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# A BILL FOR AN ACT

RELATING TO ENFORCEMENT TOOLS TO IMPROVE PATIENT SAFETY.

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

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

4           "§453- Summary suspension. (a) The board may summarily  
5 suspend any license issued under this chapter upon a specific  
6 determination that the failure to take such an action may result  
7 in an immediate and unreasonable threat to personal safety or of  
8 fraud that jeopardizes or endangers the health or safety of  
9 patients as determined by the professional standards of care  
10 upon consumers, and that, for the protection of the public from  
11 the possible consequences of such practices, the license should  
12 be immediately suspended or restricted.

13           (b) The order of summary suspension shall include a brief  
14 statement of findings of fact and conclusions of law and shall  
15 be served upon the licensee as required by chapter 91. The  
16 order of summary suspension shall be effective upon service.

17           (c) A licensee served with an order of summary suspension  
18 shall have the right to request a hearing to show cause why the



1 order of summary suspension should be terminated. Any request  
2 for a hearing shall be made in writing and filed with the board  
3 within five business days of service of the order. The board  
4 shall hold a hearing within seven business days of receipt of  
5 the licensee's request for the hearing to show cause.

6 (d) Notwithstanding any law to the contrary, an order  
7 summarily suspending a license issued under this chapter shall  
8 remain in effect until the effective date of a final decision  
9 and order issued by the board in a disciplinary action or the  
10 effective date of an order issued by the board terminating the  
11 summary suspension following a hearing to show cause, whichever  
12 occurs first, but in either case shall not exceed thirty  
13 business days.

14 (e) The board shall conduct a hearing for disciplinary  
15 action against a licensee whose license has been summarily  
16 suspended under this section within twenty business days from  
17 the effective date of the order of summary suspension.

18 (f) Any attempt by the licensee to continue the practice  
19 of medicine or the practice of medicine by the licensee while  
20 the license has been summarily suspended shall be grounds for  
21 revocation of the license and shall subject the licensee to any



1 penalties prescribed under this chapter, the applicable  
2 licensing laws, or any rule or order of the board."

3 SECTION 2. Section 453-8, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§453-8 Revocation, limitation, suspension, or denial of  
6 licenses. (a) In addition to any other actions authorized by  
7 law, any license to practice medicine and surgery may be  
8 revoked, limited, or suspended by the board at any time in a  
9 proceeding before the board, or may be denied, for any cause  
10 authorized by law, including but not limited to the following:

- 11 (1) Procuring, or aiding or abetting in procuring, a  
12 criminal abortion;
- 13 (2) Employing any person to solicit patients for one's  
14 self;
- 15 (3) Engaging in false, fraudulent, or deceptive  
16 advertising, including but not limited to:
- 17 (A) Making excessive claims of expertise in one or  
18 more medical specialty fields;
- 19 (B) Assuring a permanent cure for an incurable  
20 disease; or



- 1 (C) Making any untruthful and improbable statement in  
2 advertising one's medical or surgical practice or  
3 business;
- 4 (4) Being habituated to the excessive use of drugs or  
5 alcohol; or being addicted to, dependent on, or a  
6 habitual user of a narcotic, barbiturate, amphetamine,  
7 hallucinogen, or other drug having similar effects;
- 8 (5) Practicing medicine while the ability to practice is  
9 impaired by alcohol, drugs, physical disability, or  
10 mental instability;
- 11 (6) Procuring a license through fraud, misrepresentation,  
12 or deceit, or knowingly permitting an unlicensed  
13 person to perform activities requiring a license;
- 14 (7) Professional misconduct, hazardous negligence causing  
15 bodily injury to another, or manifest incapacity in  
16 the practice of medicine [~~osteopathy~~] or surgery;
- 17 (8) Incompetence or multiple instances of negligence,  
18 including but not limited to the consistent use of  
19 medical service, which is inappropriate or  
20 unnecessary;
- 21 (9) Conduct or practice contrary to recognized standards  
22 of ethics of the medical profession as adopted by the



- 1 Hawaii Medical Association, the American Medical  
2 Association, the Hawaii Association of Osteopathic  
3 Physicians and Surgeons, or the American Osteopathic  
4 Association;
- 5 (10) Violation of the conditions or limitations upon which  
6 a limited or temporary license is issued;
- 7 (11) Revocation, suspension, or other disciplinary action  
8 by another state or federal agency of a license,  
9 certificate, or medical privilege for reasons as  
10 provided in this section;
- 11 (12) Conviction, whether by nolo contendere or otherwise,  
12 of a penal offense substantially related to the  
13 qualifications, functions, or duties of a physician or  
14 osteopathic physician, notwithstanding any statutory  
15 provision to the contrary;
- 16 (13) Violation of chapter 329, the uniform controlled  
17 substances act, or any rule adopted thereunder except  
18 as provided in section 329-122;
- 19 (14) Failure to report to the board, in writing, any  
20 disciplinary decision issued against the licensee or  
21 the applicant in another jurisdiction within thirty  
22 days after the disciplinary decision is issued; or



1           (15) Submitting to or filing with the board any notice,  
2                           statement, or other document required under this  
3                           chapter, which is false or untrue or contains any  
4                           material misstatement or omission of fact.

5           (b) If disciplinary action related to the practice of  
6 medicine has been taken against the applicant in any  
7 jurisdiction that would constitute a violation under this  
8 section, or if the applicant reveals a physical or mental  
9 condition that would constitute a violation under this section,  
10 then the board may impose one or more of the following  
11 requirements as a condition for licensure:

12           (1) Physical and mental evaluation of the applicant by a  
13                           licensed physician or osteopathic physician approved  
14                           by the board;

15           (2) Probation, including conditions of probation as,  
16                           requiring observation of the licensee by an  
17                           appropriate group or society of licensed physicians,  
18                           osteopathic physicians, or surgeons;

19           (3) Limitation of the license by restricting the fields of  
20                           practice in which the licensee may engage;

21           (4) Further education or training or proof of performance  
22                           competency; and



1 (5) Limitation of the medical practice of the licensee in  
2 any reasonable manner to assure the safety and welfare  
3 of the consuming public.

4 (c) Where the board has reasonable cause to believe that a  
5 licensee is or may be unable to practice medicine with  
6 reasonable skill and safety to protect patients, the board may  
7 order the licensee to submit to a mental or physical examination  
8 or any combination thereof, by a licensed practitioner approved  
9 by the board, at the licensee's expense. The examination may  
10 include biological fluid testing and other testing known to  
11 detect the presence of alcohol or other drugs. In addition:

12 (1) Any licensee shall be deemed to have consented to  
13 submit to a mental or physical examination when so  
14 directed by the board and to have waived all objection  
15 to the use or referral of information by the board to  
16 determine whether the licensee is able to practice  
17 medicine with reasonable skill and safety to protect  
18 patients;

19 (2) The board may seek to enforce an order directing a  
20 licensee to submit to a mental or physical examination  
21 in the circuit court in the county in which the  
22 licensee resides;



1       (3) Failure of a licensee to submit to an examination  
2       ordered under this subsection shall constitute grounds  
3       for summary suspension of the licensee's license; and

4       (4) The board may take any action authorized under this  
5       chapter based on information obtained under this  
6       subsection.

7       (d) Any person licensed by the board, including a  
8       physician, surgeon, or physician assistant, who provides  
9       information to the board indicating that a board licensee may be  
10      guilty of unprofessional conduct or may be impaired because of  
11      drug or alcohol abuse or mental illness shall not be liable for  
12      any damages in any civil action based on the communication. The  
13      immunity afforded by this section shall be in addition to any  
14      immunity afforded by section 663-1.7, if applicable, and shall  
15      not be construed to affect the availability of any absolute  
16      privilege under sections 663-1.7 and 671D-10."

17       SECTION 3. Statutory material to be repealed is bracketed  
18       and stricken. New statutory material is underscored.

19       SECTION 4. This Act, upon its approval, shall take effect  
20       on July 1, 2013.



**Report Title:**

Hawaii Medical Board; Summary Suspension of a License; Physical and Mental Examination Order

**Description:**

Authorizes the Hawaii medical board to summarily suspend a license and order a licensee to submit to a physical and mental examination under specific circumstances. Specifies immunities for licensees who provide certain information to the Hawaii medical board. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

