

A Bill for an Act Relating to Licensing.

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

SECTION 1. The legislature finds that a recent Honolulu Star-Advertiser investigation found dozens of examples of physicians who were disciplined in other states, but were issued new Hawaii medical licenses or their active Hawaii

medical licenses were not assessed reciprocal sanctions for long periods of time after the physicians were disciplined. Hawaii regulators often took more than two years to issue reciprocal discipline on licensed physicians after other states imposed sanctions.

Often Hawaii consumers would learn that a Hawaii-licensed physician faced sanctions in another state only after Hawaii levied reciprocal discipline. Furthermore, Hawaii failed to take immediate action when other states declared emergencies to justify the immediate revocation of a license. The most egregious cases uncovered during the investigation involved physicians who lost the ability to practice in other states, either because of serious misconduct or to settle misconduct charges, but maintained their Hawaii licenses for months or even years after the fact.

The legislature further finds that timely action in reciprocal discipline cases is a vital aspect of consumer protection. Furthermore, delayed action in reciprocal discipline cases, particularly in emergency situations, can put patients unnecessarily at risk. The legislature additionally finds that ensuring timely reciprocal discipline of physicians and other health care professionals, including osteopathic physicians, physician assistants, nurses, dentists, and pharmacists, is necessary to protect the public.

Accordingly, the purpose of this Act is to:

- (1) Authorize the board of dental examiners, Hawaii medical board, and board of pharmacy to deny a license to an applicant who has been disciplined by another state or federal agency and the board of nursing to deny a license to an applicant who has been disciplined by another state;
- (2) Authorize the board of dental examiners, Hawaii medical board, board of nursing, and board of pharmacy to impose disciplinary action against a licensee who was disciplined by another state or federal agency;
- (3) Establish conditions for the disciplinary action;
- (4) Prohibit a licensee from practicing until a final order of discipline is issued if disciplinary action taken by another state prohibited the licensee from practicing in that state; and
- (5) Ensure consumer protection by requiring any final order of discipline taken to be public record.

SECTION 2. Chapter 448, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§448- Discipline based on action taken by another state or federal agency; conditions; prohibition on practice. (a) Upon receipt of evidence of revocation, suspension, or other disciplinary action against a licensee by another state or federal agency, the board may issue an order imposing disciplinary action upon the licensee on the following conditions:

- (1) The board shall serve the licensee with a proposed order imposing disciplinary action as required by chapter 91;
- (2) The licensee shall have the right to request a hearing pursuant to chapter 91 to show cause why the action described in the proposed order should not be imposed;
- (3) Any request for a hearing shall be made in writing and filed with the board within twenty days after mailing of the proposed order to the licensee; and
- (4) If the licensee does not submit a written request for a hearing within twenty days after mailing of the proposed order, the board shall is-

sue a final order imposing the disciplinary action described in the proposed order.

(b) A certified copy of the disciplinary action by another state or federal agency shall constitute prima facie evidence of the disciplinary action.

(c) A licensee against whom the board has issued a proposed order under this section shall be prohibited from practicing in this State until the board issues a final order if:

(1) The licensee was the subject of disciplinary action by another state; and

(2) The disciplinary action by another state prohibits the licensee from practicing in that state.

(d) In addition to the provisions of this section, the board may take any other action authorized by this chapter or chapter 436B.

(e) Notwithstanding any law to the contrary, the final order of discipline taken pursuant to this section shall be a matter of public record.”

SECTION 3. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§453- Discipline based on action taken by another state or federal agency; conditions; prohibition on practice. (a) Upon receipt of evidence of revocation, suspension, or other disciplinary action against a licensee by another state or federal agency, the board may issue an order imposing disciplinary action upon the licensee on the following conditions:

(1) The board shall serve the licensee with a proposed order imposing disciplinary action as required by chapter 91;

(2) The licensee shall have the right to request a hearing pursuant to chapter 91 to show cause why the action described in the proposed order should not be imposed;

(3) Any request for a hearing shall be made in writing and filed with the board within twenty days after mailing of the proposed order to the licensee; and

(4) If the licensee does not submit a written request for a hearing within twenty days after mailing of the proposed order, the board may issue a final order imposing the disciplinary action described in the proposed order.

(b) A certified copy of the disciplinary action by another state or federal agency shall constitute prima facie evidence of the disciplinary action.

(c) A licensee against whom the board has issued a proposed order under this section shall be prohibited from practicing in this State until the board issues a final order if:

(1) The licensee was the subject of disciplinary action by another state; and

(2) The disciplinary action by another state prohibits the licensee from practicing in that state.

(d) In addition to the provisions of this section, the board may take any other action authorized by this chapter or chapter 436B.

(e) Notwithstanding any law to the contrary, any final order of discipline taken pursuant to this section shall be a matter of public record.”

SECTION 4. Chapter 457, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§457- Discipline based on action taken in another state; conditions; prohibition on practice. (a) Upon receipt of evidence of revocation, suspension, or other disciplinary action against a licensee in another state, the board may issue an order imposing disciplinary action upon the licensee on the following conditions:

- (1) The board shall serve the licensee with a proposed order imposing disciplinary action as required by chapter 91;
- (2) The licensee shall have the right to request a hearing pursuant to chapter 91 to show cause why the action described in the proposed order should not be imposed;
- (3) Any request for a hearing shall be made in writing and filed with the board within twenty days after mailing of the proposed order to the licensee; and
- (4) If the licensee does not submit a written request for a hearing within twenty days after mailing of the proposed order, the board shall issue a final order imposing the disciplinary action described in the proposed order.

(b) A certified copy of the disciplinary action in another state shall constitute prima facie evidence of the disciplinary action.

(c) A licensee against whom the board has issued a proposed order under this section shall be prohibited from practicing in this State until the board issues a final order if:

- (1) The licensee was the subject of disciplinary action in another state; and
- (2) The disciplinary action in the other state prohibits the licensee from practicing in that state.

(d) In addition to the provisions of this section, the board may take any other action authorized by this chapter or chapter 436B.

(e) Notwithstanding any law to the contrary, the final order of discipline taken pursuant to this section shall be a matter of public record.”

SECTION 5. Chapter 461, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§461- Discipline based on action taken by another state or federal agency; conditions; prohibition on practice. (a) Upon receipt of evidence of revocation, suspension, or other disciplinary action against a licensee by another state or federal agency, the board may issue an order imposing disciplinary action upon the licensee on the following conditions:

- (1) The board shall serve the licensee with a proposed order imposing disciplinary action as required by chapter 91;
- (2) The licensee shall have the right to request a hearing pursuant to chapter 91 to show cause why the action described in the proposed order should not be imposed;
- (3) Any request for a hearing shall be made in writing and filed with the board within twenty days after mailing of the proposed order to the licensee; and
- (4) If the licensee does not submit a written request for a hearing within twenty days after mailing of the proposed order, the board shall issue a final order imposing the disciplinary action described in the proposed order.

(b) A certified copy of the disciplinary action by another state or federal agency shall constitute prima facie evidence of the disciplinary action.

(c) A licensee against whom the board has issued a proposed order under this section shall be prohibited from practicing in this State until the board issues a final order if:

- (1) The licensee was the subject of disciplinary action by another state; and
- (2) The disciplinary action by another state prohibits the licensee from practicing in that state.

(d) In addition to the provisions of this section, the board may take any other action authorized by this chapter or chapter 436B.

(e) Notwithstanding any law to the contrary, the final order of discipline taken pursuant to this section shall be a matter of public record.”

SECTION 6. Section 448-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board shall refuse to issue a license to any applicant who fails to meet all of the requirements imposed by this chapter and may refuse to issue a license to any applicant who has ~~previously committed any act that would, if committed by a licensee, result in the revocation or suspension of the license.]~~ been disciplined by another state or federal agency. Notwithstanding any law to the contrary, a final order denying the issuance of a license to any applicant based on the applicant’s discipline by another state or federal agency shall be a matter of public record.”

SECTION 7. 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 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.] by another state or federal agency,~~ 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) Notwithstanding any other law to the contrary, the board may deny a license to any applicant who has been disciplined by another state or federal agency. Any final order of discipline taken pursuant to this subsection shall be a matter of public record.

~~[(e)]~~ (d) Where the board has reasonable cause to believe that a licensee is or may 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. In addition:

- (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 to determine whether the licensee is able to practice medicine with reasonable skill and safety to protect 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 licensee's license; and
- (4) The board may take any action authorized under this chapter based on information obtained under this subsection.

~~[(d)]~~ (e) Any person licensed by the board, including a physician, surgeon, or physician assistant, who provides information to the board 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 based on the communication. The immunity afforded by this section shall be in addition to any immunity afforded by section 663-1.7, if applicable, and shall not be construed to affect the availability of any absolute privilege under sections 663-1.7 and 671D-10."

SECTION 8. Section 457-12, Hawaii Revised Statutes, is amended to read as follows:

"§457-12 Discipline; grounds; proceedings; hearings. (a) In addition to any other actions authorized by law, the board shall have the power to deny, revoke, limit, or suspend any license to practice nursing as a registered nurse or as a licensed practical nurse applied for or issued by the board in accordance with this chapter, and to fine or to otherwise discipline a licensee for any cause authorized by law, including but not limited to the following:

- (1) Fraud or deceit in procuring or attempting to procure a license to practice nursing as a registered nurse or as a licensed practical nurse;
- (2) Gross immorality;
- (3) Unfitness or incompetence by reason of negligence, habits, or other causes;
- (4) Habitual intemperance, addiction to, or dependency on alcohol or other habit-forming substances;
- (5) Mental incompetence;
- (6) Unprofessional conduct as defined by the board in accordance with its own rules;
- (7) Wilful or repeated violation of any of the provisions of this chapter or any rule adopted by the board;
- (8) Revocation, suspension, limitation, or other disciplinary action by another state of a nursing license ~~[for reasons as provided in this section]~~;
- (9) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a nurse, notwithstanding any statutory provision to the contrary;
- (10) Failure to report to the board any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final;
- (11) 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 of fact, including a false attestation of compliance with continuing competency requirements; or
- (12) Violation of the conditions or limitations upon which any license is issued.

(b) Notwithstanding any other law to the contrary, the board may deny a license to any applicant who has been disciplined by another state. Any final order entered pursuant to this subsection shall be a matter of public record.

~~(b)~~ (c) Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$100 and no more than \$1,000 for each violation.

~~(c)~~ (d) 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 9. Section 461-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other powers and duties authorized by law, the board:

- (1) Shall adopt, amend, and repeal rules pursuant to chapter 91, as it deems proper for the purposes of this chapter, Public Law 100-293, and 21 Code of Federal Regulations part 205;
- (2) Shall examine, license, reinstate, and renew the licenses of qualified applicants for registered pharmacists and wholesale prescription drug distributors, and issue and renew permits to operate pharmacies;
- (3) May require the inspection of any wholesale prescription drug distributor premises in the State to ensure compliance with this chapter and rules adopted under this chapter, or may require an applicant for a pharmacy license to submit a statement that the premises, including but not limited to security and sanitation, are in conformance with the board’s requirements and that the applicant possesses the reference materials and technical clinical equipment and supplies as may be specified in rules adopted under this chapter; ~~and~~
- (4) May fine, suspend, or revoke any license or permit for any cause prescribed by this chapter, or for any violation of the rules adopted under this chapter, and refuse to grant or renew any license or permit for any cause which would be ground for revocation or suspension of a license or permit~~[-]; and~~
- (5) May deny a license to any applicant who has been disciplined by another state or federal agency. Notwithstanding any law to the contrary, a final order of disciplinary action taken pursuant to this paragraph shall be a matter of public record.”

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved April 29, 2016.)

Note

1. Edited pursuant to HRS §23G-16.5.