

## ACT 211

H.B. NO. 2044-86

A Bill for an Act Relating to Sanctions.

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

SECTION 1. Chapter 437B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§437B- Cumulative penalties.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.”

SECTION 2. Chapter 438, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§438- Disciplinary actions.** (a) The board may take disciplinary action against any certificate issued under this chapter, including but not limited to revocation, suspension, fine, or a combination thereof, or refuse to grant or renew any certificate for any of the following causes:

- (1) Procuring a certificate through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross negligence, or manifest incapacity;
- (3) Permitting an uncertified person to perform activities which require a certificate under this chapter;
- (4) Violation of this chapter or the rules adopted pursuant thereto;
- (5) Making any false representation or promise through advertising or otherwise;
- (6) Failing to display the certificate as provided in this chapter;
- (7) Any other conduct constituting fraudulent or dishonest dealings;
- (8) Failure to comply with a board order; or
- (9) Making a false statement on any document submitted or required to be filed by this chapter.

(b) Any person who violates this chapter or the rules adopted pursuant thereto shall be fined not less than \$100 nor more than \$1,000 for each violation.

(c) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.”

SECTION 3. Chapter 438, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§438- Right of injunction.** The department of commerce and consumer affairs may, in addition to any other remedies available, apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter.”

SECTION 4. Section 438-5, Hawaii Revised Statutes, is amended to read as follows:

**“§438-5 Powers and duties of the board.** (a) The board of barbers may give examinations for the issuance of certificates of registration to practice barbering; grant, revoke, or suspend [such] certificates; establish, subject to chapter 91 and with the approval of the governor and the director of commerce and consumer affairs, rules governing the practice of barbering which shall have the force and effect of law.

(b) The board may suspend or revoke a certificate of a person guilty of fraud in passing the examination or at any time guilty of grossly unprofessional or dishonest conduct, or addicted to liquor or drugs to such a degree as to render the person unfit to practice any of the occupations classified under this chapter, or knowingly advertising by means of false or deceptive statements, or failing to display the certificates as provided in section 438-9.]

[(c)] (b) The board may require the attendance of witnesses and the production of [such] books, records, and papers as it or any person involved may desire at any hearing of any matter which the board has authority to investigate, and for the purpose may require the executive secretary to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers directed to the sheriff or chief of police of the county where [such] the witness resides or is found which shall be served and returned in the same manner as a subpoena in a criminal case. Fees and mileage shall be paid from the funds in the state treasury for the use of the board in the same manner as other expenses of the board.

[(d)] (c) Any investigation, inquiry, or hearing which the board is empowered by law to hold or undertake may be held or undertaken by or before any member or members of the board or an appointed hearings officer and the finding or order of that member, members, or hearings officer shall be deemed to be the finding or order of the board when approved and confirmed by it.”

SECTION 5. Chapter 457B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§457B- Remedies or penalties cumulative.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.”

SECTION 6. Chapter 459, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§459- Remedies or penalties cumulative.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.”

SECTION 7. Section 460-14.5, Hawaii Revised Statutes, is amended to read as follows:

**“[[ ]§460-14.5[ ]] Disciplinary action.** In disciplining a licensee in a proceeding under section 460-12, the board may impose one or more of the following actions:

- (1) Place the licensee on probation, including [such] conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed osteopathic physicians and surgeons;
- (2) Suspend the license;

- (3) Revoke the license;
- (4) Limit the license by restricting the fields of practice in which the licensee may engage;
- (5) Fine the licensee, including assessment against the licensee of the costs of the disciplinary proceedings[;]. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be not less than \$500 nor more than \$5,000 for each violation exclusive of the costs of the disciplinary proceedings;
- (6) Temporarily suspend the license for not more than thirty days without a hearing, when the board finds the practice of the licensee probably constitutes an immediate and grave danger to the public; or
- (7) Require further education or training or require proof of performance competency.”

SECTION 8. Section 460-15, Hawaii Revised Statutes, is amended to read as follows:

“§460-15 [Restoration of license. At any time following the suspension or revocation of a license, the board may restore such license with all of its original rights and privileges.] Remedies or penalties cumulative. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws in this State.”

SECTION 9. Section 466-11, Hawaii Revised Statutes, is amended to read as follows:

“§466-11 Measures against violation. (a) [Injunctions.] Whenever the board has reason to believe that any person has engaged, or is about to engage, in any act or practice which constitutes, or will constitute, a violation of section 466-10, the board may certify the facts underlying [such] the belief to the attorney general of this State, who shall make application to the appropriate court for an order enjoining [such] the act or practice, and upon a showing that [such] the person has engaged, or is about to engage, in any [such] act or practice, an injunction, restraining order or [such] other order as may be appropriate shall be granted by [such] the court without bond.

(b) [Criminal penalties.] Any person who violates any provision of section 466-10 shall be guilty of a misdemeanor. Whenever the board has reason to believe that any person is liable to punishment under this section it may certify the facts underlying [such] the belief to the county attorney or prosecuting attorney of the county in which the violation occurred who shall cause appropriate proceedings to be brought.

(c) Any person violating this chapter shall be fined not more than \$1,000 for each violation.

[(c)] (d) [Evidence of practice.] The display or uttering by a person of a card, sign, advertisement, or other printed, engraved, or written instrument or device bearing a person’s name in conjunction with the words “certified public accountant” or any abbreviation thereof, of the words “public accountant” or any abbreviation thereof, shall be prima facie evidence in any action brought under subsection (a) or [subsection] (b) of this section that the person whose name is so displayed caused or procured the display or uttering of [such] the card, sign, advertisement, or other printed, engraved, or written instrument or device and that [such] the person is holding [himself] oneself out to be a certified public accountant or public accountant holding a current permit to practice

issued under section 466-7. In any [such] action, evidence of the commission of a single act prohibited in section 466-10 shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

(e) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State."

SECTION 10. Chapter 468E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§468E- Cumulative remedies or penalties.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws in this State."

SECTION 11. Chapter 468E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§468E- Right of injunction.** The department of commerce and consumer affairs may, in addition to any other remedies available, apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter."

SECTION 12. Section 468E-13, Hawaii Revised Statutes, is amended to read as follows:

"[ [§468E-13] Suspension and revocation of license.] **Disciplinary action.** (a) The board may [refuse to issue or renew a license, or may suspend or revoke a license where the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct may result from:] **take disciplinary action against any licensee, including but not limited to revocation, suspension, fine, or a combination thereof, or refuse to issue or renew a license for any of the following causes:**

- (1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;
- (2) [Being guilty of unprofessional conduct as defined by the rules established by the board, or violating the Code of Ethics adopted and published by the board;] Professional misconduct or unethical conduct;
- (3) [Violating any lawful order, rule, or regulation rendered or adopted by the board;] Conduct constituting fraudulent or dishonest dealings;
- (4) Violating any provision of [the] this chapter[.] or rules adopted pursuant thereto;
- (5) Failure to comply with a board order; or
- (6) Making a false statement on any document submitted or required to be filed by this chapter.

(b) [The board shall deny any application for, or suspend, revoke, or impose probationary conditions upon a license as ordered by the board in any decision made after hearing as provided in this chapter. One year from the date of revocation of a license under this section, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement and may require an examination for such reinstatement.] Any person who violates this chapter or the rules adopted

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pursuant thereto shall be fined not more than \$1,000 and each day a violation exists, failure to comply with this chapter shall constitute a separate violation.”

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 14. This Act shall take effect upon its approval.

(Approved May 27, 1986.)

**Note**

1. Edited pursuant to HRS §23G-16.5.