

JAN 28 2009

A BILL FOR AN ACT

RELATING TO THE HAWAII MEDICAL BOARD.

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

1 SECTION 1. The legislature finds that the Hawaii medical
2 board has, upon occasion, issued guidelines and directives that
3 are not based on a sound source of statutory authority.
4 Furthermore, the issuance of these informal guidelines and
5 directives under authority of the Hawaii medical board has not
6 complied with the statutory requirements of Hawaii's
7 Administrative Procedure Act codified in chapter 91, Hawaii
8 Revised Statutes. The Hawaii medical board believes that its
9 informal guidelines and directives that are not adopted in
10 accordance with chapter 91, Hawaii Revised Statutes, have the
11 force and effect of law. The legislature finds that this is
12 incorrect.

13 A department may adopt rules to implement a statute which,
14 by definition, has been enacted into law by the legislature. A
15 rule in itself, because it has the force and effect of law, must
16 only be based on the authority of the statute the rule is
17 implementing. A department that adopts a rule without a sound



1 basis in statutory authority could contravene the intent and
2 implementation of the underlying statute and, even if not
3 causing actual affirmative harm, would at least be overstepping
4 its powers by creating unauthorized law.

5 This situation is made worse by an agency that does not
6 comply with the required process to adopt rules as laid out in
7 the administrative procedure law. The purpose of this Act is to
8 restate, without substantive change, the requirement that
9 rulemaking is required to comply with the requirements of the
10 administrative procedure law, particularly with respect to the
11 Hawaii medical board.

12 SECTION 2. Section 453-5.1, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§453-5.1 Powers and duties of board. (a) In addition to
15 other powers and duties authorized by law, the Hawaii medical
16 board shall have all the powers necessary or convenient to
17 effectuate the purpose of this chapter, including, without
18 limitation, the following powers:

- 19 (1) To adopt rules, pursuant to chapter 91; and
20 (2) To enforce this chapter and rules adopted pursuant
21 thereto.



1 (b) Whenever it is the Hawaii medical board's intent to
2 adopt guidelines or statements of general or particular
3 applicability that are intended to implement substantive policy
4 or to carry out the effect of a statute within the board's
5 jurisdiction, with the full force and effect of law, the board
6 shall affirmatively adopt rules strictly in accordance with
7 chapter 91. The board shall not:

8 (1) Issue statements or guidelines;
9 (2) Prescribe, proscribe, interpret, or implement law or
10 policy; or
11 (3) Delineate, prescribe, proscribe, or restrict practice
12 requirements,

13 of any kind with respect to matters within the board's
14 jurisdiction without a sound source of statutory authority.
15 However, the board is authorized to perform the actions under
16 paragraphs (1) through (3) by affirmatively adopting rules in
17 accordance with chapter 91 based on a sound source of statutory
18 authority. Any statement made by the board under paragraphs (1)
19 through (3) without the benefit of and not in compliance with
20 the administrative procedures relating to rulemaking under
21 chapter 91 shall be void and unenforceable as against public
22 policy."



1 SECTION 3. New statutory material is underscored.

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

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Report Title:

Hawaii Medical Board; Rulemaking

Description:

Affirmatively requires Hawaii medical board to adopt rules in accordance with the administrative procedure law. Prohibits the issuing of statements that prescribe, interpret, or implement law or policy that lack a sound and demonstrable source of statutory authority. Makes such statements void as against public policy.

