

ACT 227

H.B. NO. 3140-82

A Bill for an Act Relating to Medicine and Surgery.

Be It Enacted by the Legislature of the State of Hawaii:

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

“§453- **Board of medical examiners; delegation of authority.** The board of medical examiners may by written order delegate to the executive secretary of the board or other personnel of the department of regulatory agencies any of its powers or duties as it deems reasonable and proper for the administration of this chapter. The board shall not, however, delegate its authority to:

- (1) Adopt, amend or repeal rules and regulations;

(2) Take final disciplinary action against a licensee; or

(3) Restore a license which was revoked.

§453- Medical advisory committee. (a) The director of regulatory agencies shall establish a medical advisory committee, the members of which shall serve as consultants to the board of medical examiners in its review of physicians referred for possible disciplinary action. The advisory committee shall be appointed by the director from a list of twenty-five physicians submitted annually by the board.

(b) The membership of the advisory committee shall vary in number, depending on the level of expertise deemed necessary by the board in its review of the conduct of the physician in question. Each member of the committee shall serve on the committee until the investigation of the particular case for which he was designated a consultant has been concluded.

(c) All members of the advisory committee shall serve voluntarily and without compensation, but shall be paid allowances for travel and living expenses which may be incurred as a result of performance of their duties on the committee. The costs shall be paid by the department of regulatory agencies.

(d) There shall be no civil liability for any member of the advisory committee for any act done in furtherance of the purpose for which the advisory committee was established.

§453- Reporting requirements. (a) Every physician licensed pursuant to this chapter who does not possess professional liability insurance shall report any settlement or arbitration award of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services. The report shall be submitted to the board of medical examiners within thirty days after any written settlement agreement has been reduced in writing and signed by all the parties thereto or thirty days after service of the arbitration award on the parties.

(b) Failure of a physician to comply with the provisions of this section is an offense punishable by a board imposed fine of not less than \$100 for the first offense, \$250 to \$500 for the second offense, and \$500 to \$1,000 for subsequent offenses.

(c) The clerks of the respective courts of this state shall report to the board any judgment or other determination of the court which adjudges or finds that a physician is liable criminally or civilly for any death or personal injury caused by his professional negligence, error or omission in the practice of his profession, or his rendering of unauthorized professional services. The report shall be submitted to the board within ten days after the judgment is entered by the court.

(d) The board shall prescribe forms for the submission of reports required by this section.

§453- Investigation by board. In connection with an investigation by the board of medical examiners on its own motion, or as the result of information received by the board pursuant to sections 92-17, 453- , or 663-1.7(d), the director of regulatory agencies may issue subpoenas, pursuant to section 26-9(i), compelling the production of hospital records of patients whose cases were reviewed by a peer review committee that filed a report pursuant to section 663-1.7, notwithstanding section 624-25.5. A medical society, hospital or health care facility shall expunge

from the documents specific patient identifiers. Information for investigation which was obtained through a subpoena shall be for the sole use by the board to carry out its responsibilities and functions and shall be held confidential by the board, unless the information is admissible evidence at a hearing held under section 453-9. This investigation shall be deemed a sensitive matter related to public safety under section 92-5."

SECTION 2. Section 453-4, Hawaii Revised Statutes, is amended to read as follows:

"§453-4 **Qualifications for examination.** Except as otherwise provided by law, no person shall be licensed to practice medicine or surgery unless he has passed an examination and has been found to be possessed of the necessary qualifications.

Before any applicant shall be eligible for [such] the examination he shall furnish proof satisfactory to the board that:

- [(1)] He (A) is a citizen of the United States; or (B) if not a citizen of the United States, has declared his intention to become a citizen of the United States, as provided by law;
- (2) (1) He is of good moral character;
- [(3)] (2) (A) He is a graduate of a medical school or college approved by the council on medical education and hospitals of the American medical association; or (B) He is a graduate of a foreign medical school, who has had at least three years' medical experience or training in a hospital approved by the council on medical education and hospitals of the American medical association for the internship or residency, and has passed the qualifying examination of the educational council for foreign medical graduates or its successor;
- [(4)] (3) He has served an internship of at least one year in either a hospital which has been certified or approved for the training of interns and resident physicians by the American medical association, council on medical education and hospitals, or if outside the United States, in a hospital which is shown by the applicant to the satisfaction of the board to possess standards substantially the equivalent of those required for such American medical association approval, or has completed one year of residency training in a program approved by the American medical association, council of medical education and hospitals.

Diplomates of the national board of medical examiners or those who have passed the federation licensing examination (FLEX) with scores deemed satisfactory by the board and who meet the requirements of paragraphs (1), (2), [(3),] and [(4)] (3) above, shall be licensed without the necessity of any further examination; provided that with respect to any applicant the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service or attending physicians who have been associated with an applicant or chief residents on a service who have been associated with an applicant during his training or during his practice to be used by the board in assessing the applicant's qualifications to practice medicine."

SECTION 3. Section 453-8, Hawaii Revised Statutes, is amended to read as

follows:

"§453-8 Revocation, limitation, or suspension of licenses. (a) Any license to practice medicine and surgery may be revoked, limited, or suspended by the board of medical examiners at any time in a proceeding before the board for any one or more of the following acts or conditions on the part of the holder of such license:

- (1) Procuring, or aiding or abetting in procuring, a criminal abortion;
- (2) Employing any person to solicit patients for him;
- (3) [Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;] 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) Wilfully betraying a professional secret;
- (5) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;
- (6) False, fraudulent, or deceptive advertising;
- (7)] (4) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or an habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- [(8)] (5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- [(9)] (6) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
- [(10)] (7) Professional misconduct or gross carelessness or manifest incapacity in the practice of medicine or surgery;
- (8) Negligence or incompetence, including, but not limited to, the consistent use of medical service which is inappropriate or unnecessary;
- [(11)] (9) Conduct or practice contrary to recognized standards of ethics of the medical profession;
- [(12) Consistently utilizing medical service which is inappropriate or unnecessary;
- (13)] (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 of a license or certificate for reasons as provided in this section; or
- (12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician, notwithstanding any statutory provision to the contrary.

(b) If any [such] license is revoked, limited, or suspended by the board for any act or condition listed in this section, the board shall notify the holder of the license [shall be] in writing [notified by the board] of the revocation, limitation, or

suspension. Any license to practice medicine and surgery which has been revoked under this section may be restored by the board [of medical examiners].”

SECTION 4. Section 453-8.3, Hawaii Revised Statutes, is amended to read as follows:

“§453-8.3 Review of adverse decisions reported by peer review committees. The board shall review all adverse decisions reported to it by the peer review committees of medical societies, hospitals, and other health care institutions required to report by section 663-1.7. [The information in such decisions] The reports shall not be available for public inspection or subject to discovery and shall be held confidential by the board [unless and to the extent any such information is admissible evidence at a hearing held under section 453-9]; provided that a written affirmative or negative reply may be given to a written inquiry by a hospital or health care facility as to whether a report of an adverse decision is on file with the board.”

SECTION 5. Section 624-25.5, Hawaii Revised Statutes, is amended to read as follows:

“§624-25.5 Proceedings and records of medical, dental and optometric peer review committees and hospitals. (a) Neither the proceedings nor the records of peer review committees of medical, dental or optometric staffs in hospitals having the responsibility of evaluation and improvement of the quality of care rendered in the hospital or peer review committees of local medical, dental, or optometric societies shall be subject to discovery. Except as hereinafter provided, no person in attendance at a meeting of [any such] the committee shall be required to testify as to what transpired at [such] the meeting. The prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at [such a] the meeting who is a party to an action or proceeding the subject matter of which was reviewed at [such] the meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

(b) The prohibition contained in this section shall not apply to medical, dental, or optometric society committees that exceed ten per cent of the membership of the society, nor to any [such] committee if any person serves upon the committee when his own conduct or practice is being reviewed.

(c) The prohibitions contained in this section shall apply to investigations and discovery conducted by the board of medical examiners, except as required by sections 92-17, 453- or 663-1.7(d).”

SECTION 6. Section 663-1.7, Hawaii Revised Statutes, is amended to read as follows:

“§663-1.7 Professional society; peer review committee; no liability; exceptions. (a) As used in this section, “professional society” or “society” means any association or other organization of persons engaged in the same profession or occupation, [the membership of which comprises a majority of the people engaged in the profession or occupation in the area which it serves and] a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation; and “peer review committee” or “committee” means a committee created by a professional society, or by the medical staff of a licensed hospital, whose function is to maintain the professional standards established by

the bylaws of the society or the hospital of the persons engaged in its profession or occupation, or in its hospital.

(b) There shall be no civil liability for any member of a peer review committee for any acts done in furtherance of the purpose for which the committee was established; provided that:

- (1) The member was authorized to perform in the manner in which he did; and
- (2) The member acted without malice after having made a reasonable effort to ascertain the truth of the facts upon which he acted.

(c) This section shall not be construed to confer immunity from liability upon any professional society or hospital, nor shall it affect the immunity of any shareholder or officer of a professional corporation; provided, however, there shall be no civil liability for any professional society or hospital in communicating any conclusions reached by one of its peer review committees relating to the conformance with professional standards of any person engaged in the profession or occupation of which the membership of the communicating professional society consists, to a peer review committee of another professional society whose membership is comprised of persons engaged in the same profession or occupation, or to a duly constituted governmental board or commission or authority having as one of its duties the licensing of persons engaged in that same profession or to a government agency charged with the responsibility for administering a program of medical assistance in which services are provided by private practitioners.

(d) The [highest level] final peer review committee of a medical society, hospital, or other health care [institution] facility shall report in writing every adverse decision made by it to the board of medical examiners [within thirty days after the adverse decision is verified by the committee]. The report shall be filed within thirty business days following an adverse decision. The report shall contain information on the nature of the action, its date, the reasons for, and the circumstances surrounding the action, provided that specific patient identifiers shall be expunged. If a potential adverse decision was superceded by resignation or other voluntary action that was requested or bargained for in lieu of medical disciplinary action, the report shall so state. The board shall prescribe forms for the submission of reports required by this section. Failure to comply with this subsection shall be a violation punishable by a fine of not [more] less than \$100 for each member of the committee."

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 8. This Act shall not affect rights matured, penalties incurred, or prosecutions begun prior to the effective date of this Act.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 12, 1982.)

Note

1. Edited pursuant to HRS §23G-16.5.