

ACT 162

S.B. NO. 1946

A Bill for an Act Relating to the Practice of Medicine.

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

SECTION 1. The legislature finds:

- (1) The ancient Hawaiian culture incorporated traditional Hawaiian healing practices including la'au lapa'au (herbal healing), la'au kahea (spiritual healing), lomi lomi (massage), and ho'oponopono (conflict resolution);
- (2) Knowledge of some of these traditional Hawaiian healing practices has survived to the present in a dwindling number of traditional Hawaiian healers through direct practical association with elders and oral traditions transmitted from generation to generation;
- (3) There is the current risk that this knowledge will cease because of the advancing age of the few surviving traditional Hawaiian healers and because of concerns that the performance of traditional Hawaiian healing practices may constitute the unauthorized practice of medicine under state law;
- (4) Similar concerns have been recognized and addressed by various federal initiatives including but not limited to Public Law No. 102-396, the Native Hawaiian Health Care Improvement Act of 1992;

- (5) It is in the public interest that a process be established involving traditional Hawaiian healers and other interested individuals that will result in statutory clarification of the continued role of traditional Hawaiian healing practices in the recognized and authorized medical arts; and
- (6) It is in the public interest that, while this process is underway, there be interim certification provided by the Hawaiian health community to currently recognized traditional Hawaiian healers.

SECTION 2. For the purposes of this Act:

- (1) The term "Papa Ola Lokahi" shall refer to the same organization that is described and defined in Public Law No. 102-396, the Native Hawaiian Health Care Improvement Act of 1992;
- (2) The term "traditional native Hawaiian healer" shall have the same meaning as provided under Public Law No. 102-396, the Native Hawaiian Health Care Improvement Act of 1992; and
- (3) The term "traditional Hawaiian healing practices" shall refer to la'au lapa'au, la'au kahea, lomi lomi, ho'oponopono and similar practices commonly performed by traditional native Hawaiian healers.

SECTION 3. Section 453-2, Hawaii Revised Statutes, is amended to read as follows:

"§453-2 License required; exceptions. (a) Except as otherwise provided by law, no person shall practice medicine or surgery in the State either gratuitously or for pay, or shall offer to so practice, or shall advertise or announce one's self, either publicly or privately, as prepared or qualified to so practice, or shall append the letters "Dr." or "M.D." to one's name, with the intent thereby to imply that the individual is a practitioner of medicine or surgery, without having a valid unrevoked license or a limited and temporary license, obtained from the board of medical examiners, in form and manner substantially as hereinafter set forth.

(b) Nothing herein shall:

- (1) Apply to so-called Christian Scientists so long as they merely practice the religious tenets of their church without pretending a knowledge of medicine or surgery;
- (2) Prohibit service in the case of emergency or the domestic administration of family remedies;
- (3) Apply to any commissioned medical officer in the United States armed forces or public health service, engaged in the discharge of one's official duty, nor to any practitioner of medicine and surgery from another state when in actual consultation, including but not limited to in-person, mail, electronic, telephonic, fiber-optic, or other telemedicine consultation, with a licensed physician of this State if the physician from another state, at the time of such consultation, is licensed to practice in the state in which the physician resides; provided that:
 - (A) The physician from another state shall not open an office, or appoint a place to meet patients, or receive calls within the limits of the State; and
 - (B) The licensed physician of this State retains control and remains responsible for the provision of care for the patient; and provided further that the laws and regulations relating to contagious diseases are not violated;

- (4) Prohibit services rendered by any person certified under part II of this chapter to provide emergency medical services or any physician assistant when the services are rendered under the direction and control of a physician licensed in this State except for final refraction resulting in a prescription for spectacles, contact lenses, or visual training as performed by an oculist or optometrist duly licensed by the State. The direction and control shall not be construed in every case to require the personal presence of the supervising and controlling physician. Any physician who employs or directs a person certified under part II of this chapter to provide emergency medical services or physician assistant shall retain full professional and personal responsibility for any act which constitutes the practice of medicine when performed by such person or physician assistant; or
- (5) Prohibit automatic defibrillation by any first responder personnel certified by the department of health to provide automatic defibrillation when it is rendered under the medical oversight of a physician licensed in this State.

(c) Nothing herein shall prohibit traditional Hawaiian healing practices by traditional native Hawaiian healers, both as recognized and certified as such by the panel convened by Papa Ola Lokahi.”

SECTION 4. (a) Papa Ola Lokahi shall convene a panel of traditional native Hawaiian healers to address issues and recommend legislation relating to the permanent implementation of the purposes of this Act; and

(b) Papa Ola Lokahi shall submit a final report and recommended legislation to the legislature no later than twenty days prior to the convening of the regular session of 1999; provided that, if Papa Ola Lokahi is not then prepared to submit a final report, then Papa Ola Lokahi shall submit an interim report by such date, and shall submit a final report, together with recommended legislation, no later than twenty days prior to the convening of the regular session of 2000.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that on July 1, 2000 subsection (c) of section 453-2, Hawaii Revised Statutes, shall be repealed.

(Approved July 14, 1998.)