
A BILL FOR AN ACT

RELATING TO MEDICINE AND SURGERY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

4 "§453-A Reports relating to professional conduct and
5 capacity of physicians and surgeons. (a) Entities required to
6 report:

7 (1) Health care institutions. The chief administrator or
8 executive officer of any health care institution
9 licensed by the Hawaii department of health shall
10 report to the board when:

11 (A) The clinical privileges of any person licensed to
12 practice medicine or surgery in the State under
13 this chapter are terminated or restricted based
14 on a final determination, in accordance with that
15 institution's bylaws or rules, that:

16 (i) The person has committed an act or acts that
17 may directly threaten patient care and the



1 act or acts are not of an administrative
2 nature; or

3 (ii) The person may be mentally or physically
4 disabled in a manner that endangers patients
5 under that person's care; or

6 (B) A person accepts voluntary termination or
7 restriction of clinical privileges in lieu of
8 formal action:

9 (i) Based upon conduct related directly to
10 patient care and not of an administrative
11 nature, or

12 (ii) Seeking to determine whether the person may
13 be mentally or physically disabled in a
14 manner that endangers patients under that
15 person's care.

16 The report shall be strictly confidential and may be
17 reviewed only as provided by rules adopted by the
18 board.

19 (2) Professional associations. The president or chief
20 executive officer of any association or society of
21 persons licensed to practice medicine or surgery in
22 the State under this chapter shall report to the board



1 upon a final determination that a person has committed
2 unprofessional conduct related directly to patient
3 care or that a person may be mentally or physically
4 disabled in a manner that endangers patients under
5 that person's care.

6 (3) Professional liability insurers. Every insurance
7 company that offers policies of professional liability
8 insurance to, or any other entity that seeks to
9 indemnify the professional liability of a person
10 licensed to practice medicine or surgery in the State
11 under this chapter, shall report to the board upon the
12 settlement of any claim, cause of action, or final
13 judgment based upon negligence in the furnishing of
14 medical care by a licensed person when settlement or
15 final judgment is in favor of the plaintiff.

16 (4) Attorney general. The attorney general shall report
17 to the board all instances in which a person licensed
18 under this chapter is convicted or otherwise found
19 guilty of any felony.

20 (5) State agencies. All departments, boards, commissions,
21 or other instrumentalities of the State shall report
22 to the board any instance arising in connection with



1 its operations in which a person licensed under this
2 chapter has committed an act or acts that:

3 (A) May constitute unprofessional conduct related
4 directly to patient care; or

5 (B) Indicate that the person may be mentally or
6 physically disabled in a manner that endangers
7 patients under that person's care.

8 (b) All reports required by subsection (a) and section
9 453-8 shall be submitted to the board in a timely fashion. The
10 reports shall be filed in writing within sixty days after a
11 determination that a report is required under this section. All
12 reports shall contain the following information:

13 (1) The name, address, and telephone number of the person
14 making the report;

15 (2) The name, address and telephone number of the person
16 who is the subject of the report;

17 (3) The name and date of birth of any patient or patients
18 whose treatment is a subject of the report, if
19 available, or other means of identification if the
20 information is not available, identification of the
21 hospital or other healthcare facility where the care



1 at issue in the report was rendered, provided, that no
2 medical records shall be revealed;

3 (4) A brief description of the facts that gave rise to the
4 issuance of the report, including the dates of any
5 occurrences deemed to necessitate the filing of the
6 report;

7 (5) If court action is involved, the identity of the court
8 in which the action is filed, along with the docket
9 number and date of filing of the action; and

10 (6) Any further pertinent information which the reporting
11 party deems to be an aid in the evaluation of the
12 report.

13 The board or department may also exercise the power under
14 to subpoena copies of hospital or medical records in mandatory
15 report cases alleging death or permanent bodily injury.

16 Appropriate rules shall be adopted by the department pursuant to
17 chapter 91, with the approval of the board.

18 When the department has received written reports concerning
19 incidents required to be reported by this section or section
20 453-8, the licensee's failure to report the incident to the
21 department under those items shall not be the sole grounds for
22 disciplinary action.

1 Nothing contained in this section shall act to in any way,
2 waive or modify the confidentiality of medical reports or any
3 other reports to the extent provided by law. Except for
4 information required for physician profiles under subsection
5 (a), any information reported or disclosed shall be kept for the
6 confidential use of the board as provided in this section and
7 section 453-B, and shall be afforded the same status as is
8 provided information concerning medical studies in chapter 324,
9 except that the department may disclose information and
10 documents to a federal, state, or county law enforcement agency
11 pursuant to a subpoena in an ongoing criminal investigation.
12 Furthermore, information and documents disclosed to a federal,
13 state, or county law enforcement agency may be used by that
14 agency only for the investigation and prosecution of a criminal
15 offense.

16 (c) Any individual or organization acting in good faith,
17 and not in a wilful and wanton manner, in complying with this
18 section by providing any report or other information to the
19 board, or by voluntarily reporting to the board information
20 regarding alleged errors or negligence by a licensed physician
21 or surgeon, or by participating in proceedings of the board, or
22 by serving a member of the board, shall not be subject to



1 criminal prosecution or civil damages as a result of the
2 actions.

3 (d) Members of the board, the board's attorneys, and
4 authorized clerical staff shall be indemnified by the State for
5 any actions occurring within the scope of services on the board,
6 done in good faith and not wilful and wanton in nature. The
7 attorney general shall defend all actions unless the attorney
8 general determines that there would be a conflict of interest in
9 the representation or that the actions complained of were not in
10 good faith or were wilful and wanton.

11 Should the attorney general decline representation, the
12 member shall have the right to employ counsel of the member's
13 choice, whose fees shall be provided by the State, after
14 approval by the attorney general, unless there is a
15 determination by a court that the member's actions were not in
16 good faith or were wilful and wanton.

17 The member shall notify the attorney general within seven
18 days of receipt of notice of the initiation of any disciplinary
19 action involving services of the board. Failure to so notify
20 the attorney general shall constitute an absolute waiver of the
21 right to a defense and indemnification.



1 The attorney general shall determine within seven days
2 after receiving notice whether to represent the member.

3 (e) Upon the receipt of any report called for by this
4 section, other than those reports of impaired persons licensed
5 under this chapter required pursuant to the rules of the board,
6 the board shall notify in writing, by certified mail, the person
7 who is the subject of the report. The notification shall be
8 made within thirty days of receipt by the board of the report.

9 The notification shall include a written notice setting
10 forth the person's right to examine the report. Included in the
11 notification shall be the address at which the file is
12 maintained, the name of the custodian of the reports, and the
13 telephone number at which the custodian may be reached. The
14 person who is the subject of the report shall submit a written
15 statement responding, clarifying, adding to, or proposing the
16 amending of the report previously filed. The person who is the
17 subject of the report shall also submit with the written
18 statement any medical records related to the report. The
19 statement and accompanying medical records shall become a
20 permanent part of the file and must be received by the board no
21 more than thirty days after the date on which the person was
22 notified by the board of the existence of the original report.



1 The board shall review all reports received by it, together
2 with any supporting information and responding statements
3 submitted by persons who are the subject of reports. The review
4 by the board shall be in a timely manner but in no event, shall
5 the board's initial review of the material contained in each
6 disciplinary file be less than sixty-one days nor more than one
7 hundred eighty days after the receipt of the initial report by
8 the board.

9 When the board makes its initial review of the materials
10 contained within its disciplinary files, the board shall make a
11 determination in writing as to whether there are sufficient
12 facts to warrant further investigation or action. Failure to
13 make a determination within the time provided shall be deemed to
14 be a determination that there are not sufficient facts to
15 warrant further investigation or action.

16 Should the board find that there are not sufficient facts
17 to warrant further investigation, or action, the report shall be
18 accepted for filing and the matter shall be deemed closed and
19 the closure reported to the director of commerce and consumer
20 affairs. The director shall then have thirty days to accept the
21 board's decision or request further investigation. The director
22 shall inform the board in writing of the decision to request



1 further investigation, including the specific reasons for the
2 decision. The individual or entity filing the original report
3 or complaint and the person who is the subject of the report or
4 complaint shall be notified in writing by the director of any
5 final action on their report or complaint.

6 (f) The board shall prepare, on a timely basis, but in no
7 event less than one every other month, a summary report of final
8 actions taken upon disciplinary files maintained by the board.
9 The summary reports shall be sent by the board to every health
10 care facility licensed by the department of health, every
11 professional association and society of persons licensed under
12 this chapter functioning on a statewide basis in this State, the
13 American Medical Association, the American Osteopathic
14 Association, the American Chiropractic Association, all insurers
15 providing professional liability insurance to persons licensed
16 to practice medicine and surgery under this chapter in the
17 State, or the Federation of State Medical Licensing Boards.

18 (g) Any violation of this section shall be a misdemeanor.

19 (h) If any person violates the provisions of this section,
20 an action may be brought in the name of the people of the State,
21 through the attorney general of the State, for an order
22 enjoining the violation or for an order enforcing compliance



1 with this section. Upon filing of a verified petition in the
2 court, the court may issue a temporary restraining order without
3 notice or bond and may preliminarily or permanently enjoin the
4 violation, and if it is established that the person has violated
5 or is violating the injunction, the court may punish the
6 offender for contempt of court. Proceedings under this
7 subsection shall be in addition to all other remedies and
8 penalties provided for by this chapter.

9 **§453-B Establishment of data repository.** (a) There shall
10 be established by the board of medical examiners a data
11 repository that shall hold all data required under this section
12 and any other law or rule that requires that information be
13 reported to the board. The board shall collect the following
14 information to create individual profiles on licensees, in a
15 format created by the board that shall be available for
16 dissemination to the public:

17 (1) A description of any criminal convictions for felonies
18 and serious misdemeanors as determined by the board,
19 within the most recent ten years. For the purposes of
20 this subsection, a person shall be deemed to be
21 convicted of a crime if the person pleaded guilty or



- 1 if the person was found or adjudged guilty by a court
2 of competent jurisdiction;
- 3 (2) A description of any charges to which a licensee
4 pleads nolo contendere or where sufficient facts of
5 guilt were found and the matter was continued without
6 a finding by a court of competent jurisdiction;
- 7 (3) A description of any final board disciplinary actions
8 within the most recent ten years;
- 9 (4) A description of any final disciplinary actions by
10 licensing boards in other states within the most
11 recent ten years;
- 12 (5) A description of revocation or involuntary restriction
13 of hospital privileges for reasons related to
14 competence or character that have been taken by the
15 hospital's governing body or any other official of the
16 hospital after procedural due process has been
17 afforded, or the resignation from or nonrenewal of
18 medical staff membership or the restriction of
19 privileges at a hospital taken in lieu of or in
20 settlement of a pending disciplinary case related to
21 competence or character in that hospital. Only cases



1 which have occurred within the most recent ten years
2 shall be disclosed by the board to the public;
3 (6) All medical malpractice court judgments and all
4 medical malpractice arbitration awards in which a
5 payment is awarded to a complaining party during the
6 most recent ten years and all settlements of medical
7 malpractice claims in which a payment is made to a
8 complaining party within the most recent ten years.
9 Dispositions of paid claims shall be reported in a
10 minimum of three graduated categories indicating the
11 level of significance of the award or settlement.
12 Information concerning paid medical malpractice claims
13 shall be put in context by comparing an individual
14 licensee's medical malpractice judgment awards and
15 settlements to the experience of other physicians
16 within the same specialty. Information concerning all
17 settlements shall be accompanied by the following
18 statement: "Settlement of a claim may occur for a
19 variety of reasons which do not necessarily reflect
20 negatively on the professional competence or conduct
21 of the physician. A payment in settlement of a
22 medical malpractice action or claim should not be



1 construed as creating a presumption that medical
2 malpractice has occurred." Nothing in this section
3 shall be construed to limit or prevent the board from
4 providing further explanatory information regarding
5 the significance of categories in which settlements
6 are reported.

7 (7) Names of medical schools and dates of graduation;

8 (8) Graduate medical education;

9 (9) Specialty board certification;

10 (10) Number of years in practice;

11 (11) Names of the hospitals where the licensee has
12 privileges;

13 (12) Appointments to medical school faculties and
14 indication as to whether a licensee has a
15 responsibility for graduate medical education within
16 the most recent ten years;

17 (13) Information regarding publications in peer-reviewed
18 medical literature within the most recent ten years;

19 (14) Information regarding professional or community
20 service activities and awards;

21 (15) Location of the licensee's primary practice setting;



1 (16) Identification of any translating services that may be
2 available at the licensee's primary practice location;
3 (17) An indication of whether the licensee participates in
4 the medicaid program.

5 (b) Pending malpractice claims shall not be disclosed by
6 the board to the public. Nothing in this section shall be
7 construed to prevent the board from investigating and
8 disciplining a licensee on the basis of medical malpractice
9 claims that are pending.

10 (c) The board shall provide individual licensees with a
11 copy of their profiles prior to release to the public. A
12 licensee shall be provided a reasonable time to correct factual
13 inaccuracies that appear in such profile. A physician may elect
14 to have the physician's profile omit certain information
15 provided pursuant to subsection (a)(12) through (14), concerning
16 academic appointments and teaching responsibilities, publication
17 in peer-reviewed journals and professional and community service
18 awards. In collecting information for the profiles and in
19 disseminating the same, the board shall inform physicians that
20 they may choose not to provide the information required pursuant
21 to subsection (a)(12) through (14). For purposes of subsection
22 (a), the method described in this subsection is to make the



1 information involved available to the public, without charge,
 2 through the telecommunications medium known as the world wide
 3 web of the internet. The executive secretary, acting through
 4 the director of commerce and consumer affairs, shall provide for
 5 the establishment of a site on such medium, and shall update the
 6 information maintained through such medium not less frequently
 7 than monthly."

8 SECTION 2. In codifying the new sections added by section
 9 1 of this Act, the revisor of statutes shall substitute
 10 appropriate section numbers for the letters used in designating
 11 the new sections in this Act.

12 SECTION 3. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 029.2-

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 John M. Flanagan
 Scott K. Brown

JAN 23 2008



nReport Title:

Physician profiles

Description:

Establishes a data depository containing individual profiles on persons licensed to practice medicine or surgery and provides for the public release of information relating to criminal charges, administrative disciplinary actions, and hospital privilege revocations.

