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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 or its  
5 delegate 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 or misrepresentation upon  
9 consumers, and that, for the protection of the public from the  
10 possible consequences of practices, the license should be  
11 immediately suspended or 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

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1 for a hearing shall be made in writing to the board or its  
2 delegate within five business days of service of the order. The  
3 board or its delegate shall hold a hearing within ten business  
4 days of receipt of the licensee's request for the hearing to  
5 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 in a disciplinary action or the effective date of an  
10 order terminating the summary suspension by the board following  
11 a hearing to show cause, whichever occurs first.

12 (e) The board or its delegate shall conduct a hearing for  
13 disciplinary action against a licensee whose license has been  
14 summarily suspended under this section within twenty business  
15 days from 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."

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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;

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- 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

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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

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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.

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 or  
16 its delegate to determine whether the licensee is able  
17 to practice medicine with reasonable skill and safety  
18 to 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;





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**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.

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

JUSTIFICATION SHEET

**SB. NO. 1078**

DEPARTMENT: Commerce and Consumer Affairs.

TITLE: A BILL FOR AN ACT RELATING TO ENFORCEMENT TOOLS TO IMPROVE PATIENT SAFETY.

PURPOSE: To authorize the Hawaii Medical Board (Board) to summarily suspend a license and to order a licensee to submit to a mental or physical examination under certain circumstances.

MEANS: Add a new section to chapter 453, Hawaii Revised Statutes (HRS), and amend section 453-8, HRS.

JUSTIFICATION: Summary Suspension

In 2003, an independent review of state medical boards ranked the Board (then the Hawaii Board of Medical Examiners) fifty-first nationally among medical boards in the U.S. and its territories in the number of physician disciplinary actions. In response, the Board and the Department's Regulated Industries Complaints Office (RICO) implemented a number of initiatives to improve investigation and handling of complaints against physicians and to enhance protection of Hawaii's healthcare consumers. These initiatives contributed to a dramatic rise in the Board's national ranking from 51<sup>st</sup> for disciplinary action taken in 2003 to 18<sup>th</sup> for disciplinary actions taken during the period 2009-2011.

The Board and RICO continue to evaluate other mechanisms that would enhance enforcement. This proposal uses the current language in section 436B-23, HRS, which authorizes licensing authorities to summarily suspend many types of different licenses, and tailors the language in a new provision in chapter 453, HRS, to more

appropriately address summary suspension proceedings for physician licensees.

Specifically, the bill establishes the criteria under which the Board or its delegate may summarily suspend a license and sets forth the contents of an order of summary suspension, the means of service of the order, and the length of time a summary suspension order remains in effect. The bill also subjects a licensee who continues to practice medicine despite a summary suspension to revocation of the license and penalties. Such provisions similarly are included in other states' statutes.

The bill affords a licensee the opportunity for a hearing by: (1) allowing the licensee to request a hearing to show cause within five business days of service of the order to demonstrate why the summary suspension order should be terminated; and (2) requiring the Board to conduct a hearing for disciplinary action within twenty business days of a summary suspension order.

The bill recognizes the seriousness of a summary suspension order and the rights of a licensee summarily suspended such that it requires that a disciplinary hearing be held within twenty business days of a summary suspension order. In the approximately 45 states in which a medical board has the authority to summarily suspend a license, the length of time within which a disciplinary hearing must be held after issuance of a summary suspension order varies from seven days to 180 days.

The twenty-business-day time period provided in this bill affords a licensee and the Board time to prepare for the hearing and is well within the time variations existing in other states' statutes. A shorter time frame would be a significant hindrance for the Board, the Office of Administrative Hearings, which could serve as the Board's

delegate, and RICO, which would prosecute the case.

This bill will enable the Board to respond swiftly and appropriately for the protection of the public when a licensee's conduct poses an immediate threat to patients.

Physical and Mental Examination

Pursuant to section 453-8(b), HRS, the Board may require an applicant to undergo a physical and mental examination as a condition of licensure. However, there is no corresponding requirement for licensees. This bill broadens the Board's authority to order a physical and mental examination to cover licensees as well as applicants.

The bill adds a new subsection to section 453-8, HRS, to provide that the Board may order a licensee to submit to a physical or mental examination when the Board has reasonable cause to believe that a licensee is or may be unable to practice medicine with reasonable skill and safety to patients. The bill also deems the licensee to have consented to the examination and to have waived objections to the use or referral of information by the Board or its delegate.

The Board also may seek to enforce its order in the circuit court and may take action authorized by chapter 453, HRS, based on information obtained from the examination. Lastly, the bill provides that a licensee's failure to submit to an examination is grounds for summary suspension.

Approximately 39 states have laws that authorize a licensing authority to order a licensee to submit to a physical and mental examination. In most of these states, the licensing board is the identified entity to impose such a requirement. This bill would strengthen the Board's authority to ensure

that licensees continue to practice with reasonable skill and safety.

Impact on the public: The bill will protect the public from licensees whose medical practice poses an immediate threat to personal safety and who are unable to practice without reasonable skill and safety.

Impact on the department and other agencies: The bill will enhance the Board's authority to take timely and appropriate action against licensees. No impact upon other agencies is anticipated.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2013.