

CHAPTER 453
MEDICINE AND SURGERY

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Physicians, appointment as child custody evaluators, see §571-46.4.

Primary health care incentive program, see §321-1.5.

Law Journals and Reviews

Driving into the Sunset: A Proposal for Mandatory Reporting to the DMV by Physicians Treating Unsafe Elderly Drivers. 25 UH L. Rev. 59 (2002).

Medical Malpractice in Hawai'i: Tort Crisis or Crisis of Medical Errors? 30 UH L. Rev. 167 (2007).

"[PART I. GENERALLY]

Revision Note

Part heading added by revisor.

§453-1 Practice of medicine defined. For the purposes of this chapter the practice of medicine by a physician or an osteopathic physician includes the use of drugs and medicines, water, electricity, hypnotism, osteopathic medicine, or any means or method, or any agent, either tangible or intangible, for the treatment of disease in the human subject; provided that when a duly licensed physician or osteopathic physician pronounces a person affected with any disease hopeless and beyond recovery and gives a written certificate to that effect to the person affected or the person's attendant nothing herein shall forbid any person from giving or furnishing any remedial agent or measure when so requested by or on behalf of the affected person.

This section shall not amend or repeal the law respecting the treatment of those affected with Hansen's disease.

For purposes of this chapter, "osteopathic medicine" means the utilization of full methods of diagnosis and treatment in physical and mental health and disease, including the prescribing and administration of drugs and biologicals of all kinds, operative surgery, obstetrics, radiological, and other electromagnetic emissions, and placing special emphasis on the interrelation of the neuro-musculoskeletal system to all other body systems, and the amelioration of disturbed structure-function relationships by the clinical application of the osteopathic diagnosis and therapeutic skills for the maintenance of health and treatment of disease. [L 1896, c 60, §2; am L 1909, c 133, §1; RL 1925, §1023; RL 1935, §1201; RL 1945, §2502; am L 1949, c 53, §29 and c 63, §1; RL 1955, §64-1; am L 1965, c 218, §1; HRS §453-1; am L 1969, c 152, §1; am L 1981, c 185, §1; am L 1983, c 124, §16; gen ch 1985; am L 2008, c 5, §1]

Cross References

Determination of death, see §327C-1.

Attorney General Opinions

Medical acupuncture is not sufficiently distinct from traditional acupuncture so as to fall outside the scope of the practice of acupuncture. Physicians licensed by board of medical examiners cannot practice medical acupuncture absent licensure by board of acupuncture. Att. Gen. Op. 03-5.

Law Journals and Reviews

Should The Right To Die Be Protected? Physician Assisted Suicide And Its Potential Effect On Hawai'i. 19 UH L. Rev. 783 (1997).

Physician Assisted Suicide: Expanding the Laboratory to the State of Hawai'i. 29 UH L. Rev. 269 (2006).

Case Notes

"Practice" defined. 21 H. 465 (1913).

Decision of private hospitals concerning granting of staff privileges to licensed doctors is subject to judicial review if hospital has received government funds. 53 H. 475, 497 P.2d 564 (1972).

" **§453-1.3 Practice of telehealth.** [Section effective until December 31, 2016. For section effective January 1, 2017, see below.] (a) Subject to section 453-2(b), nothing in this

section shall preclude any physician acting within the scope of the physician's license to practice from practicing telehealth as defined in this section.

(b) For the purposes of this section, "telehealth" means the use of telecommunications as that term is defined in section 269-1, including but not limited to real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, for the purposes of delivering enhanced health care services and information to parties separated by distance, establishing a physician-patient relationship, evaluating a patient, or treating a patient.

(c) Telehealth services shall include a documented patient evaluation, including history and a discussion of physical symptoms adequate to establish a diagnosis and to identify underlying conditions or contraindications to the treatment recommended or provided.

(d) Treatment recommendations made via telehealth, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional physician-patient settings that do not include a face-to-face visit but in which prescribing is appropriate, including on-call telephone encounters and encounters for which a follow-up visit is arranged. Issuing a prescription based solely on an online questionnaire is not treatment for the purposes of this section and does not constitute an acceptable standard of care. For the purposes of prescribing a controlled substance, a physician-patient relationship shall be established pursuant to chapter 329.

(e) All medical reports resulting from telehealth services are part of a patient's health record and shall be made available to the patient. Patient medical records shall be maintained in compliance with all applicable state and federal requirements including privacy requirements.

(f) A physician shall not use telehealth to establish a physician-patient relationship with a patient in this State without a license to practice medicine in Hawaii. Once a provider-patient relationship is established, a patient or physician licensed in this State may use telehealth for any purpose, including consultation with a medical provider licensed in another state, authorized by this section or as otherwise provided by law.

(g) Reimbursement for behavioral health services provided through telehealth shall be equivalent to reimbursement for the

same services provided via face-to-face contact between a health care provider and a patient. [L 2009, c 20, §2; am L 2013, c 189, §1; am L 2014, c 159, §7]

§453-1.3 Practice of telehealth. *[Section effective January 1, 2017. For section effective until December 31, 2016, see above.]* (a) Subject to section 453-2(b), nothing in this section shall preclude any physician acting within the scope of the physician's license to practice from practicing telehealth as defined in this section.

(b) Telehealth services shall include a documented patient evaluation, including history and a discussion of physical symptoms adequate to establish a diagnosis and to identify underlying conditions or contraindications to the treatment recommended or provided.

(c) Treatment recommendations made via telehealth, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional physician-patient settings that do not include a face-to-face visit but in which prescribing is appropriate, including on-call telephone encounters and encounters for which a follow-up visit is arranged. Issuing a prescription based solely on an online questionnaire is not treatment for the purposes of this section and does not constitute an acceptable standard of care. For the purposes of prescribing opiates or medical marijuana, a physician-patient relationship shall only be established after an in-person consultation between the prescribing physician and the patient.

(d) All medical reports resulting from telehealth services are part of a patient's health record and shall be made available to the patient. Patient medical records shall be maintained in compliance with all applicable state and federal requirements including privacy requirements.

(e) A physician shall not use telehealth to establish a physician-patient relationship with a patient in this State without a license to practice medicine in Hawaii.

(f) A physician-patient relationship may be established via telehealth if the patient is referred to the telehealth provider by another health care provider who has conducted an in-person consultation and has provided all pertinent patient information to the telehealth provider. Once a provider-patient relationship is established, a patient or physician licensed in this State may use telehealth for any purpose, including consultation with a medical provider licensed in another state, authorized by this section or as otherwise provided by law.

(g) The physician-patient relationship prerequisite under this section shall not apply to telehealth consultations for emergency department services.

(h) Reimbursement for behavioral health services provided through telehealth shall be equivalent to reimbursement for the same services provided via face-to-face contact between a health care provider and a patient.

(i) Services provided by telehealth pursuant to this chapter shall be consistent with all federal and state privacy, security, and confidentiality laws.

(j) For the purposes of this section:

"Distant site" means the location of the physician delivering services through telehealth at the time the services are provided.

"Originating site" means the location where the patient is located, whether accompanied or not by a health care provider, at the time services are provided by a physician through telehealth, including but not limited to a physician's office, hospital, health care facility, a patient's home, and other non-medical environments such as school-based health centers, university-based health centers, or the work location of a patient.

"Telehealth" means the use of telecommunications as that term is defined in section 269-1, to encompass four modalities: store and forward technologies, remote monitoring, live consultation, and mobile health; and which shall include but not be limited to real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, for the purposes of: delivering enhanced health care services and information while a patient is at an originating site and the physician is at a distant site; establishing a physician-patient relationship; evaluating a patient; or treating a patient. [L 2009, c 20, §2; am L 2013, c 189, §1; am L 2014, c 159, §7; am L 2016, c 226, §9]

" **§453-1.5 Pain management guidelines.** The Hawaii medical board may establish guidelines for physicians or osteopathic physicians with respect to patients' pain management. The guidelines shall apply to all patients with severe acute pain or severe chronic pain, regardless of the patient's prior or current chemical dependency or addiction, and may include standards and procedures for chemically dependent individuals. [L 2004, c 189, §2; am L 2008, c 5, §2 and c 9, §3]

" **§453-2 License required; exceptions.** (a) Except as otherwise provided by law, no person shall practice medicine or surgery in the State, either gratuitously or for pay, or offer to practice medicine or surgery in the State, or advertise or announce one's self, either publicly or privately, as prepared or qualified to practice medicine or surgery in the State, or append the letters "Dr.", "M.D.", or "D.O." to one's name with the intent to imply that the person is a practitioner of medicine or surgery, without having a valid unrevoked license or a limited and temporary license obtained from the Hawaii medical board.

- (b) Nothing herein shall:
 - (1) Apply to so-called Christian Scientists; provided that the Christian Scientists practice the religious tenets of their church without pretending a knowledge of medicine or surgery;
 - (2) Prohibit service in the case of emergency or the domestic administration of family remedies;
 - (3) Apply to any commissioned medical officer in the United States armed forces or public health service engaged in the discharge of one's official duty, including a commissioned medical officer employed by the United States Department of Defense, while providing direct telehealth support or services to neighbor island beneficiaries within a Hawaii National Guard armory on the island of Kauai, Hawaii, Molokai, or Maui; provided that the commissioned medical officer employed by the United States Department of Defense is credentialed by Tripler Army Medical Center;
 - (4) Apply to any practitioner of medicine and surgery from another state when in actual consultation, including in-person, mail, electronic, telephonic, fiber-optic, or other telehealth consultation with a licensed physician or osteopathic physician of this State, if the physician or osteopathic physician from another state at the time of consultation is licensed to practice in the state in which the physician or osteopathic physician resides; provided that:
 - (A) The physician or osteopathic physician from another state shall not open an office, or appoint a place to meet patients in this State, or receive calls within the limits of the State for the provision of care for a patient who is located in this State;
 - (B) The licensed physician or osteopathic physician of this State retains control and remains

responsible for the provision of care for the patient who is located in this State; and
(C) The laws and rules relating to contagious diseases are not violated;

(5) Prohibit services rendered by any person certified under part II of this chapter to provide emergency medical services, or any physician assistant, when the services are rendered under the direction and control of a physician or osteopathic physician licensed in this State except for final refraction resulting in a prescription for spectacles, contact lenses, or visual training as performed by an oculist or optometrist duly licensed by the State. The direction and control shall not be construed in every case to require the personal presence of the supervising and controlling physician or osteopathic physician. Any physician or osteopathic physician who employs or directs a person certified under part II of this chapter to provide emergency medical services, or a physician assistant, shall retain full professional and personal responsibility for any act that constitutes the practice of medicine when performed by the certified person or physician assistant;

(6) Prohibit automated external defibrillation by:
(A) Any first responder personnel certified by the department of health to provide automated external defibrillation when it is rendered under the medical oversight of a physician or osteopathic physician licensed in this State; or
(B) Any person acting in accordance with section 663-1.5(e); or

(7) *[Paragraph effective until December 31, 2016. For paragraph effective January 1, 2017, see below.]*
Prohibit a radiologist duly licensed to practice medicine and provide radiology services in another state from using telehealth while located in this State to provide radiology services to a patient who is located in the state in which the radiologist is licensed. For the purposes of this paragraph:

"Radiologist" means a doctor of medicine or a doctor of osteopathy certified in radiology by the American Board of Radiology or the American Board of Osteopathy.

"Telehealth" means the use of telecommunications, as that term is defined in section 269-1, including but not limited to real-time video conferencing-based communication, secure interactive and non-interactive

web-based communication, and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, for the purpose of delivering enhanced health care services and information to parties separated by distance. Standard telephone contacts, facsimile transmissions, or e-mail texts, in combination or by themselves, do not constitute a telehealth service for the purposes of this paragraph.

(7) *[Paragraph effective January 1, 2017. For paragraph effective until December 31, 2016, see above.]*

Prohibit a radiologist duly licensed to practice medicine and provide radiology services in another state from using telehealth while located in this State to provide radiology services to a patient who is located in the state in which the radiologist is licensed. For the purposes of this paragraph:

"Distant site" means the location of the radiologist delivering services through telehealth at the time the services are provided.

"Originating site" means the location where the patient is located, whether accompanied or not by a health care provider, at the time services are provided by a radiologist through telehealth, including but not limited to a radiologist's or health care provider's office, hospital, health care facility, a patient's home, and other non-medical environments such as school-based health centers, university-based health centers, or the work location of a patient.

"Radiologist" means a doctor of medicine or a doctor of osteopathy certified in radiology by the American Board of Radiology or the American Board of Osteopathy.

"Telehealth" means the use of telecommunications, as that term is defined in section 269-1, to encompass four modalities: store and forward technologies, remote monitoring, live consultation, and mobile health; and which shall include but not be limited to real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital images and laboratory results for medical

interpretation and diagnosis, for the purpose of delivering enhanced health care services and information while a patient is at an originating site and the radiologist is at a distant site. Standard telephone contacts, facsimile transmissions, or e-mail texts, in combination or by themselves, do not constitute a telehealth service for the purposes of this paragraph.

(c) Nothing in this chapter shall prohibit healing practices by traditional Hawaiian healers engaged in traditional Native Hawaiian healing practices, both as recognized and certified as such by any kupuna council convened by Papa Ola Lokahi. No person or organization involved with the selection of kupuna council members, the convening of a kupuna council, or the certification process of healers under this subsection shall be sued or held liable for any cause of action that may arise out of their participation in the selection, convening, or certification process. Nothing in this chapter shall limit, alter, or otherwise adversely affect any rights of practice of traditional Native Hawaiian healing pursuant to the Constitution of the State of Hawaii. [L 1896, c 60, §1; am L 1905, c 48, §1; am L 1909, c 124, §1; am L 1919, c 22, §1; am L 1920, c 37, §2; am L 1921, c 14; RL 1925, §1022; am L 1925, c 26, §1; RL 1935, §1200; am L 1939, c 183, §1; RL 1945, §2501; RL 1955, §64-2; am L 1959, c 271, §1; am L Sp 1959 2d, c 1, §19; HRS §453-2; am L 1969, c 257, §1; am L 1973, c 111, §1; am L 1976, c 219, §6; am L 1977, c 167, §12; am L 1978, c 148, §2(2); am L 1982, c 112, §4; am L 1983, c 92, pt of §1(1); am L 1984, c 168, §7; am L 1985, c 68, §14; am L 1987, c 147, §1; am L 1988, c 110, §1; am L 1993, c 163, §1; am L 1997, c 364, §3; am L 1998, c 160, §1 and c 162, §§3, 6; am L 2000, c 209, §1(2); am L 2001, c 304, §§1, 3; am L 2005, c 153, §1; am L 2007, c 91, §1 and c 255, §1; am L 2008, c 5, §3 and c 9, §3; am L 2013, c 189, §2; am L 2014, c 159, §8; am L 2016, c 226, §10]

Note

Papa Ola Lokahi; definitions and other related matters. L 1998, c 162; L 2000, c 209; L 2001, c 304; L 2005, c 153.

L 2007, c 255, §3 provides:

"SECTION 3. Nothing herein shall be deemed to permit a radiologist without a license to practice medicine in Hawaii, wherever located, to provide services to a patient who is located in Hawaii."

Attorney General Opinions

There is no prohibition against the use by unlicensed doctor of the letters "Dr." or any synonym thereof if the possibility for deception is removed. Att. Gen. Op. 63-55.

Foreign professional (medical) corporation cannot transact business in Hawaii as a foreign corporation. Att. Gen. Op. 80-5.

Case Notes

Prior to enactment of chapter, both license and certificate from board of health were necessary. 4 H. 9 (1877).

Treasurer cannot revoke licenses issued on recommendation of board of health. 15 H. 273 (1903).

L 1905, c 48, requiring applicant to pay fee held invalid. 17 H. 389 (1906).

City and county cannot pass an ordinance injuriously affecting the status of territorial licenses. 29 H. 422 (1926).

Pleading and proof in prosecution for practicing medicine without license. 21 H. 465 (1913).

" **§453-3 Limited and temporary licenses.** The Hawaii medical board shall issue a limited and temporary license to an applicant who has not been examined as required by section 453-4, and against whom no disciplinary proceedings are pending in any state or territory, if the applicant is otherwise qualified to be examined, and upon determination that:

- (1) There is an absence or a shortage of licensed physicians or osteopathic physicians in a particular locality, and that the applicant has been duly licensed as a physician or osteopathic physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall permit the practice of medicine and surgery by the applicant only in the particular locality, and no other, as shall be set forth in the license issued to the applicant. The license shall be valid only for a period of eighteen months from the date of issuance. The board shall establish guidelines to determine a locality with an absence or shortage of physicians or osteopathic physicians. For this purpose, the board may consider a locality to have an absence or shortage of physicians or osteopathic physicians if the absence or shortage results from the temporary loss of a physician or osteopathic physician. In designating a locality with an absence or shortage of physicians or

- osteopathic physicians, the board shall not delegate its authority to a private organization;
- (2) The applicant is to be employed by an agency or department of the state or county government, and that the applicant has been duly licensed as a physician or osteopathic physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall only be valid for the practice of medicine and surgery while the applicant is in the employ of the governmental agency or department and in no case shall be used to provide private patient care for a fee. A license issued under this paragraph may be renewed from year to year;
 - (3) The applicant would practice medicine and surgery only while under the direction of a physician or osteopathic physician regularly licensed in the State other than as permitted by this section, and that the applicant intends to take the regular licensing examination conducted by the board within the next eighteen months. A limited and temporary license issued under this paragraph shall be valid for no more than eighteen months from the date of issuance, unless otherwise extended at the discretion of the Hawaii medical board; provided that this discretionary extension shall not exceed a period of six months beyond the original expiration date of the limited and temporary license;
 - (4) The applicant has been appointed as a resident or accepted for specialty training in a health care facility or organized ambulatory health care facility as defined in section 323D-2 or a hospital approved by the board, and that the applicant shall be limited in the practice of medicine and surgery to the extent required by the duties of the applicant's position or by the program of training while at the health care facility, organized ambulatory health care facility, or hospital. The license shall be valid during the period in which the applicant remains as a resident in training, and may be renewed from year to year during the period; or
 - (5) A public emergency exists, and that the applicant has been duly licensed as a physician or osteopathic physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall only be valid for the period of the public emergency.

Nothing herein requires the registration or licensing hereunder of nurses, or other similar persons, acting under the direction and control of a licensed physician or osteopathic physician. [L 1965, c 218, §2; Supp, §64-2.5; HRS §453-3; am L 1969, c 257, §2; am L 1970, c 32, §1; am L 1973, c 126, §1; am L 1983, c 92, pt of §1(1); am L 1984, c 168, §8; am L 1988, c 110, §2; am L 1992, c 68, §1; am L 1997, c 74, §1; am L 2008, c 5, §4 and c 9, §3]

Attorney General Opinions

"Direction" of physician under prior law construed. Att. Gen. Op. 63-55.

Case Notes

Where a physician without a Hawaii license is authorized under paragraph (3) to practice under the direction of a licensed physician, the absence of a license is immaterial on the question of negligence in the treatment of a patient. 53 H. 526, 497 P.2d 1354 (1972).

" **§453-3.1 REPEALED.** L 1983, c 92, §1(11).

" **§453-3.2 Educational teaching license.** (a) The board may issue an educational teaching license to a physician or osteopathic physician who is not licensed in this State and who is invited by the chief of service of a clinical department of a hospital to provide and promote professional education for students, interns, residents, fellows, doctors of medicine, and doctors of osteopathic medicine in this State. In no case shall an educational teaching license issued hereunder be valid for more than a period of twelve months from the date of issuance of the license.

(b) To receive an educational teaching license, the applicant shall:

- (1) Complete an application as prescribed by the board, which shall include a summary of the applicant's medical, educational, and professional background;
- (2) Provide proof that the applicant is licensed as a physician or osteopathic physician in another state or country and the license is current and in good standing;
- (3) Submit a letter with the application signed by the chief of service of a clinical department of a hospital attesting that the chief of service is a licensed physician or osteopathic physician of this

State and is requesting to sponsor and monitor the applicant while the person is engaged in educational or teaching activities for the hospital under an educational teaching license; and

(4) Pay all applicable fees.

(c) The holder of an educational teaching license shall not open or appoint a place to meet patients, or receive calls from patients relating to the practice of medicine, beyond the parameters of the hospital that is sponsoring and monitoring the licensee's activities.

(d) The holder of an educational teaching license shall obey all laws and rules of this State. [L 1992, c 22, §1; am L 2008, c 5, §5]

" **§453-3.5 Training replacement temporary license.** (a) The board may issue a limited and temporary license to a physician or osteopathic physician to maintain patient services for the purpose of substituting for another physician or osteopathic physician licensed in this State to enable specialized training at an out-of-state fully accredited medical teaching institution; provided that the out-of-state physician or osteopathic physician:

- (1) Is board certified by the American Board of Medical Specialties or Bureau of Osteopathic Specialties in the subspecialty in which the Hawaii physician or osteopathic physician is seeking training;
- (2) Is a member of the teaching faculty of the accredited medical teaching institution;
- (3) Has an unrestricted license in another state;
- (4) Has been invited by the chief of a clinical department of a hospital; and
- (5) Has been examined and approved by the hospital's credential process.

The limited and temporary license issued under this section shall expire upon notification of the board by the Hawaii-licensed physician or osteopathic physician that the physician or osteopathic physician has resumed the physician's or osteopathic physician's practice in this State. Licenses and extensions of licenses issued under this section to an individual shall not be valid for more than nine months during any consecutive twenty-four month period.

(b) The chief of the clinical department in which the out-of-state physician or osteopathic physician will practice shall submit a letter to the board that shall include, without limitation, the following:

- (1) Identification and documentation of unrestricted license for the applicant for the specialty training license;
- (2) A statement that the hospital is sponsoring the applicant, and shall be responsible for monitoring the individual physician or osteopathic physician during the period of the temporary license;
- (3) Verification of the start and end dates for the requested temporary license; and
- (4) Verification that the chief of the clinical department is a licensed physician or osteopathic physician of this State.

(c) The holder of a specialty training license shall obey and be subject to all laws and rules of this State. [L 1997, c 364, §2; am L 2008, c 5, §6]

" **§453-4 Qualifications for examination and licensure.** (a) Except as otherwise provided by law, no person shall be licensed to practice medicine or surgery unless the applicant has passed an examination and has been found to possess the necessary qualifications. No applicant shall be eligible for the examination sooner than the first year of residency; provided that if the applicant is a graduate of a foreign medical school, the applicant shall be eligible no sooner than the second year of residency.

(b) Before any applicant shall be eligible for licensure, the applicant shall furnish proof satisfactory to the board that:

- (1) The applicant is of demonstrated competence and professional knowledge; and
- (2) The applicant is a graduate of:
 - (A) A medical school or college whose program leading to the M.D. degree is accredited by the Liaison Committee on Medical Education or whose program leading to the D.O. degree is approved by the American Osteopathic Association Commission on Osteopathic College Accreditation, and has served a residency of at least one year in a program that has been accredited for the training of resident physicians or osteopathic physicians by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, respectively, or a residency of at least one year in a program in Canada that has been accredited for the training of resident physicians by the Royal College of Physicians and

- Surgeons of Canada, or the College of Family Physicians of Canada; or
- (B) A foreign medical school and has had at least two years of residency in a program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or has had at least two years of residency in a program in Canada that has been accredited for the training of resident physicians by the Royal College of Physicians and Surgeons of Canada, or by the College of Family Physicians of Canada; and:
- (i) Holds the national certificate of the Educational Commission for Foreign Medical Graduates, or its successor, or for applicants with residency training in Canada, has passed with scores deemed satisfactory by the board, the Medical Council of Canada Evaluating Examination, or its successor; or
- (ii) Holds the certificate of the Fifth Pathway Program of the American Medical Association; provided that for a period of two years after June 26, 2004, the requirements of subsection (b) (2) (B) (i) and (ii) shall not apply to any applicant who has had four years of residency in a program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association and who has passed, with scores deemed satisfactory by the board, the Special Purpose Examination (SPEX).

(c) Applicants who have passed, with scores deemed satisfactory by the board, the National Board of Medical Examiners examination (NBME), the Federation Licensing Examination (FLEX), the United States Medical Licensing Examination (USMLE), or a combination of these examinations as approved by the board, or the National Board of Osteopathic Medical Examiners examination (NBOME), the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA), or the Medical Council of Canada Qualifying Examination (MCCQE), and who meet the requirements of subsection (b) shall be licensed without the necessity of any further examination; provided that with respect to any applicant, the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service or attending physicians or osteopathic physicians who have been associated with an applicant, or chief residents on a service who have been associated with an

applicant during the applicant's training or practice, to be used by the board in assessing the applicant's qualifications to practice medicine.

(d) Applicants who are licensed in another state by virtue of having passed a state-produced examination may qualify for licensure if they have passed the Special Purpose Examination (SPEX) or the Comprehensive Osteopathic Medical Variable-Purpose Examination - USA (COMVEX-USA) and meet the requirements of subsection (b); provided that the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service, attending physicians, or osteopathic physicians who have been associated with an applicant, or chief residents on a service who have been associated with an applicant during the applicant's training or practice, to be used by the board in assessing the applicant's qualifications to practice medicine. [L 1896, c 60, §3; am L 1920, c 37, §1; RL 1925, §1024; am L 1925, c 26, §2; RL 1935, §1203; am L 1939, c 183, §1; am L 1941, c 181, §1; am L Sp 1941, c 40, §§1 to 3; RL 1945, §2503; am L 1951, c 173, §1; RL 1955, §64-3; am L 1957, c 219, §1; am L 1959, c 149, §1 and c 271, §2; am L 1961, c 72, §1; am L 1965, c 218, §3; HRS §453-4; am L 1969, c 152, §1 and c 257, §3; am L 1970, c 75, §1; am L 1972, c 167, §1; am L 1973, c 126, §2; am L 1976, c 219, §7; am L 1982, c 227, §2; am L 1983, c 92, pt of §1(2); am L 1984, c 168, §9; am L 1985, c 25, §1 and c 54, §1; am L 1988, c 110, §3; am L 1990, c 295, §1; am L 1993, c 164, §1; am L 1996, c 103, §1 and c 183, §1; am L 2004, c 205, §2; am L 2008, c 5, §7]

Note

Periodic review of subsection (b). L 2004, c 205, §3.

" **§453-4.5 Foreign medical graduates; alternative qualifications.** Notwithstanding section 453-4(b)(2)(B), a graduate of a foreign medical school who has passed the Federation Licensing Examination (FLEX) or the United States Medical Licensing Examination (USMLE), or a combination of these examinations as approved by the board, with scores deemed satisfactory to the board, passed the qualifying examination of the Educational Commission for Foreign Medical Graduates prior to 1984, and has at least three years of medical training or experience in a hospital approved by the Council on Medical Education and Hospitals of the American Medical Association for internship or residency may be licensed by the Hawaii medical board under section 453-4(c). [L 1988, c 133, §1; am L 1993, c 164, §2; am L 2008, c 9, §3]

" **§453-5 Hawaii medical board; appointment, removal, qualifications.** (a) For the purpose of carrying out this chapter, the governor shall appoint a Hawaii medical board whose duty it shall be to examine all applicants for license to practice medicine or surgery. As used in this chapter, "board" means the Hawaii medical board.

The board shall consist of eleven persons, seven of whom shall be physicians or surgeons licensed under the laws of the State, two of whom shall be osteopathic physicians licensed under the laws of the State, and two of whom shall be lay members appointed from the public at large. Of the nine members who are physicians, surgeons, or osteopathic physicians, at least five shall be appointed from the city and county of Honolulu and at least one shall be appointed from each of the other counties. Medical societies in the various counties may conduct elections periodically but no less frequently than every two years to determine nominees for the board to be submitted to the governor. In making appointments, the governor may consider recommendations submitted by the medical societies and the public at large. Each member shall serve until a successor is appointed and qualified.

(b) The department shall employ, not subject to chapter 76, an executive secretary to administer the board's activities and an employee to administer the medical inquiry and conciliation panels established under chapter 671. The employee responsible for administration of the medical inquiry and conciliation panels shall have no duties in administration of the board's activities. [L 1896, c 60, §4; RL 1925, §1025; RL 1935, §1204; RL 1945, §2504; am L 1953, c 86, §1; RL 1955, §64-4; am L Sp 1959 2d, c 1, §§5, 19; HRS §453-5; am L 1969, c 257, §4; am L 1976, c 219, §8; am L 1982, c 204, §8; am L 1983, c 92, pt of §1(2); am L 1984, c 168, §10; am L 1985, c 106, §1; am L 1992, c 202, §98; am L 1999, c 248, §3; am L 2000, c 253, §150; am L 2008, c 9, §2; am L 2012, c 296, §2]

Attorney General Opinions

Subsection (a) is constitutional, with regard to the use of the phrase "appointed and qualified" to describe when a successor's appointment terminates a holdover member's position. Att. Gen. Op. 16-3.

Law Journals and Reviews

Medical Malpractice in Hawai'i: Tort Crisis or Crisis of Medical Errors? 30 UH L. Rev. 167 (2007).

Case Notes

De facto officers' actions are not subject to collateral attack. 15 H. 273 (1903).

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

- (1) To adopt rules, pursuant to chapter 91; and
- (2) To enforce this chapter and rules adopted pursuant thereto. [L 1977, c 107, §1; ree L 1983, c 92, pt of §1(3); am L 1992, c 202, §99; am L 2008, c 9, §3]

" **§453-5.2 REPEALED.** L 1992, c 202, §212.

" **§453-5.3 Physician assistant; licensure required.** (a) The Hawaii medical board shall require each person practicing medicine under the supervision of a physician or osteopathic physician, other than a person licensed under section 453-3, to be licensed as a physician assistant. A person who is trained to do only a very limited number of diagnostic or therapeutic procedures under the direction of a physician or osteopathic physician shall not be deemed a practitioner of medicine or osteopathy and therefore does not require licensure under this section.

(b) The board shall establish medical educational and training standards with which a person applying for licensure as a physician assistant shall comply. The standards shall be at least equal to recognized national education and training standards for physician assistants.

(c) Upon satisfactory proof of compliance with the required medical educational and training standards, the board may grant state licensure to a person who has been granted certification based upon passage of a national certifying examination and who holds a current certificate from the national certifying entity approved by the board.

(d) The board shall approve temporary licensure of an applicant under this section. The applicant shall have graduated from a board approved training program within twelve months of the date of application and never taken a national certifying examination approved by the board but otherwise meets the requirements of this section. The applicant shall file a complete application with the board and pay all required fees. If the applicant fails to apply for, or to take, the first examination scheduled by the board following the issuance of the

temporary license, fails to pass the examination, or fails to receive licensure, all privileges under this section shall automatically cease upon written notification sent to the applicant by the board. A temporary license shall be issued only once to each person.

(e) Prior to practicing under temporary licensure, holders of temporary licenses shall notify the board in writing of any and all supervising physicians or osteopathic physicians under whom they will be performing services.

(f) The board shall establish the degree of supervision required by the supervising physician or osteopathic physician when a physician assistant performs a service within the practice of medicine. A physician or osteopathic physician who does not supervise a physician assistant's services at the degree required by the board shall be deemed to have engaged in professional misconduct.

(g) Any license of a physician assistant may be denied, not renewed, revoked, limited, or suspended under section 453-8.

(h) The board shall establish the application procedure, medical educational and training standards, examination requirement, if any, and degrees of supervision by rule.

(i) Every person holding a license under this section shall apply for renewal with the board no later than January 31 of each even-numbered year and pay a renewal fee. Failure to apply for renewal shall constitute a forfeiture of the license that may only be restored upon written application for restoration and payment to the board of a restoration fee.

(j) A license that has been forfeited for one renewal term shall be automatically terminated and cannot be restored. A new application for licensure shall be required. [L 1984, c 168, pt of §1; am L 1986, c 144, §1; am L 1988, c 110, §4; am L 1989, c 181, §2; am L 1991, c 52, §1; am L 1999, c 90, §3; am L 2008, c 5, §8 and c 9, §3]

" **§453-5.4 Physician assistant advisory committee.** There shall be a physician assistant advisory committee under the Hawaii medical board consisting solely of persons licensed under section 453-5.3. The committee shall review all complaints and requests relating to physician assistants, and review and recommend revisions of the physician assistant regulations.

The chairperson of the committee shall be the representative for the committee members to the Hawaii medical board for the purpose of providing input to the board from the physician assistant's perspective on issues and concerns, including complaints and requests, regarding physician assistants. The chairperson shall not be a member of the Hawaii

medical board to avoid conflict of interests. [L 1993, c 183, §3; am L 1999, c 90, §4; am L 2008, c 9, §3]

" **[\$453-5.5] Physician assistant; authority to sign documents.** Any physician assistant who holds a current, valid, and permanent license to practice medicine pursuant to this chapter, and who is under the supervision of a licensed physician or osteopathic physician, shall have the authority to sign the following documents:

- (1) Certification of psychiatric medical condition of the parents of a child applicant for aid from the temporary assistance for needy families program;
- (2) Evaluation forms for Hansen's disease patients;
- (3) Orders for physical therapy and plans of care;
- (4) Pharmacist orders to assist in monitoring and management of anticoagulation anemia and atrial fibrillation;
- (5) Orders for speech therapy and plans of care;
- (6) Applications for bracelets indicating compassionate care only;
- (7) Admissions applications for foster homes;
- (8) Dietary consultations forms; and
- (9) Medicaid application forms for nursing care facility admission. [L 2009, c 151, §2]

" **§453-6 Fees; expenses.** (a) No applicant shall be examined under this chapter until the applicant has paid to the board application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses.

(b) Every physician or surgeon holding a license under this chapter shall renew the license with the board no later than January 31 of each even-numbered year. Every osteopathic physician or surgeon holding a license previously issued under chapter 460 and this chapter shall renew the license with the board no later than June 30 of each even-numbered year. Every physician, osteopathic physician, or surgeon shall pay a renewal fee and comply with the category 1 or 1A continuing medical education requirements provided in rules adopted by the board.

(c) A physician, osteopathic physician, or surgeon shall meet the category 1 or 1A continuing medical education requirements by obtaining credit hours in a category 1 or 1A continuing medical education program accredited by the American Medical Association or the American Osteopathic Association or in other approved category 1 or 1A continuing medical education as provided in the board's rules. To determine compliance, the board may conduct a random audit. A physician, osteopathic

physician, or surgeon selected for audit shall be notified by the board. Within sixty days of notification, the physician, osteopathic physician, or surgeon shall provide to the board documentation to verify compliance with the category 1 or 1A continuing medical education requirements.

(d) Failure to renew, pay the renewal fee, and, in the case of audited physicians, osteopathic physicians, or surgeons, provide documentation of compliance shall constitute a forfeiture of license, which may be restored only upon the submission of written application therefor, payment to the board of a restoration fee, and, in the case of audited physicians, osteopathic physicians, and surgeons, documentation of compliance.

(e) A license that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for licensure shall be required. [L 1896, c 60, §5; am L 1920, c 37, §2; am L 1921, c 14, §§5, 10; RL 1925, §1026; am L 1925, c 26, §3; am imp L 1925, cc 27, 29; RL 1935, §1205; am L 1939, c 183, pt of §1; RL 1945, §2505; RL 1955, §64-5; am L 1957, c 316, §5; am L Sp 1959 2d, c 1, §§14, 15; am L 1961, c 184, §10; am L 1963, c 114, §§1, 3; am L 1965, c 218, §4; HRS §453-6; am L 1971, c 31, §1; am L 1975, c 118, §17; am L 1976, c 219, §9; am L 1983, c 92, §1(4); am L 1985, c 87, §1; am L 1989, c 181, §3; am L 1992, c 202, §100; am L 2001, c 66, §1; am L 2008, c 5, §9]

" **§453-6.5 REPEALED.** L 1988, c 110, §5.

" **§453-7 Form of license.** The form of license to practice medicine and surgery shall be substantially as follows:

State of Hawaii, Hawaii Medical Board

License to Practice Medicine and Surgery

....., having been duly examined by the Hawaii Medical Board, and having been found to be possessed of the necessary qualifications, is hereby licensed to practice medicine and surgery in the State of Hawaii.

This license is granted and accepted on the express condition that it may be revoked at any time for any of the causes enumerated in section 453-8, Hawaii Revised Statutes, which cause or causes shall have been proven to the satisfaction of the Hawaii Medical Board.

Given under the seal of the Hawaii Medical Board this day of, A.D.

By
Chairperson, Hawaii Medical Board

The form of temporary and limited license to practice medicine and surgery shall be substantially as follows:

State of Hawaii, Hawaii Medical Board
Limited and Temporary License to Practice
Medicine and Surgery

....., having been duly considered by the Hawaii Medical Board, and having been found to be possessed of the necessary qualifications, is hereby temporarily licensed to practice medicine and surgery in the State of Hawaii, subject to the following conditions and limitations:

.....
This temporary and limited license is granted and accepted on the express condition that it may be revoked at any time for any of the causes enumerated in section 453-8, Hawaii Revised Statutes, or for any violation of the conditions and limitations contained herein.

Given under the seal of the Hawaii Medical Board this day of, A.D.
.....

By
Chairperson, Hawaii Medical Board

[L 1896, c 60, §9; RL 1925, §1027; am L 1925, c 26, §4; RL 1935, §1206; am L 1939, c 183, pt of §1; RL 1945, §2506; RL 1955, §64-6; am L 1963, c 59, §1; am L 1965, c 218, §5; HRS §453-7; am L 1969, c 257, §5; am L 1983, c 92, pt of §1(5); gen ch 1993; am L 2008, c 9, §3]

" **§453-7.5 Review of complaints and information by department.** (a) The department of commerce and consumer affairs shall review each complaint, inquiry, and information, as applicable, received under sections 92-17, 329-44, 453-8.7, 663-1.7, and 671-5. The department shall investigate the complaint, inquiry, or information if it appears that the physician or osteopathic physician who is the subject of the complaint, inquiry, or information has violated this chapter. If the department determines that the physician or osteopathic physician has violated this chapter, the department shall

present the results of its investigation to the Hawaii medical board for appropriate disciplinary proceedings.

(b) Reports of adverse decisions of peer review committees transmitted to the department under section 663-1.7 shall not be available to public inspection or subject to discovery and shall be held confidential by the department; provided that:

- (1) A written affirmative or negative reply may be given to a written inquiry by a hospital or health care facility as to whether a report of an adverse decision is on file with the department; and
- (2) A subpoenaed report shall be subject to the requirements under section 453-17. [L 1984, c 168, pt of §1; am L 2008, c 5, §10 and c 9, §3; am L 2012, c 296, §3]

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

- (1) Procuring, or aiding or abetting in procuring, a criminal abortion;
- (2) Employing any person to solicit patients for one's self;
- (3) Engaging in false, fraudulent, or deceptive advertising, including but not limited to:
 - (A) Making excessive claims of expertise in one or more medical specialty fields;
 - (B) Assuring a permanent cure for an incurable disease; or
 - (C) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;
- (4) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- (5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (6) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;
- (7) Professional misconduct, hazardous negligence causing bodily injury to another, or manifest incapacity in the practice of medicine or surgery;

- (8) Incompetence or multiple instances of negligence, including but not limited to the consistent use of medical service, which is inappropriate or unnecessary;
- (9) Conduct or practice contrary to recognized standards of ethics of the medical profession as adopted by the Hawaii Medical Association, the American Medical Association, the Hawaii Association of Osteopathic Physicians and Surgeons, or the American Osteopathic Association;
- (10) Violation of the conditions or limitations upon which a limited or temporary license is issued;
- (11) Revocation, suspension, or other disciplinary action by another state or federal agency of a license, certificate, or medical privilege;
- (12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician or osteopathic physician, notwithstanding any statutory provision to the contrary;
- (13) Violation of chapter 329, the uniform controlled substances act, or any rule adopted thereunder except as provided in section 329-122;
- (14) Failure to report to the board, in writing, any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days after the disciplinary decision is issued; or
- (15) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement or omission of fact.

(b) If disciplinary action related to the practice of medicine has been taken against the applicant by another state or federal agency, or if the applicant reveals a physical or mental condition that would constitute a violation under this section, then the board may impose one or more of the following requirements as a condition for licensure:

- (1) Physical and mental evaluation of the applicant by a licensed physician or osteopathic physician approved by the board;
- (2) Probation, including conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed physicians, osteopathic physicians, or surgeons;
- (3) Limitation of the license by restricting the fields of practice in which the licensee may engage;

- (4) Further education or training or proof of performance competency; and
- (5) Limitation of the medical practice of the licensee in any reasonable manner to assure the safety and welfare of the consuming public.

(c) Notwithstanding any other law to the contrary, the board may deny a license to any applicant who has been disciplined by another state or federal agency. Any final order of discipline taken pursuant to this subsection shall be a matter of public record.

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

- (1) Any licensee shall be deemed to have consented to submit to a mental or physical examination when so directed by the board and to have waived all objection to the use or referral of information by the board to determine whether the licensee is able to practice medicine with reasonable skill and safety to protect patients;
- (2) The board may seek to enforce an order directing a licensee to submit to a mental or physical examination in the circuit court in the county in which the licensee resides;
- (3) Failure of a licensee to submit to an examination ordered under this subsection shall constitute grounds for summary suspension of the licensee's license; and
- (4) The board may take any action authorized under this chapter based on information obtained under this subsection.

(e) Any person licensed by the board, including a physician, surgeon, or physician assistant, who provides information to the board indicating that a 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. The immunity afforded by this section shall be in addition to any immunity afforded by section 663-1.7, if applicable, and shall not be construed to affect the availability of any absolute privilege under sections 663-1.7 and 671D-10. [L 1896, c 60, §7; am L 1917, c 116, §1; RL 1925, §1029; am L 1925, c 26, §5; RL 1935, §1208; am L 1939, c 183, pt of §1; am L 1941, c 4, §2; RL

1945, §2507; am L 1947, c 201, pt of §1; am L 1949, c 108, §1; RL 1955, §64-7; am L Sp 1959 2d, c 1, §19; am L 1965, c 218, §6; HRS §453-8; am L 1969, c 257, §6; am L 1974, c 205, §2(15); am L 1976, c 219, §10; am L 1977, c 167, §13; am L 1982, c 227, §3; am L 1983, c 22, §1 and c 92, pt of §1(5); am L 1984, c 16, §1; am L 1986, c 144, §2; am L 1987, c 76, §1; am L 1988, c 110, §6; am L 1989, c 181, §4; am L 1992, c 177, §3 and c 202, §101; am L 2000, c 228, §3; am L 2008, c 5, §11; am L 2013, c 219, §2; am L 2016, c 38, §7]

Attorney General Opinions

Giving insufficient direction or failure to indicate status of an unlicensed physician may subject a licensed physician to license revocation. Att. Gen. Op. 63-55.

Case Notes

"Gross carelessness" and "manifest incapacity" defined. 52 F.2d 411 (1931).

Constitutional. 31 H. 625 (1930), aff'd 52 F.2d 411 (1931).

One year suspension of appellant's license to practice medicine by board of medical examiners after appellant was convicted of attempted first degree sexual abuse and kidnapping did not amount to a violation of double jeopardy clause of Fifth Amendment to U.S. Constitution; appellant had been convicted of a penal offense within meaning of subsection (a)(12); board did not err in finding that appellant violated subsection (a)(12). 78 H. 21, 889 P.2d 705 (1995).

Cited: 15 H. 273, 274 (1903).

" **§453-8.1 Voluntary limitation of license.** A physician, osteopathic physician, or surgeon may request, in writing, that the board limit the individual's license to practice. The board may grant the request and may impose conditions on the limited license. The board shall determine whether and when the limitation shall be removed. [L 1976, c 219, pt of §14; am L 1983, c 92, pt of §1(6); am L 2008, c 5, §12]

" **§453-8.2 Disciplinary action.** (a) In addition to any other actions authorized by law, in disciplining a licensee in a proceeding held in conformity with chapter 91, the board may impose one or more of the following sanctions:

- (1) Place the licensee on probation, including conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed physicians, osteopathic physicians, or surgeons;

- (2) Suspend the license;
- (3) Revoke the license;
- (4) Limit the license by restricting the fields of practice in which the licensee may engage;
- (5) Fine the licensee, including assessment against the licensee of the costs of the disciplinary proceedings. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be not less than \$500 and not more than \$5,000 for each violation, exclusive of the costs of the disciplinary proceedings;
- (6) Require further education or training, or require proof of performance competency; or
- (7) Censure or reprimand.

(b) Unless otherwise expressly provided, the actions, remedies, or penalties provided by this chapter are cumulative to each other and to the actions, remedies, or penalties available under all other laws of this State. [L 1976, c 219, pt of §14; am L 1983, c 92, pt of §1(6); am L 1986, c 144, §3; am L 1992, c 202, §102; am L 2004, c 26, §1; am L 2008, c 5, §13]

" **§453-8.3 REPEALED.** L 1984, c 168, §19.

" **[§453-8.4] Summary suspension.** (a) The board may summarily suspend any license issued under this chapter upon a specific determination that the failure to take such an action may result in an immediate and unreasonable threat to personal safety or of fraud that jeopardizes or endangers the health or safety of patients as determined by the professional standards of care upon consumers, and that, for the protection of the public from the possible consequences of such practices, the license should be immediately suspended or restricted.

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

(c) A licensee served with an order of summary suspension shall have the right to request a hearing to show cause why the order of summary suspension should be terminated. Any request for a hearing shall be made in writing and filed with the board within five business days of service of the order. The board shall hold a hearing within seven business days of receipt of the licensee's request for the hearing to show cause.

(d) Notwithstanding any law to the contrary, an order summarily suspending a license issued under this chapter shall remain in effect until the effective date of a final decision and order issued by the board in a disciplinary action or the effective date of an order issued by the board terminating the

summary suspension following a hearing to show cause, whichever occurs first, but in either case shall not exceed thirty business days.

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

(f) Any attempt by the licensee to continue the practice of medicine or the practice of medicine by the licensee while the license has been summarily suspended shall be grounds for revocation of the license and shall subject the licensee to any penalties prescribed under this chapter, the applicable licensing laws, or any rule or order of the board. [L 2013, c 219, §1]

" **§453-8.5 REPEALED.** L 1987, c 67, §2.

" **[§453-8.6] Discipline based on action taken by another state or federal agency; conditions; prohibition on practice.**

(a) Upon receipt of evidence of revocation, suspension, or other disciplinary action against a licensee by another state or federal agency, the board may issue an order imposing disciplinary action upon the licensee on the following conditions:

- (1) The board shall serve the licensee with a proposed order imposing disciplinary action as required by chapter 91;
- (2) The licensee shall have the right to request a hearing pursuant to chapter 91 to show cause why the action described in the proposed order should not be imposed;
- (3) Any request for a hearing shall be made in writing and filed with the board within twenty days after mailing of the proposed order to the licensee; and
- (4) If the licensee does not submit a written request for a hearing within twenty days after mailing of the proposed order, the board may issue a final order imposing the disciplinary action described in the proposed order.

(b) A certified copy of the disciplinary action by another state or federal agency shall constitute prima facie evidence of the disciplinary action.

(c) A licensee against whom the board has issued a proposed order under this section shall be prohibited from practicing in this State until the board issues a final order if:

- (1) The licensee was the subject of disciplinary action by another state; and

(2) The disciplinary action by another state prohibits the licensee from practicing in that state.

(d) In addition to the provisions of this section, the board may take any other action authorized by this chapter or chapter 436B.

(e) Notwithstanding any law to the contrary, any final order of discipline taken pursuant to this section shall be a matter of public record. [L 2016, c 38, §3]

" **§453-8.7 Reporting requirements.** (a) Every physician or osteopathic physician licensed pursuant to this chapter who does not possess professional liability insurance shall report any settlement or arbitration award of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services. The report shall be submitted to the department of commerce and consumer affairs within thirty days after any written settlement agreement has been reduced to writing and signed by all the parties thereto or thirty days after service of the arbitration award on the parties.

(b) Failure of a physician or osteopathic physician to comply with the provisions of this section is an offense punishable by a fine of not less than \$100 for the first offense, \$250 to \$500 for the second offense, and \$500 to \$1,000 for subsequent offenses.

(c) The clerks of the respective courts of this State shall report to the department any judgment or other determination of the court, which adjudges or finds that a physician or osteopathic physician is liable criminally or civilly for any death or personal injury caused by the physician's or osteopathic physician's professional negligence, error, or omission in the practice of the physician's or osteopathic physician's profession, or rendering of unauthorized professional services. The report shall be submitted to the department within ten days after the judgment is entered by the court.

(d) The department shall prescribe forms for the submission of reports required by this section. [L 1982, c 227, pt of §1; am L 1983, c 92, §1(8); am L 1984, c 168, §12; am L 2008, c 5, §14]

" **§453-8.8 Physician workforce assessment fee; license; physician workforce information.** [*Section repealed June 30, 2017. L Sp 2009, c 18, §9; L 2012, c 186, §3(2).*] When a license is renewed, each physician or surgeon and each osteopathic physician or surgeon shall be assessed a fee of \$60 that shall be transferred and deposited into the John A. Burns

school of medicine special fund established under section 304A-2171 to support ongoing assessment and planning of the physician workforce in Hawaii, including ongoing assessment and planning, as well as the recruitment and retention of physicians, especially for the physician workforce serving rural and medically underserved areas of the State. Payment of the physician workforce assessment fee shall be required for license renewal. [L Sp 2009, c 18, §3; am L 2012, c 186, §2]

Note

Disbursements to special fund (repealed June 30, 2017). L Sp 2009, c 18, §4; L 2012, c 186, §3(2).

Physician workforce assessment report to legislature beginning in 2011 and every year thereafter. L Sp 2009, c 18, §5; L 2012, c 186, §3(1).

" **§453-9 REPEALED.** L 1992, c 202, §213.

" **§453-10 Witnesses in such proceeding.** In any proceeding the board may subpoena, administer oaths to, and examine witnesses on any relevant matter in the proceeding. The board may subpoena physicians, osteopathic physicians, or surgeons as specialists, on the recommendation of the appropriate specialist society. The board may order a mental, physical, or medical competency examination to determine the capacity or ability of a licensee to continue to practice medicine or surgery and order appropriate specialist societies to conduct examinations. The person whose license is sought in the proceeding to be revoked, limited, or suspended shall be entitled to require the board or any member thereof to subpoena and to administer oaths to any witness who may be able to present evidence relevant in the proceeding, and shall be entitled to examine any witness in the proceeding. The circuit court of the circuit in which the proceeding is held may enforce by proper proceeding the attendance and testimony of witnesses in the proceeding. [L 1917, c 61, §1; RL 1925, §1031; RL 1935, §1210; RL 1945, §2509; am L 1947, c 201, pt of §1; RL 1955, §64-9; am L Sp 1959 2d, c 1, §19; HRS §453-10; am L 1969, c 257, §8; am L 1976, c 219, §12; am L 2008, c 5, §15]

" **§453-11 Recalcitrant witnesses; contempt.** If any person called before the board as a witness in any proceeding, whether under subpoena or otherwise, except as privileged by law, refuses to answer any question which is relevant to the proceeding and is put to the individual by the board, a member thereof or the person whose license is sought to be revoked,

limited, or suspended in the proceeding, or disobeys any order of the circuit court relating to the proceeding, the board shall report the matter in writing to any judge of the circuit court of the circuit in which such proceeding is held and the person shall be cited to appear before the circuit judge to show cause why the individual should not be punished for contempt of court under section 710-1077. [L 1917, c 61, §2; RL 1925, §1032; RL 1935, §1211; RL 1945, §2510; am L 1947, c 201, pt of §1; RL 1955, §64-10; am L Sp 1959 2d, c 1, §19; HRS §453-11; am L 1969, c 257, §9; am L 1976, c 219, §13; am L 1982, c 147, §24; am L 1983, c 92, §1(9)]

Cross References

Physician-patient privilege, see §626-1, rule 504.

Rules of Court

Contempt, see HRCF rule 45(f).

" **§453-12 Perjury.** Any person who wilfully and knowingly makes under oath any false statement in connection with any such proceeding before the board shall be guilty of perjury and shall be subject to the penalty prescribed by law for perjury. Whenever the board is satisfied that the witness has committed perjury in any proceeding before the board, it shall report the same to the prosecuting officer of the county in which the perjury took place, who shall prosecute the witness for perjury. [L 1917, c 61, §3; RL 1925, §1033; am imp L 1932 1st, c 13, pt of §1; RL 1935, §1212; RL 1945, §2511; am L 1947, c 201, pt of §1; RL 1955, §64-11; am L Sp 1959 2d, c 1, §19; HRS §453-12; am L 1969, c 257, §10]

" **§453-13 Penalty.** Any person who violates this chapter, or who offers or in any way attempts to engage in the practice of medicine as defined in section 453-1 and fails to comply with any of the requirements or provisions of this chapter, penalty for which violation or failure to comply is not otherwise provided for, shall be fined not more than \$500 or imprisoned not more than six months and each day's violation or failure to comply shall be deemed a separate offense.

All tools, implements, medicine, and drugs used in the practice of medicine by any person convicted of practicing medicine without a license shall be declared forfeited to the State by the court and ordered destroyed. [L 1896, c 60, §6; RL 1925, §1028; am L 1929, c 109, §1; RL 1935, §1207; RL 1945, §2512; RL 1955, §64-12; HRS §453-13]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, and 706-663.

" **§453-14 Duty of physician, osteopathic physician, surgeon, hospital, clinic, etc., to report wounds.** (a) Every physician, osteopathic physician, physician assistant, and surgeon attending or treating a case of knife wound, bullet wound, gunshot wound, powder burn, or any injury that would seriously maim, produce death, or has rendered the injured person unconscious, caused by the use of violence or sustained in a suspicious or unusual manner or in motor vehicle collisions resulting in serious injury or death, or, whenever the case is treated in a hospital, clinic, or other institution, the manager, superintendent, or person in charge thereof, shall report the case or provide requested information to the chief of police of the county within which the person was attended or treated, giving the name of the injured person, description of the nature, type, and extent of the injury, together with other pertinent information that may be of use to the chief of police. As used herein, the term "chief of police" means the chief of police of each county and any of the chief's authorized subordinates.

(b) This section shall not apply to wounds, burns, or injuries received by a member of the armed forces of the United States or of the State while engaged in the actual performance of duty.

(c) Any person who fails to make the report called for herein within twenty-four hours after the attendance or treatment shall be fined not less than \$50 nor more than \$500. [L 1933-34, c 27, §§1, 2; RL 1935, §1202; am L 1943, c 23, §1; RL 1945, §2513; am L 1955, c 110, §1; RL 1955, §64-13; HRS §453-14; am L 1983, c 92, §1(10); am L 2005, c 39, §1; am L 2008, c 5, §16; am L 2009, c 151, §19]

Cross References

Report of child abuse, see chapter 350.

" **§453-15 Who shall give consent to a postmortem examination.** A pathologist or any licensed physician, osteopathic physician, or surgeon may conduct a postmortem examination when written consent thereto is given by whoever of the following assumes custody of the body for purposes of burial: father, mother, husband, wife, reciprocal beneficiary,

child, guardian, next of kin, or, in the absence of any of the foregoing, a friend or person, including a governmental agency, charged by law with the responsibility for the burial. If two or more persons assume custody of the body, the consent of one of them is sufficient. The consent shall include the consent to the retention by the pathologist or licensed physician, osteopathic physician, or surgeon who conducts the postmortem examination of tissues, including fetal material, of the body removed at the time of the postmortem examination to be used for necessary or advisable scientific investigation, including research, teaching, and therapeutic purposes. [L 1957, c 309, §1; Supp, §64-14; am L 1967, c 188, §1; HRS §453-15; am L 1997, c 383, §62; am L 2008, c 5, §17]

" **§453-16 Intentional termination of pregnancy; penalties; refusal to perform.** (a) No abortion shall be performed in this State unless:

- (1) The abortion is performed by a licensed physician or surgeon, or by a licensed osteopathic physician and surgeon; and
- (2) The abortion is performed in a hospital licensed by the department of health or operated by the federal government or an agency thereof, or in a clinic or physician's or osteopathic physician's office.

(b) Abortion shall mean an operation to intentionally terminate the pregnancy of a nonviable fetus. The termination of a pregnancy of a viable fetus is not included in this section.

(c) The State shall not deny or interfere with a female's right to choose or obtain an abortion of a nonviable fetus or an abortion that is necessary to protect the life or health of the female.

(d) Any person who knowingly violates subsection (a) shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

(e) Nothing in this section shall require any hospital or any person to participate in an abortion nor shall any hospital or any person be liable for a refusal. [L 1970, c 1, §2; am L 2006, c 35, §2; am L 2008, c 5, §18]

Attorney General Opinions

Constitutionality of residence requirement discussed. Att. Gen. Op. 70-2.

The hospital requirement of subsection (a)(2) is not enforceable during the first trimester of pregnancy; subsection (a)(3) is unconstitutional and invalid. Att. Gen. Op. 74-17.

Law Journals and Reviews

The Abortion Decision and Evolving Limits on State Intervention. 11 HBJ 51 (1974).

Emergency Contraception in Religious Hospitals: The Struggle Between Religious Freedom and Personal Autonomy. 27 UH L. Rev. 65 (2004).

Case Notes

Fetus in last trimester was vested with all rights of human beings. 751 F. Supp. 168 (1990).

" **§453-17 Subpoena of peer review adverse decision report.** In connection with an investigation under section 453-7.5, the director of commerce and consumer affairs may issue subpoenas, pursuant to section 26-9(j), compelling the production of hospital records of patients whose cases were reviewed by a peer review committee that filed a report pursuant to section 663-1.7, as well as the full report reflecting the committee's decision and the basis of that decision, notwithstanding section 624-25.5. A medical society, hospital, or health care facility shall expunge from the documents only the following patient identifiers: name, address, telephone number, hospital identification number, and social security number. Information for investigation which was obtained through a subpoena shall be for the sole use by the department of commerce and consumer affairs to carry out its responsibilities and functions and shall be held confidential by the department, unless the information is admissible evidence at a hearing held under section 453-9. This investigation shall be deemed a sensitive matter related to public safety under section 92-5. [L 1982, c 227, pt of §1 and c 204, §8; am L 1983, c 124, §17; am L 1984, c 168, §13; am L 1987, c 67, §3]

Note

Section 453-9 referred to in text is repealed.

Revision Note

Section "26-9(j)" substituted for "26-9(i)".

" **[\$453-18] Pelvic examinations on anesthetized or unconscious female patients.** A physician, osteopathic physician, surgeon, or student participating in a course of instruction, residency program, or clinical training program

shall not perform a pelvic examination on an anesthetized or unconscious female patient unless:

- (1) The patient gives prior verbal or written informed consent to the pelvic examination;
- (2) The performance of a pelvic examination is within the scope of care for the surgical procedure or diagnostic examination scheduled to be performed on the patient; or
- (3) The patient is unconscious and the pelvic examination is required for diagnostic purposes. [L 2012, c 136, §2]

"PART II. EMERGENCY MEDICAL SERVICE PERSONNEL

§453-31 Emergency ambulance service personnel. The practice of any emergency medical services by any individual employed by an emergency ambulance service who is not licensed under this chapter or under chapter 457 shall be subject to certification under this part. In the event of any conflict between this part and any rules adopted under section 453-2, this part shall control with regard to emergency ambulance service personnel.

The Hawaii medical board shall define the scope of the practice of emergency medical services, different levels of the practice, and degree of supervision required of a supervising physician or osteopathic physician when a person certified under this part provides services within the practice of medicine. [L 1978, c 148, pt of §2(1); am L 1984, c 168, §14; am L 2008, c 5, §19 and c 9, §3]

" §453-32 Certification of emergency ambulance personnel.

The Hawaii medical board shall certify individuals as qualified in emergency medical services upon application therefor; provided that the applicant for certification:

- (1) Holds a certificate from the National Registry of Emergency Medical Technicians, has satisfactorily passed a course of training in emergency medical services for emergency ambulance services personnel which shall be based on the national curriculum of the United States Department of Transportation and approved by the board, and meets other standards and qualifications, including passage of an examination, set by the Hawaii medical board pertinent to the practice of emergency medical services in Hawaii;
- (2) Meets continuing education requirements which shall be set by the Hawaii medical board; and

- (3) Meets other qualifications set by the Hawaii medical board.

The board shall directly review the credentials of applicants and administer examinations required. Certification under this section shall be a prerequisite to the practice of emergency medical services as an employee of an emergency ambulance service.

The Hawaii medical board shall provide standard application forms for the certification of emergency ambulance personnel and shall provide for the periodic renewal of such certification. The Hawaii medical board shall assess a fee for such application, certification, and renewal. The Hawaii medical board shall provide for the revocation, suspension, or limitation of certification in the event an individual once certified under this section fails to maintain or meet requirements for continued certification, or for good cause shown. [L 1978, c 148, pt of §2(1); am L 1984, c 168, §15; am L 1989, c 181, §5; am L 2008, c 9, §3]

" **§453-32.1 Renewal of certification.** (a) Every person holding a certificate under this part shall renew the certificate with the board no later than January 31 of each even-numbered year, pay a renewal fee, and comply with the continuing education requirements set forth in the board's rules.

(b) To determine compliance, the board may conduct a random audit. A person selected for audit shall be notified by the board. Within sixty days of notification, the person shall provide to the board documentation to verify compliance with the continuing education requirements.

(c) Failure to renew, pay the renewal fee, and, in the case of audited persons, provide documentation of compliance shall constitute a forfeiture of the certificate which may only be restored upon the submission of written application, payment to the board of a restoration fee, and in the case of audited persons, documentation of compliance.

(d) A certificate that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for certification shall be required. [L 1989, c 181, §1; am L 2001, c 66, §2]

" **§453-32.5 Temporary certification.** The board shall approve temporary certification of an applicant under section 453-32 if the applicant has graduated from a board approved training program within twelve months of the date of application and has never taken the written and practical examination of the National Registry of Emergency Medical Technicians for that

level of practice but otherwise meets the requirements of section 453-32, has filed a complete application with the board, and has paid all required fees.

If the applicant fails to apply for, or to take, the next succeeding examination or fails to pass the examination or fails to receive a certificate, all privileges under this section shall automatically cease upon written notification sent to the applicant by the board. A temporary certificate for each level of practice may be issued only once to each person.

Prior to practicing under temporary certification, applicants shall notify the board in writing of any and all employers under whom they will be performing services. [L 1984, c 168, pt of §2; am L 1986, c 144, §5; am L 1988, c 110, §7]

" **§453-32.51 Limited temporary certification.** (a) The Hawaii medical board shall approve limited temporary certification of an applicant under this section if the applicant:

- (1) Has graduated from a board or state-approved training program as developed and promulgated by the United States Department of Transportation;
- (2) Has passed the written and practical examinations of the National Registry of Emergency Medical Technicians for that level of practice;
- (3) Holds a current certificate from the National Registry of Emergency Medical Technicians for that level of practice;
- (4) Has submitted a letter verifying acceptance into a period of peer review as an emergency medical technician or mobile intensive care technician;
- (5) Has filed a completed application with the board; and
- (6) Has paid all the required fees.

(b) Limited certification of any applicant shall be restricted to a maximum of one year.

(c) All privileges under this section shall automatically cease if the applicant receives certification under section 453-32 or 453-32.1 or is no longer participating in a period of peer review. [L 1996, c 147, §1; am L 2008, c 9, §3]

" **§453-32.6 Delegation to committee of practicing emergency physicians or osteopathic physicians and emergency ambulance personnel.** The Hawaii medical board shall establish a committee consisting of practicing emergency physicians or osteopathic physicians and emergency ambulance personnel to assist the board in the performance of duties under this part.

The board, by written order, may delegate to the committee any of its powers and duties for administration of this part,

except that the board shall not delegate any authority to adopt, amend, or repeal rules, take disciplinary action against a certificate holder, or restore a certificate which has been revoked. [L 1984, c 168, pt of §2; am L 2008, c 5, §20 and c 9, §3]

" **[§453-33] Rules.** The Hawaii medical board shall adopt rules to implement this part, subject to chapter 91. [L 1978, c 148, pt of §2(1); am L 2008, c 9, §3]

"[PART III.] EXPEDITED PARTNER THERAPY

[§453-51] Definitions. As used in this part:

"Expedited partner therapy" means the indirect treatment of partners of a patient who has been diagnosed as having a sexually transmitted disease through the dispensing or prescribing of antibiotic therapy for the treatment of the partners to the patient without the physical examination of the partners by a health professional.

"Health professional" means any of the following:

- (1) A person licensed or otherwise authorized by law to practice medicine or surgery under this chapter and whose scope of practice includes the diagnosis and treatment of sexually transmitted diseases;
- (2) An advanced practice registered nurse with prescriptive authority under chapter 457 and duly licensed in the State; or
- (3) For the purpose of dispensing antibiotic therapy under this section, a pharmacist who is licensed or otherwise authorized to engage in the practice of pharmacy under chapter 461.

"Sexual activity" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

"Sexually transmitted disease" means chlamydia, gonorrhea, or other sexually transmitted diseases that are or may be recommended by the Centers for Disease Control and Prevention for expedited partner therapy. [L 2013, c 250, pt of §2]

" **[§453-52] Expedited partner therapy.** (a) A health professional may, in addition to treating a patient, provide expedited partner therapy to the partners of the patient if all of the following requirements are met:

- (1) The patient has a laboratory-confirmed or suspected clinical diagnosis of a sexually transmitted disease;

- (2) The patient indicates that the patient has partners with whom the patient has engaged in sexual activity within the sixty-day period immediately preceding the diagnosis of a sexually transmitted disease; and
 - (3) The patient indicates that the patient's partners are unable or unlikely to seek clinical services in a timely manner.
- (b) A health professional who provides expedited partner therapy as authorized in this section shall do all of the following:
- (1) Dispense or prescribe antibiotic therapy in the name of the partners, if known, without the physical examination of the partners by the health professional. Notwithstanding any law to the contrary, if the name of the partners are not known, the health professional shall dispense or prescribe the antibiotic therapy in the name of "Expedited Partner Therapy";
 - (2) Convey to the patient that it is important to notify the patient's partners of the patient's diagnosis and that it is important for the partners to obtain medical care for a complete evaluation, testing for sexually transmitted diseases, counseling, and treatment;
 - (3) Distribute to the patient the information sheet developed pursuant to section 453-53; and
 - (4) Follow all Centers for Disease Control and Prevention guidelines related to the practices and recommendations for expedited partner therapy. [L 2013, c 250, pt of §2]

" **[\$453-53] Information sheet.** The department of health shall develop and, upon request, distribute to health professionals subject to this part an information sheet that includes all of the following:

- (1) A description of expedited partner therapy and its purpose;
- (2) A notice that an individual who has been treated for a sexually transmitted disease should be retested after treatment to detect possible persistent or recurrent infection, including information on the timing of retesting, as recommended by the Centers for Disease Control and Prevention;
- (3) A warning about the possible dangers of administering antibiotic therapy to a pregnant individual;
- (4) Information about antibiotics dispensed or prescribed and dosages of those antibiotics dispensed or

- prescribed, as recommended by the Centers for Disease Control and Prevention;
- (5) A warning about the risk of allergies to and drug interactions with the antibiotics described in paragraph (4);
 - (6) Information about sexually transmitted diseases, the treatment of sexually transmitted diseases, and the prevention of sexually transmitted diseases;
 - (7) A notice that the patient and the patient's partners should abstain from sexual activity for seven days after the patient and the partners have completed the antibiotic therapy;
 - (8) A notice that the partners should be tested for sexually transmitted diseases;
 - (9) A notice of the risk to the patient, the partners, and others, including the public health, if a sexually transmitted disease is not completely treated;
 - (10) A notice of the responsibility of the patient to notify sexual partners of the risk of sexually transmitted diseases and the importance of examination and treatment for sexually transmitted diseases; and
 - (11) A statement advising any individual who has any questions regarding anything in the information sheet to contact a health professional or the department of health. [L 2013, c 250, pt of §2]

" **[\$453-54] Limitation of liability.** A health professional who provides expedited partner therapy as authorized under section 453-52, a person licensed or otherwise authorized by law to practice medicine or surgery under this chapter, an advanced practice registered nurse with prescriptive authority under chapter 457, or a pharmacist who is licensed or otherwise authorized to engage in the practice of pharmacy under chapter 461, who reasonably and in good faith renders the expedited partner therapy in accordance with this section and the rules and regulations adopted by the director of commerce and consumer affairs, shall not be subject to civil or criminal liability or be deemed to have engaged in unprofessional conduct for rendering that therapy. [L 2013, c 250, pt of §2]