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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION, 2013

FRIDAY, FEBRUARY 1, 2013
8:30 A.M.

TESTIMONY ON HOUSE BILL NO. 847
RELATING TO ENFORCEMENT TOOLS TO IMPROVE PATIENT SAFETY

TO THE HONORABLE DELLA AU BELATTI, CHAIR,
AND TO THE HONORABLE DEE MORIKAWA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 847, Relating To Enforcement Tools to Improve Patient Safety. My name is Daria Loy-Goto. I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department strongly supports this Administration bill.

House Bill No. 847 amends chapter 453, Hawaii Revised Statutes ("HRS"), to authorize the Hawaii Medical Board ("Board") to: (1) summarily suspend a license; and (2) require a licensee to submit to a mental or physical examination. By authorizing the Board to take these actions, House Bill No. 847 seeks to prevent situations where consumers may face an immediate threat to their personal safety or may be at risk of receiving medical care from a licensee who is unable to practice with reasonable skill and safety.

Current law, §436B-23, HRS, authorizes licensing authorities to summarily suspend many types of different licenses. House Bill No. 847 tailors the language in a new provision in chapter 453, HRS, to more appropriately address summary suspension proceedings for physician licensees. The bill provides that the Board may issue an order for summary suspension upon a specific determination that failure to take action may result in an immediate and unreasonable threat to personal safety or fraud or misrepresentation upon consumers.

The bill also addresses the contents for an order of summary suspension, the means of service of an order for summary suspension, and the length of time a summary suspension order remains in effect. The bill affords the licensee an opportunity for a hearing if a summary suspension order is issued. Licensing authorities in approximately 45 other states may summarily suspend a license pending disciplinary action.

House Bill No. 847 also allows the Board to order a licensee to undergo a physical and mental examination when the Board has reasonable cause to believe

that a licensee is or may be unable to practice medicine with reasonable skill and safety to patients. Currently, the Board may require an applicant to submit to a physical and mental examination as a condition of licensure. This bill extends the Board's authority to cover licensees as well. Licensing authorities in approximately 39 other states may order a licensee to submit to a physical and mental examination.

House Bill No. 847 will enable the Board to respond swiftly and appropriately for the protection of consumers, either by summarily suspending a license or ordering a licensee to submit to a physical and mental examination.

RICO recognizes the unusual circumstances in which a request for summary suspension or medical or psychiatric evaluation may be made, but believes these actions are sometimes necessary to protect patients and appreciates the Committee's careful consideration of this bill.

Thank you again for the opportunity to testify on House Bill No. 847. I will be happy to answer any questions the Committee members may have.

**PRESENTATION OF THE
HAWAII MEDICAL BOARD**

TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Friday, February 1, 2013
8:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 847, RELATING TO ENFORCEMENT TOOLS TO
IMPROVE PATIENT SAFETY.**

TO THE HONORABLE DELLA AU BELATTI, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Danny M. Takanishi, Jr. and I am the Chairperson of the Hawaii Medical Board ("Board"). The Board takes no position on SECTION 1 of the bill which adds a new provision on summary suspension and supports SECTION 2 which amends HRS section 453-8.

Thank you for the opportunity to provide testimony on H.B. No. 847.



HAWAII MEDICAL ASSOCIATION

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Friday, February 1, 2013
1:15 p.m.
Conference Room 229

To: COMMITTEE ON HEALTH
Rep. Della Au Bellati, Chair
Rep. Dee Morikawa, Vice Chair

From: Hawaii Medical Association
Dr. Steven Kemble, MD, President
Dr. Linda Rasmussen, MD, Legislative Co-Chair
Dr. Joseph Zodian, MD, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

Re: HB 847 RELATING TO ENFORCEMENT TOOLS TO IMPROVE PATIENT SAFETY

Position: Support, with Amendments

Dear Chair Bellati, Vice Chair Morikawa and the House Committee on Health Members:

The Hawaii Medical Association is submitting testimony in support of HB 847, with amendments.

Thank you for the opportunity to provide testimony on HB 847. The Hawaii Medical Association fully supports the intent of this bill, in that we have long advocated for the safety of our patients. While we recognize the enforcement role of the Hawaii Medical Board, we urge restraint in the exercise of summary judgment on licensure suspension. There are situations so egregious as to offend common sense which must be acted on quickly and decisively. However these cases are thankfully rare. We support the ability of the Board to act expediently in these instances.

The Hawaii offers a number of amendments to this bill, designed to give this potential statute the intended focus (see attached HB847 with amendments).

Mahalo for the opportunity to submit testimony on this important issue.

OFFICERS

PRESIDENT - STEPHEN KEMBLE, MD PRESIDENT-ELECT - WALTON SHIM, MD
SECRETARY - THOMAS KOSASA, MD IMMEDIATE PAST PRESIDENT - ROGER KIMURA, MD
TREASURER - BRANDON LEE, MD EXECUTIVE DIRECTOR - CHRISTOPHER FLANDERS, DO

A BILL FOR AN ACT

RELATING TO ENFORCEMENT TOOLS TO IMPROVE PATIENT SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§453- Summary suspension. (a) The board [or its delegate] may summarily suspend any license issued under this chapter upon a specific determination that the failure to take such an action may result in an immediate and unreasonable threat to personal safety or fraud [or misrepresentation] upon consumers to such an egregious extent as to endanger life or well-being beyond acceptable standards of professional conduct and the public common sense, and that, for the protection of the public from the possible consequences of practices, the license should be immediately suspended or restricted.

(b) The order of summary suspension shall include a brief statement of findings of fact and conclusions of law and shall be served upon the licensee as required by chapter 91. The order of summary suspension shall be effective upon service.

(c) A licensee served with an order of summary suspension shall have the right to request a hearing to show cause why the order of summary suspension should be terminated. Any request for a hearing shall be made in writing to the board or its delegate within five business days of

service of the order. The board or its delegate shall hold a hearing within seven business days of receipt of the licensee's request for the hearing to show cause.

(d) Notwithstanding any law to the contrary, an order summarily suspending a license issued under this chapter shall remain in effect until the effective date of a final decision and order in a disciplinary action or the effective date of an order terminating the summary suspension by the board following a hearing to show cause, whichever occurs first, but in either case will not exceed 30 business days.

(e) The board or its delegate shall conduct a hearing for disciplinary action against a licensee whose license has been summarily suspended under this section within twenty business days from the effective date of the order of summary suspension.

(f) Any attempt by the licensee to continue the practice of medicine or the practice of medicine by the licensee while the license has been summarily suspended shall be grounds for revocation of the license and shall subject the licensee to any penalties prescribed under this chapter, the applicable licensing laws, or any rule or order of the board."

SECTION 2. Section 453-8, Hawaii Revised Statutes, is amended to read as follows:

"§453-8 Revocation, limitation, suspension, or denial of licenses. (a) In addition to any other actions authorized by law, any license to practice medicine and surgery may be revoked, limited, or suspended by the board at any time in a proceeding before the board, or may be denied, for any cause authorized by law, including but not limited to the following:

- (1) Procuring, or aiding or abetting in procuring, a criminal abortion;
- (2) Employing any person to solicit patients for one's self;
- (3) Engaging in false, fraudulent, or deceptive advertising, including but not limited to:
 - (A) Making excessive claims of expertise in one or more medical specialty fields;
 - (B) Assuring a permanent cure for an incurable disease; or

(C) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;

(4) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;

(5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;

(6) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;

(7) Professional misconduct, hazardous negligence causing bodily injury to another, or manifest incapacity in the practice of medicine[~~-, osteopathy,~~] or surgery;

(8) Incompetence or multiple instances of negligence, including but not limited to the consistent use of medical service, which is inappropriate or unnecessary;

(9) Conduct or practice contrary to recognized standards of ethics of the medical profession as adopted by the Hawaii Medical Association, the American Medical Association, the Hawaii Association of Osteopathic Physicians and Surgeons, or the American Osteopathic Association;

(10) Violation of the conditions or limitations upon which a limited or temporary license is issued;

(11) Revocation, suspension, or other disciplinary action by another state or federal agency of a license, certificate, or medical privilege for reasons as provided in this section;

(12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician or osteopathic physician, notwithstanding any statutory provision to the contrary;

(13) Violation of chapter 329, the uniform controlled substances act, or any rule adopted thereunder except as provided in section 329-122;

(14) Failure to report to the board, in writing, any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days after the disciplinary decision is issued; or

(15) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement or omission of fact.

(b) If disciplinary action related to the practice of medicine has been taken against the applicant in any jurisdiction that would constitute a violation under this section, or if the applicant reveals a physical or mental condition that would constitute a violation under this section, then the board may impose one or more of the following requirements as a condition for licensure:

(1) Physical and mental evaluation of the applicant by a licensed physician or osteopathic physician approved by the board;

(2) Probation, including conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed physicians, osteopathic physicians, or surgeons;

(3) Limitation of the license by restricting the fields of practice in which the licensee may engage;

(4) Further education or training or proof of performance competency; and

(5) Limitation of the medical practice of the licensee in any reasonable manner to assure the safety and welfare of the consuming public.

~~(c) Where the board has reasonable cause to believe that a licensee is or may physically or mentally be unable to practice medicine with reasonable skill and safety to protect patients, the board may order the licensee to submit to a mental or physical examination or any combination thereof, by a licensed practitioner approved by the board, at the licensee's expense. The examination may include biological fluid testing and other testing known to detect the presence of alcohol or other drugs.~~

(c) In addition to any immunity afforded by Section 663-1.7 of the Hawaii Revised Statutes, if applicable, any person licensed by the Hawaii Medical Board, including, but not limited to a Physician and Surgeon or Physician Assistant, who provides information to the board, or to the Department of Commerce and Consumer Affairs, indicating that a board licensee may be guilty of unprofessional conduct or may be impaired because of drug or alcohol abuse or mental illness, shall not be liable for any damages in any civil action on account of the communication of that information to the board. The immunities afforded by this section shall

not affect the availability of any absolute privilege which may be afforded by Section 663 of the Hawaii Revised Statutes.

(1) Any licensee shall be deemed to have consented to submit to a mental or physical examination when so directed by the board and to have waived all objection to the use or referral of information by the board or its delegate to determine whether the licensee is able to practice medicine with reasonable skill and safety to patients;

(2) The board may seek to enforce an order directing a licensee to submit to a mental or physical examination in the circuit court in the county in which the licensee resides;

(3) Failure of a licensee to submit to an examination ordered under this subsection shall constitute grounds for summary suspension of the license; and

(4) The board may take any action authorized under this chapter based on information obtained under this subsection."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall take effect on July 1, 2013.

INTRODUCED BY: _____

BY REQUEST

