court has not yet considered whether, under the *Mathews* framework, the federal constitution mandates a higher standard of

proof in physician disciplinary proceedings, a majority of our sister states has concluded that the preponderance of the evidence standard satisfies the requirements of due process in such cases. See, e.g., *Sherman* v. *Commission on Licensure to Practice the Healing Art*, 407 A.2d 595, 601 (D.C. 1979) (preponderance of evidence standard sufficient to satisfy due process requirements); *Rife* v. *Dept. of Professional Regulation*, 638 So. 2d 542, 543–44 (Fla. App. 1994) (although state law required clear and convincing evidence in physician license revocation proceedings, "it is apparent that such standard is not essential to satisfy due process under the United States [c]onstitution" and license therefore could be revoked reciprocally after revocation occurred in another jurisdiction in which preponderance of evidence standard was applied in revocation proceeding); *Eaves* v. *Board of Medical Examiners*, 467 N.W.2d 234, 237 (Iowa 1991) (preponderance of evidence standard "sufficient to satisfy due process" in physician disciplinary cases); *Uckun* v. *Minnesota State Board of Medical Practice*, 733 N.W.2d 778, 784–85 (Minn. App. 2007) (applying *Mathews* and concluding that physician's right to due process was not violated by use of preponderance of evidence standard of proof in hearing to suspend physician's license); *In re Polk*, 90 N.J. 550, 569, 449 A.2d 7 (1982) ("the application of the . . . fair preponderance of the evidence standard in [a physician disciplinary proceeding] did not result in a deprivation of any rights guaranteed to [the physician] under . . . the [d]ue [p]rocess clause of the [f]ourteenth [a]mendment"); *Gould* v. *Board of Regents*, 103 App. Div. 2d 897, 897, 478 N.Y.S.2d 129 (1984) (rejecting ophthalmologist's "claim that the standard of proof in a professional license revocation proceeding must be clear and convincing proof to comport with due process" [internal quotation marks omitted]); *North Dakota State Board of Medical Examiners–Investigative Panel B* v. *Hsu*, 726 N.W.2d 216, 230 (N.D. 2007) ("[u]nder the *Mathews* framework for analyzing due process claims . . . the preponderance of evidence standard satisfies due process [in physician license revocation proceedings]"); *Gallant* v. *Board of Medical Examiners*, 159 Or. App. 175, 185, 974 P.2d 814 (1999) ("[b]alancing the three [*Mathews*] factors" and concluding "that the [d]ue [p]rocess [c]lause requires no more than the preponderance of the evidence standard of proof" in physician disciplinary proceeding); *Anonymous (M-156-90)* v. *State Board of Medical Examiners*, 329 S.C. 371, 378, 496 S.E.2d 17 (1998) ("[The] preponderance of the evidence standard adequately protects a physician's property interest in his license. We, however, leave it to the [state legislature] to amend the [state Administrative Procedure Act] . . . if it determines [that] the [clear and convincing evidence] standard [is] appropriate."); *Scally* v. *Texas State Board of Medical Examiners*, 351 S.W.3d 434, 447 n.15 (Tex. App. 2011) (observing that court previously had "rejected the contention that due

process requires a higher burden of proof [namely, clear and convincing evidence] in [physician] license-revocation proceedings"), review denied, Texas Supreme Court, Docket No. 11-0950 (Tex. September 21, 2012), cert. denied, U.S. , 133 S. Ct. 1646, 185 L. Ed. 2d 627 (2013); *In re Miller*, 186 Vt. 505, 519, 989 A.2d 982 (2009) ("the preponderance of the evidence standard comports with due process in [physician] license suspension proceedings"); *Gandhi* v. *State Medical Examining Board*, 168 Wis. 2d 299, 302, 308, 483 N.W.2d 295 (App. 1992) (preponderance of evidence standard satisfied due process requirements in physician disciplinary proceedings); see also *Chalasani* v. *Daines*, United States District Court, Docket No. 10-CV-1978 (RRM) (RML) (E.D.N.Y. June 30, 2011) ("given both the compelling governmental interest in [physician disciplinary] proceedings and the safeguards in place, the preponderance of the evidence standard is constitutionally adequate in [such] proceedings"). But see, e.g., *Ettinger* v. *Board of Medical Quality Assurance*, 135 Cal. App. 3d 853, 856, 185 Cal. Rptr. 601 (1982) ("the proper standard of proof in an administrative hearing to revoke or suspend a doctor's license should be clear and convincing proof to a reasonable certainty and not a mere preponderance of the evidence" [emphasis omitted]); *Nguyen* v. *Dept. of Health*, supra, 144 Wn. 2d 534 (applying *Mathews* and concluding that "the constitutional minimum standard of proof in a professional disciplinary proceeding for a medical doctor must be something more than a mere preponderance"); *Painter* v. *Abels*, 998 P.2d 931, 941 (Wyo. 2000) ("[d]ue process requires that the [Wyoming] Board [of Medicine] prove its disciplinary cases by clear and convincing evidence").

Applying the *Mathews* test in the present case, we agree with the majority of our sister jurisdictions that the use of the preponderance of the evidence standard in a physician disciplinary proceeding does not offend a physician's due process rights. With respect to the first *Mathews* factor, we are mindful of the plaintiff's important property interest in his medical license, the deprivation of which, the plaintiff claims, could both preclude him from practicing medicine and subject him to social stigma. Nonetheless, this interest does not rise to the level of those for which the United States Supreme Court has concluded that due process mandates the application of the clear and convincing evidence standard rather than the preponderance of the evidence standard. Compare *Addington* v. *Texas*, supra, 441 U.S. 431–33 (clear and convincing evidence required in civil commitment proceedings), and *Santosky* v. *Kramer*, 455 U.S. 745, 769, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (clear and convincing evidence standard required in proceedings to terminate parental rights), with *Vance* v. *Terrazas*, 444 U.S. 252, 266–67, 100 S. Ct. 540, 62 L. Ed. 2d 461 (1980) (use of preponderance of

evidence standard in expatriation proceedings did not violate due process).[6] Moreover, although the United States Supreme Court did not undertake a due process analysis in *Steadman* v. *Securities & Exchange Commission*, supra, 450 U.S. 91, when it determined that the preponderance of the evidence standard was appropriately applied in a proceeding that could permanently bar an investment advisor from his profession, we agree with the analysis of the Supreme Court of New Jersey that, in *Steadman*, "the [United States] Supreme Court implicitly and without discussion concluded that there was no fundamental constitutional liberty interest at stake in a proceeding to revoke a license to pursue a profession or occupation, and hence found no due process entitlement to a burden of proof greater than a fair preponderance." *In re Polk*, supra, 90 N.J. 564.[7]

Regarding the risk of erroneous deprivation, the second factor under the *Mathews* framework, we agree with the board that the procedures adequately protect against an unacceptable risk of error.[8] As the United States Supreme Court has explained, a court, in evaluating this second factor, "must consider both the risk of erroneous deprivation of private interests resulting from use of a fair preponderance standard and the likelihood that a higher evidentiary standard would reduce that risk." (Internal quotation marks omitted.) *Santosky* v. *Kramer*, supra, 455 U.S. 761. Disciplinary proceedings against physicians before the board must comport with the contested case requirements of the UAPA. We previously have determined that "the procedures required by the UAPA exceed the minimal procedural safeguards mandated by the due process clause." (Internal quotation marks omitted.) *Pet* v. *Dept. of Health Services*, supra, 228 Conn. 661. Moreover, because the board is primarily composed of medical professionals, the risk of error is further reduced.

Turning to the final *Mathews* factor, we are persuaded that the governmental interest weighs in favor of maintaining the preponderance of the evidence standard because a heightened standard of proof necessarily renders it more difficult for the state to protect the public from unsafe medical practitioners. As the Supreme Court of New Jersey has concluded, "the [s]tate has a substantial interest in the regulation and supervision of those who are licensed to practice medicine. In this capacity, the [s]tate acts as the guardian of the health and well-being of its citizens. It must be vigilant and competent to protect these interests fully. Its own obligations in this respect are paramount to the rights of the individual practitioner claiming the privilege to pursue his or her medical profession." *In re Polk*, supra, 90 N.J. 566; see also *Gandhi* v. *State Medical Examining Board*, supra, 168 Wis. 2d 305 ("[T]he state has not only a strong interest, but also an obligation to protect the health, safety and welfare of its citizens. . . . [T]he practice of medicine presents a

prime example of a profession in which incompetency, wrongdoing or misconduct can threaten life itself. Protecting citizens is one of the fundamental reasons for a government's existence. This obligation of the state is superior to the privilege of any individual to practice his or her profession." [Emphasis omitted.]); cf. *Swiller* v. *Commissioner of Public Health & Addiction Services*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. HHD-CV-95-0705601 (October 10, 1995) (15 Conn. L. Rptr. 532, 534) ("[w]hile a person who holds an occupational license has a property interest in continuing to pursue his occupation, the consumers of his services, that is, members of the public, have a right to be protected from misconduct that could threaten their physical and personal well-being").

Weighing these three factors, we are not persuaded that the constitution requires a heightened standard of proof when a physician's license is imperiled in an administrative proceeding before the board. We therefore decline the plaintiff's invitation to judicially impose the heightened standard of proof imposed by a minority of our sister states.

Finally, the plaintiff suggests that the disciplinary procedures to which attorneys are subjected should have some bearing on the appropriate disciplinary procedures applied to physicians. We are not persuaded. As the Appellate Court aptly observed; see *Jones* v. *Connecticut Medical Examining Board*, supra, 129 Conn. App. 591–92; the plaintiff's argument fails to recognize that attorney discipline, unlike physician discipline, is overseen by the Judicial Branch. See *Massameno* v. *Statewide Grievance Committee*, 234 Conn. 539, 553–54, 663 A.2d 317 (1995); Rules of Professional Conduct, preamble;[9] see also *Statewide Grievance Committee* v. *Rozbicki*, 211 Conn. 232, 239, 558 A.2d 986 (1989) (noting that regulation of attorney conduct is "within the court's inherent authority" and that statewide grievance committee is authorized "to act as an arm of the court in fulfilling this responsibility"). The UAPA's definition of "agency" expressly "does not include . . . the courts . . . ."[10] General Statutes § 4-166 (1). Under the foregoing principles, however, physician discipline is administered by the board, which is unquestionably an administrative agency under the UAPA. Thus, because there is no indication that the legislature intended to impose a heightened standard of proof in cases involving physician discipline, we decline to depart from the default standard set forth in *Goldstar*.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

[1] General Statutes (Rev. to 2005) § 19a-17 provides in relevant part: "(a) Each board or commission established under chapters 369 to 376, inclusive, 378 to 381, inclusive, and 383 to 388, inclusive, and the Department of Public Health with respect to professions under its jurisdiction which have no

board or commission may take any of the following actions, singly or in combination, based on conduct which occurred prior or subsequent to the issuance of a permit or a license upon finding the existence of good cause:

"(1) Revoke a practitioner's license or permit;

"(2) Suspend a practitioner's license or permit;

"(3) Censure a practitioner or permittee;

"(4) Issue a letter of reprimand to a practitioner or permittee;

"(5) Place a practitioner or permittee on probationary status and require the practitioner or permittee to:

"(A) Report regularly to such board, commission or department upon the matters which are the basis of probation;

"(B) Limit practice to those areas prescribed by such board, commission or department;

"(C) Continue or renew professional education until a satisfactory degree of skill has been attained in those areas which are the basis for the probation;

"(6) Assess a civil penalty of up to ten thousand dollars . . . .

* * *

"(e) As used in this section, the term 'license' shall be deemed to include the following authorizations relative to the practice of any profession listed in subsection (a) of this section: (1) Licensure by the Department of Public Health; (2) certification by the Department of Public Health; and (3) certification by a national certification body. . . ."

[2] General Statutes § 20-13c provides in relevant part: "The board is authorized to restrict, suspend or revoke the license or limit the right to practice of a physician or take any other action in accordance with section 19a-17, for any of the following reasons . . . (4) illegal, incompetent or negligent conduct in the practice of medicine; (5) possession, use, prescription for use, or distribution of controlled substances or legend drugs, except for therapeutic or other medically proper purposes . . . ."

Although § 20-13c was amended in 2005; see Public Acts 2005, No. 05-275, § 21; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of § 20-13c.

[3] Consistent with the practice of the parties and the courts throughout the administrative proceedings and appeals in the present case, we elect to refer to the children by their first initial to maintain confidentiality.

[4] The plaintiff also claimed that the board "violated his right to due process by disciplining him on a basis that was not set forth in the statement of charges . . . ." *Jones* v. *Connecticut Medical Examining Board*, supra, 129 Conn. App. 577. The plaintiff has not raised this claim before this court, and, therefore, we do not consider it.

[5] The plaintiff also sought certification to appeal with respect to his claim that a "hearing panel member . . . was biased against [him] and . . . [that the panel member's] participation . . . illegally and unconstitutionally deprived [him] of a fair hearing . . . ." We declined to grant certification with respect to this issue, however, and thus do not address the plaintiff's arguments regarding this claim to the extent that he has asserted them in his brief to this court.

[6] The United States Supreme Court "has mandated an intermediate standard of proof—clear and convincing evidence—when the individual interests at stake in a state proceeding are both particularly important and more substantial than mere loss of money. . . . [T]he [c]ourt has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with a significant deprivation of liberty or stigma." (Citations omitted; internal quotation marks omitted.) *Santosky* v. *Kramer*, supra, 455 U.S. 756–57, citing *Addington* v. *Texas*, supra, 441 U.S. 424–27 (civil commitment), *Woodby* v. *Immigration & Naturalization Service*, 385 U.S. 276, 285, 87 S. Ct. 483, 17 L. Ed. 2d 362 (1966) (deportation), *Chaunt* v. *United States*, 364 U.S. 350, 353, 81 S. Ct. 147, 5 L. Ed. 2d 120 (1960) (denaturalization), and *Schneiderman* v. *United States*, 320 U.S. 118, 125, 159, 63 S. Ct. 1333, 87 L. Ed. 1796 (1943) (denaturalization). "[I]n any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants." *Santosky* v. *Kramer*, supra, 755.

[7] The plaintiff would distinguish *Steadman* because, in that case, the agency's enabling act furnished a standard of proof applicable to the agency's proceedings. See *Steadman* v. *Securities & Exchange Commission*, supra, 450 U.S. 96. The UAPA, by contrast, does not set forth a standard of proof, and we have determined that the default rule is the preponderance of the

evidence standard in the absence of legislation to the contrary. See *Goldstar Medical Services, Inc.* v. *Dept. of Social Services*, supra, 288 Conn. 821. Nevertheless, we are not persuaded that this distinction would have any bearing on the issue of the constitutionality of the standard of proof.

[8] The plaintiff also argues that "[t]he protocols currently governing Connecticut physician disciplinary proceedings do not offer adequate procedural safeguards" because, inter alia, "[t]he sole pediatrician . . . [on the panel assigned to his disciplinary proceeding] was biased against him." The Appellate Court, however, determined that "the [trial] court's finding that the plaintiff failed to demonstrate actual bias on the part of [the allegedly biased member of the hearing panel was] not clearly erroneous." *Jones* v. *Connecticut Medical Examining Board*, supra, 129 Conn. App. 591. As we noted previously, however, we declined to grant certification with respect to this issue, limiting our review to the issue of whether the board was required to use the clear and convincing standard of proof in the plaintiff's disciplinary proceeding. See footnote 5 of this opinion. Accordingly, we decline to address the issue of bias.

[9] The preamble to the Rules of Professional Conduct provides in relevant part: "The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts. . . ."

[10] We note that the clear and convincing evidence standard for attorney discipline, which we announced in *Statewide Grievance Committee* v. *Presnick*, 215 Conn. 162, 171–72, 575 A.2d 210 (1990), applies to attorney discipline cases in a great majority of our sister states. See, e.g., *Clements* v. *Alabama State Bar*, 100 So. 3d 505, 513 (Ala.), cert. denied, U.S. , 133 S. Ct. 610, 184 L. Ed. 2d 397 (2012); *In re Lurie*, 113 Ariz. 95, 95, 546 P.2d 1126 (1976); *People* v. *Rosen*, 35 P.3d 478, 480 (Colo. 1999); *In re Clark*, 153 Idaho 349, 355, 283 P.3d 96 (2012); *Budnitz' Case*, 139 N.H. 489, 491, 658 A.2d 1197 (1995); see also *Florida Bar* v. *Mogil*, 763 So. 2d 303, 309 (Fla. 2000) (clear and convincing evidence applicable except in cases of reciprocal discipline involving jurisdiction with lower standard of proof). See generally 7 Am. Jur. 2d 171, Attorneys at Law § 111 (2007). But see, e.g., *In re Budnitz*, 425 Mass. 1018, 1018 n.1, 681 N.E.2d 813 (1997) (preponderance of evidence); *In re Capoccia*, 59 N.Y.2d 549, 551, 453 N.E.2d 497, 466 N.Y.S.2d 268 (1983) ("[t]he standard of proof for a determination of professional misconduct in an attorney's disciplinary proceeding is a fair preponderance of the evidence, not clear and convincing evidence").

We reiterate, however, that the fact that the legislature has not adopted an equally rigorous standard for Connecticut physicians is simply a policy matter.