

ACT 235

H.B. NO. 1902

A Bill for an Act Relating to Nursing Home Administrators.

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

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of hearing aid dealers and fitters, board of massage therapy, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, [board of examiners of nursing home administrators,]

board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 2. Section 457B-2, Hawaii Revised Statutes, is amended as follows:

(1) By deleting the definition of “board”.

[““Board” means the board of examiners of nursing home administrators.”]

(2) By adding two new definitions to be appropriately inserted and to read as follows:

““Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.”

SECTION 3. Section 457B-3, Hawaii Revised Statutes, is amended to read as follows:

“§457B-3 License required. No person shall operate a nursing home in the State without having a nursing home administrator’s license [and being registered with the board] from the department as hereinafter provided. It shall be unlawful for any person not licensed under this chapter to practice or offer to practice nursing home administration or to use any sign, card, or device to indicate that the person is licensed [and registered] as [an] a nursing home administrator.”

SECTION 4. Section 457B-3.1, Hawaii Revised Statutes, is amended to read as follows:

“§457B-3.1 Conditions concerning qualifications for licensure examination. The [board] director shall adopt rules setting minimum educational, training, and experience qualifications that must be satisfied before an applicant is allowed to sit for the licensing examination.”

SECTION 5. Section 457B-3.2, Hawaii Revised Statutes, is amended to read as follows:

“[[§457B-3.2]] Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of licenses. The [board] director may refuse to renew, reinstate, or restore, or may revoke, suspend, deny, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant:

- (1) Altering in any way the physician’s order for any patient’s or resident’s medical or therapeutic care unless the orders are clearly hazardous to the patient or resident, in which case the physician shall be immediately notified;
- (2) Defrauding any federal, state, county, or social agency, business, or individual in the operation of a nursing home;

- (3) Engaging in false, fraudulent, or deceptive advertising, or making false or improbable statements regarding the services of the nursing home; and
- (4) Submitting or filing with the board any notice, statement, or other document required under this chapter which is false or which contains any material misstatement of fact.”

SECTION 6. Section 457B-3.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§457B-3.5] Limited and temporary licenses.** The [board of examiners of nursing home administrators] director may issue a limited and temporary license to an applicant who has not been examined as required by section 457B-6, if the applicant is otherwise qualified to be examined. Such a license shall be effective only until the next licensure examination process has been completed.”

SECTION 7. Section 457B-6, Hawaii Revised Statutes, is amended to read as follows:

“**§457B-6 Powers and duties[.] of director.** In addition to any other powers and duties authorized by law, the [board] director shall:

- (1) Develop, impose, and enforce standards which shall be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators shall be individuals who by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;
- (2) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets the [board’s] standards[;] of this chapter or the rules adopted pursuant thereto;
- (3) Issue licenses to individuals determined, after the application of appropriate techniques, to meet the [board’s] required standards, and revoke or suspend licenses [previously issued by the board] in any case where the individual holding a license is determined substantially to have failed to conform to the [requirements of the board’s] required standards[;] of this chapter or the rules adopted pursuant thereto;
- (4) Establish and carry out procedures designed to insure that individuals licensed as nursing home administrators shall, during any period that they serve as such, comply with the [requirements of the board’s] required standards. The [board] director shall also initiate and maintain cooperative arrangements with the long-term care ombudsman, department of human services, and the department of health for the sharing of information on the performance of administrators;
- (5) Receive, investigate, and take appropriate action with respect to[,] any charge or complaint filed with the [board] department to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements [of the board’s standards;] of this chapter or the rules adopted pursuant thereto;
- (6) Conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of administrators of nursing homes and of procedures and methods for the enforce-

- ment of licensing standards with respect to administrators of nursing homes who have been licensed;
- (7) (6) Adopt in accordance with chapter 91 rules as may be necessary for the purposes of this chapter; and
- (8) (7) Maintain a record of all [its] proceedings.”

SECTION 8. Section 457B-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§457B-7[1] Subpoenas.** The [board] director may issue subpoenas to compel the attendance of witnesses and the production of documentary evidence or the production of any books, papers, or records. If any person subpoenaed as a witness fails or refuses to respond thereto, or refuses to answer questions material to the matter pending before the [board] department propounded by an examiner, any circuit judge, upon application of the [board] department or any examiner thereof, may enforce by proper proceeding the attendance and testimony of the witnesses. If any person wilfully testifies falsely under oath before the [board] department or wilfully makes a false affidavit in any proceeding before the [board,] department, the person shall be charged for perjury and shall be subject to the penalties for perjury provided by law.”

SECTION 9. Section 457B-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) There shall be a biennial renewal fee which shall be paid to the [board] department on or before June 30 of each even-numbered year. Failure, neglect, or refusal of any duly licensed nursing home administrator to pay the biennial renewal fee shall constitute a forfeiture of the nursing home administrator’s license. The license may be restored within three years upon written application therefor and the payment to the [board] department of all delinquent fees plus a penalty fee and evidence of participation in educational programs.”

SECTION 10. Section 457B-10, Hawaii Revised Statutes, is amended to read as follows:

“**§457B-10 Injunctive relief.** The [board] director may apply for an injunction in any court of competent jurisdiction to enjoin any person who has not been issued a license or [registered or] whose license has been suspended or revoked or has expired from practicing nursing home administration; and, upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise, may issue a temporary injunction, without notice or bond, enjoining the defendant from further practicing nursing home administration. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it is established that the defendant has been or is practicing nursing home administration without having been issued a license or [registered or] has been or is practicing nursing home administration after the defendant’s license has been suspended or revoked or has expired, the court or any judge thereof may enter a decree enjoining the defendant from further practicing nursing home administration. In case of violation of any injunction issued under this section, the court may summarily try and punish the offender for contempt of court. The injunction proceeding shall be in addition to, and not in lieu of, all penalties and other remedies provided in this chapter.”

SECTION 11. Section 457B-4, Hawaii Revised Statutes, is repealed.

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SECTION 12. All rules, guidelines, and other material adopted or developed by the board of nursing home administrators shall remain in full force and effect until amended or repealed by the department of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the board of nursing home administrators in those rules, guidelines, and other material is amended to refer to the director or department of commerce and consumer affairs as appropriate.

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 14. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved June 17, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.