

SB2675

Measure Title:	RELATING TO LICENSING.
Report Title:	Licensing; Applicants for Licensure; Competency; Discipline; Summary Suspension; Hearing; Board of Dental Examiners; Hawaii Medical Board; Board of Nursing; Board of Pharmacy
Description:	Requires dentist, physician, osteopathic physician, physician assistant, nurse, and pharmacist licensee applicants who have had a license, permit, or ability to practice suspended in another jurisdiction to undergo a hearing to show cause why suspension should be terminated prior to being issued a license to practice in Hawaii. Requires the board of dental examiners, Hawaii medical board, board of nursing, and board of pharmacy to summarily suspend a Hawaii license upon a determination that a licensee has had a license, registration, or ability to practice suspended or revoked in any other jurisdiction, pending a hearing to show cause. Requires orders of summary suspension or disciplinary action taken due to actions arising in other jurisdictions to be public record.
Companion:	HB2430
Package:	None
Current Referral:	CPH, JDL
Introducer(s):	BAKER, ESPERO, INOUYE, RUDERMAN, SHIMABUKURO, TOKUDA, Kidani, Riviere



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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE
ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2016

WEDNESDAY, FEBRUARY 3, 2016
9:00 A.M.

TESTIMONY ON SENATE BILL NO. 2675
RELATING TO LICENSING

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE MICHELLE N. KIDANI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 2675, Relating To Licensing. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers comments on this bill.

Senate Bill No. 2675 requires dentists, physicians, osteopathic physicians, physician assistants, nurses, and pharmacists applying for licensure to undergo a hearing and investigation to determine competency if the applicant has had a

license revoked or suspended in another jurisdiction prior to the issuance of a Hawaii license. Senate Bill No. 2675 also requires the Board of Dental Examiners, Hawaii Medical Board ("HMB"), the Board of Nursing, and the Board of Pharmacy to summarily suspend a Hawaii licensee upon a determination that the licensee's license has been revoked or suspended in another jurisdiction. The bill also requires that any disciplinary action taken would be a matter of public record.

RICO appreciates the bill's reciprocal discipline provisions for both applicants and licensees and shares the Committee's concern about enforcement in this area. However, RICO believes that its Administration bill, Senate Bill No. 2864, creates a simpler, more expedient mechanism through which reciprocal discipline can occur. Unlike Senate Bill No. 2675, which establishes a process that utilizes, for dentists and physicians, existing summary suspension procedures, Senate Bill No. 2864 creates a new tool for the HMB to impose the same discipline taken against a Hawaii licensee by another state or federal agency.

Senate Bill No. 2675 also requires an order to show cause hearing, even if the affected licensee does not contest or request a hearing. By contrast, the mechanism proposed in Senate Bill No. 2864 requires the affected licensee to request a hearing within twenty days, the failure of which would authorize the HMB to issue a final order of discipline. In the event the affected licensee does not request a hearing, reciprocal discipline under Senate Bill No. 2864 would occur much faster. In addition, the provision in Senate Bill No. 2864 that a certified copy of the disciplinary action taken by another state or federal agency shall constitute

prima facie evidence of the disciplinary action will further expedite the evidentiary process.

Most importantly, Senate Bill No. 2864 prohibits a licensee from practicing in Hawaii until a final order of discipline is issued if the licensee has been banned from practicing in another state. Thus, Hawaii consumers are protected from receiving treatment from licensees who were seriously disciplined elsewhere throughout the reciprocal discipline process provided in Senate Bill No. 2864.

Although Senate Bill No. 2864 addresses reciprocal discipline for physician licensees only, RICO believes the provisions in the bill could be added seamlessly to the dental, nursing, and pharmacy chapters. Moreover, RICO notes that some of the provisions in Senate Bill No. 2864 can be added to all four chapters that would refine the boards' consideration of out-of-state discipline in the context of license applications. RICO is willing to work with the Committee and all stakeholders on any amendments to Senate Bill No. 2675.

Thank you for the opportunity to testify on Senate Bill No. 2675. I will be happy to answer any questions the Committee may have.

**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-EIGHT LEGISLATURE
Regular Session of 2016

Wednesday, February 3, 2016
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2675, RELATING TO LICENSING.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Candace Wada, D.D.S., Vice Chair of the Board of Dental Examiners (“Board”). I appreciate the opportunity to testify on Senate Bill No. 2675, Relating to Licensing that would require that the Board deny an applicant for initial licensure or suspend a license if the applicant or licensee had disciplinary action taken in another jurisdiction that resulted in the suspension or revocation of the individual’s license. The bill also allows the individual applicant or licensee to request a hearing to show cause why the suspension or revocation should be terminated.

The Board will be discussing this measure at its next scheduled meeting on March 21, 2016. For your information, investigation and prosecution is currently delegated to the Regulated Industries Complaints Office (“RICO”) and hearings are delegated to the Office of Administrative Hearings (“OAH”). The Board itself lacks the resources and expertise to assume those responsibilities and will be dependent on RICO and OAH to timely perform those functions.

Testimony on Senate Bill No. 2675
Wednesday, February 3, 2016
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The Board, when it meets, and if the members decide to support the bill, will discuss possible amendments to clarify the language on page 6, line 15, if “suspension or revocation” should be changed to “denial”.

Thank you for the opportunity to testify on Senate Bill No. 2675.

**PRESENTATION OF THE
BOARD OF NURSING**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, February 3, 2016
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2675, RELATING TO LICENSING.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lee Ann Teshima, Executive Officer for the Board of Nursing (“Board”). I appreciate the opportunity to testify on Senate Bill No. 2675, Relating to Licensing, that would require the Board to deny an applicant for initial licensure or suspend a license if the applicant or licensee had disciplinary action taken in another jurisdiction that resulted in the suspension or revocation of the individual’s license. The bill also allows the individual applicant or licensee to request a hearing to show cause why the suspension or revocation should be terminated.

We would like to offer our comments regarding the denial of initial licensure to an individual applying for a Hawaii nurse license that has had prior disciplinary action taken by another jurisdiction that resulted in the suspension or revocation of the nurse license. Currently, section 457-7, Hawaii Revised Statutes (“HRS”), allows the Board to use its discretion in granting a license to an “endorsement” applicant, someone licensed in another jurisdiction, if the applicant has an “unencumbered” license and meets the qualifications required for a nurse license in this State. The Board has consistently denied nurse applicants who had prior disciplinary action taken in another jurisdiction

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Wednesday, February 3, 2016
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that resulted in the suspension, revocation, or even probation of the license as the Board considers these as “encumbrances” on the license. These applicants are already afforded the right to a contested case hearing in accordance with Chapter 91, HRS. Consequently, the language on page 18, lines 3 – 11, may not be necessary.

Thank you for the opportunity to testify on Senate Bill No. 2675.

**PRESENTATION OF THE
BOARD OF PHARMACY**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, February 3, 2016
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2675, RELATING TO LICENSING.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lee Ann Teshima, Executive Officer for the Board of Pharmacy ("Board"). I appreciate the opportunity to testify on Senate Bill No. 2675, Relating to Licensing, that would require the Board to deny an applicant for initial license as a pharmacist or suspend a license if the licensee had disciplinary action taken in another jurisdiction that resulted in the suspension or revocation of the license. The bill also allows the individual applicant (pharmacist) or licensee to request a hearing to show cause why the suspension or revocation should be terminated.

We would like to offer the following comments:

- "License" and "Permit" – The Board issues "licenses" and "permits". In the proposed amendments, we respectfully request that "or permit" or "or holder" be included after the word "license" or "licensee".
- Denial of initial pharmacist license – Currently, the Board has consistently denied the initial application for a pharmacist license by endorsement that has an "encumbered" license, pursuant to section 461-8.5, Hawaii Revised Statutes.

Consequently, the language on pages 23, lines 19 – 21 and page 24, lines 1 - 10, may not be necessary.

- Pharmacies, Miscellaneous Permits and Wholesale Distributors - What the bill does not address is the denial of initial applications for a pharmacy, miscellaneous permit, or wholesale distributors license or permit that may be encumbered in another jurisdiction.

Thank you for the opportunity to testify on Senate Bill No. 2675.

Hawaii State Legislature
State Senate
Committee on Commerce, Consumer Protection and Health

State Senator Rosalyn H. Baker, Chair
State Senator Michelle N. Kidani, Vice Chair
Committee on Commerce, Consumer Protection and Health

Wednesday, February 3, 2016, 9:00 a.m. Room 229
Senate Bill 2675 Relating to Licensing

Honorable Chair Rosalyn H. Baker, Vice Chair Michelle N. Kidani, and members of the Senate Committee on Commerce, Consumer Protection and Health,

My name is Russel Yamashita and I am the legislative representative for the Hawaii Dental Association (HDA) and its 960 member dentists. I appreciate the opportunity to testify in support of Senate Bill 2675 Relating to Licensing. This bill is similar to legislation that the HDA sought to have enacted last year that would have provided the Board of Dental Examiners the authority to issue cease and desist orders to stop those persons who were practicing without proper licensure in Hawaii or whose conduct was in violation of the Hawaii statutes and rules governing the practice of dentistry in Hawaii. This bill seeks to address the problem that has arisen in which the governing boards may have overlooked the licensing problems a licensee had in another state or jurisdiction which would raise possible problems for Hawaii consumers.

The HDA would like to point out that the Hawaii State Board of Dental Examiners does differ in the statutory licensing process because each dentist seeking licensure in Hawaii is screened individually and thoroughly prior to licensure in Hawaii. It is the HDA's understanding that this differs from the licensure for medical doctors who are granted licensure in Hawaii.

Also, the HDA would like to suggest that this legislation be expanded to include violations of Hawaii statutes and rules which would be in alignment with the intent of HDA's cease and desist legislation it requested in 2009 and last year.



Wednesday February 3, 2016

9:00 AM.

Capitol Rm. 229

To: SENATE COMMITTEE ON CONSUMER PROTECTION AND HEALTH
Sen. Rosalyn Baker, Chair
Sen. Michelle Kidani, Vice Chair

From: Hawaii Medical Association
Dr. Scott McCaffrey, MD, President
Dr. Linda Rasmussen, MD, Legislative Co-Chair
Dr. Ronald Keinitz, MD, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

Re: SB 2675 – RELATING TO LICENSING

IN SUPPORT, WITH AMENDMENTS

Chair, Vice Chair, and Committee Members:

The Hawaii Medical Association supports SB 2675 in principal, however would offer amendments to Sections 4 and 5 of the bill.

While the HMA is fully supportive of quick and decisive action in the event of adverse disciplinary actions taken against physicians in other state, we feel the language of the bill should maintain the discretionary and decision-making power of the Board of Medicine rather than proscriptive statutory language. It is especially important that we utilize the Board members experience and expertise in dealing with actions involving privilege revocation, as there are multiple reasons this might occur, including those which do not effect patient safety, including administrative suspension for delinquent medical records or age-related revocation.

The HMA further recommends the establishment of a mechanism in which the Board may exercise its summary suspension powers within 48 hours of discovery of a significant risk to Hawaii patient safety

Thank you for the opportunity to provide this testimony.

OFFICERS

**PRESIDENT – D. SCOTT MCCAFFREY, MD, PRESIDENT ELECT – BERNARD ROBINSON, MD
IMMEDIATE PAST PRESIDENT – ROBERT SLOAN, MD, SECRETARY - THOMAS KOSASA, MD,
TREASURER – MICHAEL CHAMPION, MD, EXECUTIVE DIRECTOR – CHRISTOPHER FLANDERS, DO**

**PRESENTATION OF THE
HAWAII MEDICAL BOARD**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, February 3, 2016
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2675, RELATING TO LICENSING.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Jone Geimer-Flanders, D.O., and I am a member of the Hawaii Medical Board's ("**Board**") Legislative Committee. Thank you for the opportunity to testify on Section 4 and Section 5 of Senate Bill No. 2675.

The Board appreciates the intent of this measure, but would like to outline for the Committee's consideration, the following comments and/or concerns below:

These sections propose to require the Board to: refuse to grant a license to an applicant whose licenses or medical privileges were suspended or revoked in another jurisdiction to undergo a hearing, in accordance with Hawaii Revised Statutes ("HRS") Chapter 91, to show cause why the suspension or revocation shall be terminated; summarily suspend a Hawaii license upon determination that a licensee has had a license suspended or revoked in any other jurisdiction, pending a hearing to show cause; and issue orders of summary suspension or disciplinary action taken due to actions arising in other jurisdictions to be public record.

- **Section 4:** The Board believes that this provision would greatly interfere with the Board's ability to perform its legislatively created role as a

regulating entity. The Board has been entrusted by the Legislature to use its collective expertise and best judgment in reviewing all license applications, and this Board has always taken its responsibilities very seriously. It was noted that the Board currently has the statutory authority to refuse to grant a license to an applicant pursuant to HRS §§453-8 and 436B-19. Any person aggrieved by the denial or refusal to grant a license may request a contested case hearing pursuant to HRS §91-13.1. The requirement that the Board refuse to grant a license does not allow the Board to assert its discretion to determine whether an individual is safe, competent, and rehabilitated. The Board takes its responsibility to protect the consumers of this great State from unsafe and incompetent physicians very seriously, and would never knowingly jeopardize consumer safety. The Board suggests that the word “shall” on page 11, line 9, be replaced with the word “may”.

- **Section 4 and Section 5:** The Board queries how taxing the requirement of a contested case hearing would be on administrative staff. In particular, the Professional and Vocational Licensing Division currently has one staff member, a Special Deputy Attorney General that is responsible for, among other things, representing the Board’s position in contested case hearings. Additionally, the Office of Administrative Hearings, the division in the Department of Commerce and Consumer Affairs responsible for hearing these types of cases may be burdened with an inordinate amount of hearings.

- **Section 4 (page 11, line 7) and Section 5 (page 14, line 1) reference to “medical privileges”:** The Board understands the intent of including the suspension or revocation of medical privileges, but would like to advise members of the Committee that medical privileges may be suspended or revoked for reasons other than competency, unsafe practice, or professionalism issues. For instance, a physician’s medical privileges may be administratively suspended for not signing medical records. Given this information, the Board requests that the Committee consider including language that clearly identifies that the suspension or revocation of medical privileges are for competency, unsafe practice, or professionalism issues.
- **Section 5. Subsection (b):** The Board requests that the Committee consider replacing this language with the proposed language in Senate Bill No. 2864, Section 1.

Thank you for the opportunity to testify on Senate Bill No. 2675.

