

A Bill for an Act Relating to Medicine.

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

SECTION 1. Chapter 453, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

“§453- Physician assistant; certification required. (a) The board of medical examiners shall require each person practicing medicine under the supervision of a physician to be certified 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 shall not be deemed a practitioner of medicine and therefore does not require certification under this section.

(b) The board shall establish medical educational and training standards with which a person applying for certification 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 certification to the person upon the person's satisfactory completion of a national certifying examination approved by the board.

(d) The board shall establish the degree of supervision required by the supervising physician when a physician assistant performs a service within the practice of medicine. A 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.

(e) The certification of a physician assistant shall be subject to revocation, limitation, or suspension under section 453-8.

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

§453- Review of complaints and information by department. (a) The department of commerce and consumer affairs shall review each complaint and information received under sections 92-17, 329-44, 453-8.7, 663-1.7, 671-5, and 671-15. The department shall investigate the complaint or information if it appears that the physician who is the subject of the complaint or information has violated this chapter. If the department determines that the physician has violated this chapter, the department shall present the results of its investigation to the board of medical examiners 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."

SECTION 2. Chapter 453, Hawaii Revised Statutes, is amended by adding two new sections to part II to be appropriately designated and to read as follows:

"§453- Temporary certification. The board shall approve temporary certification of an applicant under section 453-32 if the applicant has not taken

the written and practical examination of the National Registry of Emergency Medical Technicians but otherwise meets the requirements of section 453-32(1).

The temporary certification shall be valid until the results are issued by the board for the written and practical examination immediately following the date of temporary certification, unless sooner revoked for good cause.

§453- Delegation to committee of practicing emergency physicians and emergency ambulance personnel. The board of medical examiners shall establish a committee consisting of practicing emergency 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.”

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“**§26H-4** **[[NEW]] Repeal dates.** [(a) [DELETED] (b)] (a) The following chapters are hereby repealed effective December 31, 1984:

- (1) Chapter 436D (Board of Acupuncture)
- (2) Chapter 442 (Board of Chiropractic Examiners)
- (3) Chapter 448 (Board of Dental Examiners)
- [(4) Chapter 453 (Board of Medical Examiners)
- (5)] (4) Chapter 457 (Board of Nursing)
- [(6)] (5) Chapter 447 (Dental Hygienists)

[(c)] (b) The following chapters are hereby repealed effective December 31, 1985:

- (1) Chapter 460 (Board of Osteopathic Examiners)
- (2) Chapter 461 (Board of Pharmacy)
- (3) Chapter 455 (Board of Examiners in Naturopathy)
- (4) Chapter 463E (Podiatry)
- (5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (6) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (7) Chapter 448H (Elevator Mechanics Licensing Board)

[(d)] (c) The following chapters are hereby repealed effective December 31, 1986:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)
- (4) Chapter 460J (Pest Control Board)
- (5) Chapter 438 (Board of Barbers)

(6) Chapter 439 (Board of Cosmetology)

31, 1987: (e) (d) The following chapters are hereby repealed effective December

- (1) Chapter 458 (Board of Dispensing Opticians)
- (2) Chapter 459 (Board of Examiners in Optometry)
- (3) Chapter 452 (Board of Massage)
- (4) Chapter 471 (Board of Veterinary Examiners)
- (5) Chapter 441 (Cemeteries and Mortuaries)
- (6) Chapter 463 (Board of Detectives and Guards)

31, 1988: (f) (e) The following chapters are hereby repealed effective December

- (1) Chapter 465 (Board of Certification for Practicing Psychologists)
- (2) Chapter 468E (Board of Speech Pathology and Audiology)
- (3) Chapter 359L (Factory Built Housing Advisory Board)
- (4) Chapter 468B (Solar Energy Device Dealers)
- (5) Chapter 468K (Travel Agencies)
- (6) Chapter 373 (Commercial Employment Agencies)

31, 1989: (g) (f) The following chapters are hereby repealed effective December

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)
- (4) Chapter 466 (Board of Public Accountancy)
- (5) Chapter 467 (Real Estate Commission)

(g) The following chapter is hereby repealed effective December 31, 1990:

- (1) Chapter 453 (Board of Medical Examiners)."

SECTION 4. Section 321-227, Hawaii Revised Statutes, is amended to read as follows:

"[]§321-227[] Regulation of ambulances. The department of health shall adopt, amend, and repeal rules under chapter 91 for the regulation of ambulances within the State, including but not limited to the certification of vehicles, equipment, supplies, and communications systems. Any person who provides emergency medical service as an employee of any emergency ambulance service shall be subject to chapter 453. [In the absence of implementation of certification under chapter 453 the department of health shall provide for the certification of such personnel in accordance with the state system's requirements.]"

SECTION 5. Section 321-229, Hawaii Revised Statutes, is amended to read as follows:

“§321-229 Emergency medical services personnel, training programs. The department of health shall be responsible for the training of basic life support and advanced life support personnel and may contract for such training with accredited community colleges, colleges, and universities, and with professional medical organizations recognized by the American Medical Association. The basic life support and advance life support training programs shall be [based on a medical model.] relevant to and consistent with the training course required for certification under chapter 453.”

SECTION 6. Section 329-44, Hawaii Revised Statutes, is amended to read as follows:

“[]§329-44[] Notice of conviction to be sent to licensing board[.], department of commerce and consumer affairs. On the conviction of any physician, dentist, podiatrist, veterinarian, practitioner, apothecary, manufacturer, wholesaler, or producer, of the wilful violation of this chapter, a copy of the sentence and of the opinion of the court or district judge, if any [be] is filed, shall be sent by the clerk of the court, or by the judge, to the board or officer, if any, by whom the convicted defendant has been licensed to practice his profession or to carry on his business[.]; and if the convicted defendant is a physician, a copy of the sentence and of the opinion, if any, shall be sent to the department of commerce and consumer affairs.”

SECTION 7. Section 453-2, Hawaii Revised Statutes, is amended to read as follows:

“§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 one’s self, either publicly or privately, as prepared or qualified to so practice, or shall append the letters “DR.” or “M.D.” to one’s name, with the intent thereby to imply that 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] 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]~~ Prohibit service in the case of emergency or the domestic administration of family remedies;
- (3) [apply] Apply to any commissioned medical officer in the United States army, navy, marine corps, or public health service, engaged in the discharge of one’s official duty, nor to any practitioner of

- medicine and surgery from another state¹, 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; or
- (4) [~~prohibit~~] Prohibit services rendered by any [physician-support personnel] person certified under part II of this chapter to provide emergency medical services or any [physician's] physician 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] a person certified under part II of this chapter to provide emergency medical services or [physician's] physician assistant shall retain full professional and personal responsibility for any act which constitutes the practice of medicine when performed by such [personnel] person or [physician's] physician assistant. [The board of medical examiners shall, in conformity with chapter 91, promulgate rules 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.]”

SECTION 8. Section 453-3, Hawaii Revised Statutes, is amended to read as follows:

“§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 the applicant. The license shall be valid only for a period of eighteen months from the date of issuance; or]. The board shall establish guidelines to determine a locality with an absence or shortage of physicians. For this purpose, the board may consider a locality to have an absence or shortage of physicians if the absence or shortage results from the temporary loss of a physician. In designating a locality with an absence or shortage of 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 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] paragraph 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] a resident 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 the applicant's position or by 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] residency. 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.”

SECTION 9. Section 453-4, Hawaii Revised Statutes, is amended to read as follows:

“§453-4 **Qualifications for examination.** 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 be possessed of the necessary qualifications.

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

- (1) The applicant is of demonstrated competence and professional knowledge;
- (2) (A) The applicant is a graduate of a medical school or college approved by the Council on Medical Education and [hospitals] Hospitals of the American Medical Association; or
(B) The applicant is a graduate of a foreign medical school[, who] and has had at least [three years' medical experience or training] two years of residency in a hospital approved by the Council on Medical Education and [hospitals] Hospitals of the American Medical Association for the [internship or] residency[.]; and [has passed the qualifying examination of] holds the national certificate of the Educational [Council] Commission for Foreign Medical Graduates or its successor;
- (3) The applicant has served [an internship] a residency 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, 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 approval, or has completed one year of residency training in a program approved by the American 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 the applicant's training or practice to be used by the board in assessing the applicant's qualifications to practice medicine.”

SECTION 10. Section 453-5, Hawaii Revised Statutes, is amended to read as follows:

“§453-5 Board of medical examiners; appointment, removal, qualifications. (a) 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 by the medical societies and the public at large. Each member shall serve until a successor is appointed and qualified.

(b) 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 board shall hold its meetings in public places and shall comply with chapter 92.

(c) 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[.] and an employee to administer the medical claims conciliation panels established under chapter 671. The employee responsible for administration of the medical claims conciliation panels shall be under the executive secretary, but shall have no duties in administration of the board's activities.”

SECTION 11. Section 453-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director of commerce and consumer affairs shall establish a medical advisory committee, the members of which shall serve as consultants to the board of medical examiners in its review of physicians referred for possible disciplinary action[.] and as consultants to the department of commerce and consumer affairs for investigations under section 453- . The advisory committee

shall be appointed by the director from a list of twenty-five physicians submitted annually by the board.

The director shall develop an information sheet for each member describing the committee's purpose, roles and responsibilities of members, and procedures used to carry out the committee's work. When the board or director requests assistance from the committee on a case, the board or director, as the case may be, shall delete the name of the physician prior to submission to the committee."

SECTION 12. Section 453-8.7, Hawaii Revised Statutes, is amended to read as follows:

"§453-8.7 Reporting requirements. (a) Every 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 [board of medical examiners] 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 to comply with the provisions of this section is an offense punishable by a [board imposed] 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 [board] department 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 the physician's professional negligence, error, or omission in the practice of [one's] the physician's profession, or rendering of unauthorized professional services. The report shall be submitted to the [board] department within ten days after the judgment is entered by the court.

(d) The [board] department shall prescribe forms for the submission of reports required by this section."

SECTION 13. Section 453-17, Hawaii Revised Statutes, is amended to read as follows:

"[]§453-17[] [Investigation by board.] Subpoena of peer review adverse decision report. In connection with an investigation [by the board of medical examiners on its own motion, or as the result of information received by the board pursuant to sections 92-17, 453-8.7, or 663-1.7(d),] under section 453- , the director of commerce and consumer affairs may issue subpoenas, pursuant to section 26-9(i), 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, notwithstanding section 624-25.5. A medical society, hospital, or health care facility shall expunge from the documents specific patient identifiers. Information for investigation which was obtained through a subpoena shall be for the sole use by the [board] department of commerce and consumer affairs to carry out its responsibilities and functions and shall be held confidential by the [board,] 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.”

SECTION 14. Section 453-31, Hawaii Revised Statutes, is amended to read as follows:

“[[]§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, the provisions of this part shall control with regard to emergency ambulance service personnel.

The board of medical examiners 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 when a person certified under this part provides services within the practice of medicine.”

SECTION 15. Section 453-32, Hawaii Revised Statutes, is amended to read as follows:

“[[]§453-32[]] **Certification of emergency ambulance personnel.** The board of medical examiners shall certify individuals as qualified in emergency medical services upon application therefor; provided that the applicant for certification:

- (1) [Has successfully passed an examination recognized by the board of medical examiners to determine the knowledge and competence of emergency ambulance personnel; or who] Holds a certificate from the National Registry of Emergency Medical Technicians, has satisfactorily passed a [board-recognized] course of training in emergency medical services for emergency ambulance services personnel; or who] 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 [which may be, including passage of an examination, set by the board of medical examiners pertinent to the [emergency medical services work of emergency ambulance services personnel;] practice of emergency medical services in Hawaii;

(2) Meets continuing education requirements which shall be set by the board of medical examiners; and

(3) Meets other qualifications set by the board of medical examiners.

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 board of medical examiners shall provide standard application forms for the certification of emergency ambulance personnel[,] and shall provide for the periodic renewal of such certification. The board of medical examiners shall assess a fee for such application, certification, and renewal. The board of medical examiners shall provide for the lapsing, 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.”

SECTION 16. Section 663-1.7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The final peer review committee of a medical society, hospital, or other health care facility shall report in writing every adverse decision made by it to the [board of medical examiners.] department of commerce and consumer affairs. The report shall be filed within thirty business days following an adverse decision. The report shall contain information on the nature of the action, its date, the reasons for, and the circumstances surrounding the action[.]; provided that specific patient identifiers shall be expunged. If a potential adverse decision was superseded by resignation or other voluntary action that was requested or bargained for in lieu of medical disciplinary action, the report shall so state. The [board] department shall prescribe forms for the submission of reports required by this section. Failure to comply with this subsection shall be a violation punishable by a fine of not less than \$100 for each member of the committee.”

SECTION 17. Section 671-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The insurance commissioner shall forward the name of every health care provider, except a hospital[,] or physician licensed under chapter 453, against whom a settlement is made, an arbitration award is made, or judgment is rendered to the appropriate board of professional registration and examination for review of the fitness of the health care provider to practice his profession. The insurance commissioner shall forward the entire report under subsection (a) to the department of commerce and consumer affairs if the person against whom settlement or arbitration award is made or judgment rendered is a physician licensed under chapter 453.”

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SECTION 18. Section 671-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Within thirty days after the completion of a hearing, the medical claim conciliation panel shall file a written advisory decision with the insurance commissioner who shall thereupon mail copies to all parties concerned, their counsel, and the representative of each health care provider’s liability insurance carrier authorized to act for such carrier, and the [board of medical examiners or] board of osteopathic examiners, as appropriate. The insurance commissioner also shall mail copies of the advisory decision to the department of commerce and consumer affairs, if the claim is against a physician or surgeon licensed under chapter 453. The panel shall decide the issue of liability and shall state its conclusions in substantially the following language: “We find the health care provider was actionably negligent in his or her care and treatment of the patient and we, therefore, find for the claimant”; or “We find the health care provider was not actionably negligent in his or her care and treatment of the patient and we, therefore, find for the health care provider”.”

SECTION 19. Section 453-8.3, Hawaii Revised Statutes, is repealed.

SECTION 20. Statutory material to be repealed is bracketed. New material is underscored.²

SECTION 21. This Act shall take effect upon its approval.

(Approved May 26, 1984.)

Notes

1. So in original. Missing language.
2. Edited pursuant to HRS §23G-16.5.