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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 Hawaii medical  
5 board may summarily suspend any license issued under this  
6 chapter upon a specific determination that the failure to take  
7 such an action may result in an immediate and unreasonable  
8 threat to personal safety or fraud upon consumers and that, for  
9 the protection of the public from the possible consequences of  
10 practices, the license should be immediately suspended or  
11 restricted.

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

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



1 for a hearing shall be made in writing to the board within five  
2 business days of service of the order. The board shall hold a  
3 hearing within seven business days of receipt of the licensee's  
4 request for the hearing to show cause.

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

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

16 (f) Any attempt by the licensee to continue the practice  
17 of medicine or the practice of medicine by the licensee while  
18 the license has been summarily suspended shall be grounds for  
19 revocation of the license and shall subject the licensee to any  
20 penalties prescribed under this chapter, the applicable  
21 licensing laws, or any rule or order of the board."



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

3 "§453-8 Revocation, limitation, suspension, or denial of  
4 licenses. (a) In addition to any other actions authorized by  
5 law, any license to practice medicine and surgery may be  
6 revoked, limited, or suspended by the board at any time in a  
7 proceeding before the board, or may be denied, for any cause  
8 authorized by law, including but not limited to the following:

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



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



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

1 chapter, which is false or untrue or contains any  
2 material misstatement or omission of fact.

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

- 10 (1) Physical and mental evaluation of the applicant by a  
11 licensed physician or osteopathic physician approved  
12 by the board;
- 13 (2) Probation, including conditions of probation as  
14 requiring observation of the licensee by an  
15 appropriate group or society of licensed physicians,  
16 osteopathic physicians, or surgeons;
- 17 (3) Limitation of the license by restricting the fields of  
18 practice in which the licensee may engage;
- 19 (4) Further education or training or proof of performance  
20 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 patients;

18           (2) The board may seek to enforce an order directing a  
19 licensee to submit to a mental or physical examination  
20 in the circuit court in the county in which the  
21 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 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 but not  
8       limited to a physician, surgeon, or physician assistant, who  
9       provides information to the board indicating that a board  
10       licensee may be guilty of unprofessional conduct or may be  
11       impaired because of drug or alcohol abuse or mental illness  
12       shall not be liable for any damages in any civil action based on  
13       the communication. The immunity afforded by this section shall  
14       be in addition to any immunity afforded by section 663-1.7, if  
15       applicable, and shall not be construed to affect the  
16       availability of any absolute privilege under sections 663-1.7  
17       and 671D-10."

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

20       SECTION 4. This Act, upon its approval, shall take effect  
21       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. Provides additional immunities that specify any person licensed by the Hawaii Medical Board who provides information indicating that another 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. (SD1)

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

