

A Bill for an Act Relating to Medicine and Surgery.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 453, Hawaii Revised Statutes, is amended as follows:

1. By amending sections 453-2 and 453-3¹ to read:

“§453-2 License required; exceptions. Except as otherwise provided by law, no person shall practice medicine or surgery in the State either gratuitously or for pay, or shall offer to so practice, or shall advertise or announce [himself,] one’s self, either publicly or privately, as prepared or qualified to so practice, or shall append the letters “DR.” or “M.D.” to [his] one’s name, with the intent thereby to imply that [he] the individual is a practitioner of medicine or surgery, without having a valid unrevoked license or a limited and temporary license, obtained from

the board of medical examiners, in form and manner substantially as hereinafter set forth.

Nothing herein shall (1) apply to so-called Christian Scientists so long as they merely 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 army, navy, marine corps, or public health service, engaged in the discharge of [his] one's official duty, nor to any practitioner of medicine and surgery from another state when in actual consultation with a licensed practitioner of this State if the practitioner from another state, at the time of such consultation, is licensed to practice in the state in which he resides; provided that the practitioner from another state shall not open an office, or appoint a place to meet patients, or receive calls within the limits of the State; and provided further that the laws and regulations relating to contagious diseases are not violated; (4) prohibit services rendered by any physician-support personnel or any physician's assistant when such services are rendered under the direction and control of a physician licensed in this State, except for those specific functions and duties delegated by law to those persons licensed as optometrists under chapter 459. Such direction and control shall not be construed in every case to require the personal presence of the supervising and controlling physician. Any physician who employs or directs such support personnel and physician's assistant shall retain full professional and personal responsibility for any act which constitutes the practice of medicine when performed by such personnel or physician's assistant. The board of medical examiners shall, in conformity with chapter 91, promulgate rules [and regulations] regarding standards of medical education and training governing physician-support personnel and physician's assistant, such standards to equal but not be limited by existing national educational and training standards; and standards governing information to be given to patients as required by section 671-3. Any person who provides emergency medical services as a full or part-time employee of any emergency ambulance service shall be certified under part II.

§453-3 Limited and temporary licenses. The board of medical examiners 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 in a particular locality, and that the applicant has been duly licensed as a 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 [him.] the applicant. The license shall be valid only for a period of eighteen months from the date of issuance; or
- (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 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 such governmental agency or department and in no case shall be used to provide private patient care for a fee. A license issued under this subparagraph may be renewed from year to year; or

- (3) The applicant would practice medicine and surgery only while under the direction of a 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. In no case shall a limited and temporary license issued hereunder be valid for more than a period of eighteen months from the date of issuance; or
- (4) The applicant has been appointed as an intern or accepted for specialty or resident training in 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 [his] the applicant's position or by [his] the program of training while at the hospital. A limited and temporary license hereunder shall be issued without regard to the requirement of section 453-4(4) relative to internship. The license shall be valid during the period in which the applicant remains as intern or 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 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 such 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."

2. By amending sections 453-4 and 453-5 to read:

"§453-4 Qualifications for examination. Except as otherwise provided by law, no person shall be licensed to practice medicine or surgery unless [he] the applicant has passed an examination and has been found to be possessed of the necessary qualifications.

Before any applicant shall be eligible for the examination [he] the applicant shall furnish proof satisfactory to the board that:

- (1) [He] The applicant is of [good moral character;] demonstrated competence and professional knowledge;
- (2) (A) [He] The applicant is a graduate of a medical school or college approved by the [council on medical education] Council on Medical Education and hospitals of the American [medical association;] Medical Association; or
 (B) [He] The applicant is a graduate of a foreign medical school, who has had at least three years' medical experience or training in a hospital approved by the [council on medical education] Council on Medical

Education and hospitals of the American [medical association] Medical Association for the internship or residency, and has passed the qualifying examination of the [educational council for foreign medical graduates] Educational Council for Foreign Medical Graduates or its successor;

- (3) [He] The applicant has served an internship of at least one year in either a hospital which has been certified or approved for the training of interns and resident physicians by the American [medical association, council on medical education and hospitals,] Medical Association, Council on Medical Education and Hospitals, or if outside the United States, in a hospital which is shown by the applicant to the satisfaction of the board to possess standards substantially the equivalent of those required for such American [medical association] Medical Association approval, or has completed one year of residency training in a program approved by the American [medical association, council of medical education and hospitals.] Medical Association, Council of Medical Education and Hospitals.

Diplomates of the national board of medical examiners or those who have passed the federation licensing examination (FLEX) with scores deemed satisfactory by the board and who meet the requirements of paragraphs (1), (2), and (3) above, 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 who have been associated with an applicant or chief residents on a service who have been associated with an applicant during [his] the applicant's training or [during his] practice to be used by the board in assessing the applicant's qualifications to practice medicine.

§453-5 Board of medical examiners; appointment, removal, qualifications. For the purpose of carrying out this chapter the governor shall appoint in the manner prescribed in section 26-34, a board of medical examiners, whose duty it shall be to examine all applicants for license to practice medicine or surgery.

The board shall consist of nine persons, seven of whom shall be physicians or surgeons licensed under the laws of the State and two of whom shall be lay members appointed from the public at large. Of the seven physician or surgeon members, four shall be appointed from the city and county of Honolulu and one each 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 [to him] by the medical societies and the public at large. Each member shall serve until [his] a successor is appointed and qualified.

The members of the board shall serve without pay; provided that they shall be allowed their reasonable expenses for travel and other costs incurred in the discharge of their duties. A majority of the board shall constitute a quorum.

The department of commerce and consumer affairs shall provide administrative support to the board. The department shall employ, not subject to chapters 76 and 77, an executive secretary to administer the board's activities."

3. By amending sections 453-5.1 and 453-5.2 to read:

"**[§453-5.1] Powers and duties of board.** In addition to other powers and duties established by this chapter, the board of medical examiners 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.

[§453-5.2] Board of medical examiners; delegation of authority. The board of medical examiners may by written order delegate to the executive secretary of the board or other personnel of the department of commerce and consumer affairs any of its powers or duties as it deems reasonable and proper for the administration of this chapter. The board shall not, however, delegate its authority to:

- (1) Adopt, amend, or repeal rules [and regulations];
- (2) Take final disciplinary action against a licensee; or
- (3) Restore a license which was revoked."

4. By amending section 453-6 to read:

"§453-6 Fees; expenses. No applicant shall be examined under this chapter until [he] the applicant has paid to the board of medical examiners a fee of \$125. As a prerequisite to the issuance of a limited and temporary license under this chapter, the applicant shall pay to the board a fee of \$75; provided that the fee to be paid by an applicant qualifying under section 453-3(4) shall be \$37.50. Every person holding a license under this chapter shall re-register with the board biennially in each even-numbered year, not later than January 31 and for such registration shall pay a fee of \$150. At the time of re-registration, the physician or surgeon shall present to the board evidence of compliance with a program of continuing medical education adopted by the board. Failure to re-register and present such evidence shall constitute a forfeiture of license, which may be restored only upon written application therefor and payment to the board of a fee of \$200. All such fees shall be deposited by the director of [regulatory agencies] commerce and consumer affairs with the director of finance to the credit of the general fund."

5. By amending sections 453-7 and 453-8 to read:

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

State of Hawaii, Board of Medical Examiners

License to Practice Medicine and Surgery

_____, [a native of _____,
age _____ years,] having been duly examined by the Board of Medical Examiners, 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 Board of Medical Examiners.

Given under the seal of the Board of Medical Examiners
this _____ day of _____ A.D. _____.

By _____

Chairman, Board of Medical Examiners

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

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

_____ [a native of _____,
age _____ years,] having been duly considered by the Board of Medical Examiners,² 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 Board of Medical Examiners
this _____ day of _____ A.D. _____.

By _____

Chairman, Board of Medical Examiners

§453-8 Revocation, limitation or suspension of licenses. (a) Any license to practice medicine and surgery may be revoked, limited, or suspended by the board of medical examiners at any time in a proceeding before the board for any one or more of the following acts or conditions on the part of the holder of such license:

- (1) Procuring, or aiding or abetting in procuring, a criminal abortion;
- (2) Employing any person to solicit patients for [him;] 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 an 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 or gross carelessness or manifest incapacity in the practice of medicine or surgery;
 - (8) Negligence or incompetence, 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;
 - (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 of a license or certificate for reasons as provided in this section; or
 - (12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician, notwithstanding any statutory provision to the contrary.
- (b) If any license is revoked, limited, or suspended by the board for any act or condition listed in this section, the board shall notify the holder of the license in writing of the revocation, limitation, or suspension. Any license to practice medicine and surgery which has been revoked under this section may be restored by the board."

6. By amending sections 453-8.1 and 453-8.2 to read:

"**[§453-8.1] Voluntary limitation of license.** A physician or surgeon may request, in writing, that the board limit [his] 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 such limitation shall be removed.

[§453-8.2] Disciplinary action. In disciplining a licensee in a proceeding under section 453-9, the board may impose one or more of the following actions:

- (1) Place the licensee on probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed 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 [him] the licensee of the costs of the disciplinary proceedings.
 - (6) Temporarily suspend the license for not more than thirty days without a hearing, when the board finds the practice of the licensee probably constitutes an immediate and grave danger to the public.
 - (7) Require further education or training or require proof of performance competency."
7. By amending subsection (b) of section 453-8.5 to read:

“(b) The membership of the advisory committee shall vary in number, depending on the level of expertise deemed necessary by the board in its review of the conduct of the physician in question. Each member of the committee shall serve on the committee until the investigation of the particular case for which [he] the member was designated a consultant has been concluded.”

8. By amending subsection (c) of section 453-8.7 to read:

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

9. By amending section 453-11 to read:

“**\$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 [him] 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 [he] the individual should not be punished for contempt of court under section 710-1077.”

10. By amending section 453-14 to read:

“**\$453-14 Duty of physician, surgeon, hospital, clinic, etc., to report wounds.** Every physician 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, whenever such case is treated in a hospital, clinic, or other institution, the manager, superintendent, or person in charge thereof, shall report such case 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 which 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 [his] the chief's authorized subordinates.

This section shall not apply to such 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.

Any person who fails to make the report called for herein within twenty-four hours after such attendance or treatment shall be fined not less than \$50 nor more than \$500.”

11. By repealing section 453-3.1.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.³

ACT 92

SECTION 3. This Act shall not affect rights matured, penalties incurred, or prosecutions begun prior to the effective date of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 21, 1983.)

Notes

1. "543-3" in original.
2. Underscoring missing.
3. Edited pursuant to HRS §23G-16.5.