

ACT 181

H.B. NO. 748

A Bill for an Act Relating to the Board of Medical Examiners.

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

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

“§453- Renewal of certification. Every person holding a certificate under this part shall reregister with the board no later than January 31 of each even-numbered year. Applicants for reregistration shall pay a renewal fee and provide evidence of compliance with the continuing education requirements set forth in the board’s rules. Failure to reregister, including noncompliance with the continuing education requirements, shall constitute a forfeiture of the certificate which may only be restored upon written application for reregistration and payment to the board

of a restoration fee. 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.”

SECTION 2. Section 453-5.3, Hawaii Revised Statutes, is amended to read as follows:

“§453-5.3 Physician assistant; certification required. (a) The board of medical examiners shall require each person practicing medicine under the supervision of a physician, other than a person licensed under section 453-3, 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 approve temporary certification of an applicant under this section if the applicant has graduated from a board approved training program within twelve months of the date of application and has never taken a national certifying examination approved by the board but otherwise meets the requirements of this section, 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 may be issued only once to each person.

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

(f) 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.

(g) The certification of a physician assistant shall be subject to revocation, limitation, or suspension under section 453-8 and an application for certification may be denied for the same reasons.

(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 certificate under this section shall reregister with the board no later than January 31 of each even-numbered year and pay a renewal fee. Failure to reregister shall constitute a forfeiture of the certificate which may only be restored upon written application for registration and payment to the board of a restoration fee.

(j) 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.”

SECTION 3. Section 453-6, Hawaii Revised Statutes, is amended to read as follows:

“§453-6 Fees; expenses. No applicant shall be examined under this chapter until the applicant has paid to the board of medical examiners application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses. Every person holding a license under this chapter shall [re-register] reregister with the board [biennially in each even-numbered year, not] no later than January 31, of each even-numbered year and for such registration shall pay a renewal fee. At the time of [re-registration,] reregistration, 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] reregister 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 restoration fee. 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. All such fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund.”

SECTION 4. Section 453-8, Hawaii Revised Statutes, is amended to read as follows:

“§453-8 Revocation, limitation, suspension, or denial 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, or may be denied, for any one or more of the following acts or conditions on the part of the holder of such license or the applicant therefor:

- (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 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, gross negligence, 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 or the American Medical 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 for reasons as provided in this section;
- (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;
- (13) Violation of chapter 329, uniform controlled substance act, or any rule adopted thereunder;
- (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 any license is revoked, limited, suspended, or denied by the board for any act or condition listed in this section, the board shall notify the holder of, or the applicant for, the license in writing of the revocation, limitation, suspension, or denial. Any license to practice medicine and surgery which has been revoked under this section may be restored by the board.

(c) If disciplinary action related to the practice of medicine has been taken against the applicant in any jurisdiction that would constitute a violation under this section, 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 approved by the board;
- (2) Probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed 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."

SECTION 5. 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) 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 board of medical examiners pertinent to the 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 6. Section 463E-5, Hawaii Revised Statutes, is amended to read as follows:

"§463E-5 Fees; expenses. No applicant shall be examined under this chapter until the applicant has paid to the board of medical examiners application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses. Every person holding a license under this chapter shall reregister with the board [biennially in each even-numbered year, not] no later than January 31, and for registration shall pay a renewal fee. At the time of reregistration, the licensee shall provide written proof of a minimum of forty hours of postgraduate work or continuing education of podiatry taken during the previous biennium. Failure to reregister and present this proof shall constitute a forfeiture of the license, which may be restored only upon written application therefor and payment to the board of a restoration fee. 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. All fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund."

SECTION 7. Section 463E-6, Hawaii Revised Statutes, is amended to read as follows:

"§463E-6 Revocation, suspension, or denial of license; sanctions. (a) Any license to practice podiatry may be revoked or suspended by the board of medical examiners at any time in a proceeding before the board, or may be denied, for any one or more of the following acts or conditions on the part of the holder of the license or the applicant therefor:

- (1) Employing what is popularly known as a "capper" or "steerer";
- (2) Obtaining any fee on the assurance that manifestly incurable disease can be permanently cured;
- (3) Willfully betraying a professional secret;
- (4) Advertising one's podiatrist business with any untruthful and improbable statement;
- (5) False or fraudulent advertising;
- (6) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;
- (7) Violation of section 453-2;

- (8) Professional misconduct or gross negligence or manifest incapacity in the practice of podiatry;
 - (9) Engaging in the practice of podiatry other than as defined in section 463E-1;
 - (10) 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 effect;
 - (11) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
 - (12) Incompetence or multiple instances of negligence, including, but not limited to, the consistent use of medical service which is inappropriate or unnecessary;
 - (13) Revocation, suspension, or other disciplinary action by another state or federal agency of a license or practice privilege for reasons as provided in this section;
 - (14) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a podiatrist, notwithstanding any statutory provision to the contrary;
 - (15) Violation of chapter 329, uniform controlled substance act, or any rule adopted thereunder;
 - (16) Failure to report to the board, in writing, any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final; or
 - (17) 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) In addition to or in lieu of revoking or suspending a license to practice podiatry, 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 podiatrists;
 - (2) Limit the license by restricting the field of practice in which the licensee may engage;
 - (3) Fine the licensee, including assessment against the licensee of the cost of the disciplinary proceedings. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$500 and no more than \$5,000 for each violation, exclusive of the costs of the disciplinary proceedings;
 - (4) 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; or
 - (5) Require further education or training or require proof of performance competency.
- (c) If disciplinary action related to the practice of podiatric medicine taken against the applicant in any jurisdiction that would constitute a violation of this section, 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 of licensure:
- (1) Physical and mental evaluation of the applicant by a licensed physician approved by the board;
 - (2) Probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed podiatrists;

- (3) Limitation of the license by restricting the field of practice in which the licensee may engage;
- (4) Further education or training or proof of performance competency; and
- (5) Limitation of the podiatric practice of the licensee in any reasonable manner to assure the safety and welfare of the consuming public.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

Note

1. Edited pursuant to HRS §23G-16.5.