

ACT 177

H.B. NO. 3030

A Bill for an Act Relating to Medicine and Surgery.

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

SECTION 1. Chapter 328, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

**“§328- Out-of-state prescriptions.** (a) An out-of-state practitioner may make a written or orally-ordered prescription within the confines of the practitioner’s license and in accordance with Hawaii laws and rules. The prescription may either be filled one time or refilled one time, but not both; provided that:

- (1) The prescription filled or refilled pursuant to this section shall be limited to not more than a thirty-day supply of any drug; and
- (2) If orally-ordered, the prescription shall be personally ordered by an out-of-state practitioner and received only by a pharmacist.

(b) Any pharmacist who fills or refills an out-of-state prescription shall:

- (1) Note the following on the pharmacist’s prescription record: the out-of-state practitioner’s full name, address, telephone number, and DEA registration number;

- (2) Be responsible for validating the authenticity of the out-of-state practitioner's DEA registration number; and
- (3) Demand proper identification from the person whose name appears on the prescription prior to filling the prescription, in addition to complying with any identification procedures established by the department for filling and refilling an out-of-state prescription.
- (c) Before filling or refilling an out-of-state prescription, a pharmacist receiving transferred prescription information shall:
  - (1) Advise the person whose name appears on the prescription that the prescription on file at the originating out-of-state pharmacy may be canceled before the pharmacist can fill or refill the prescription; and
  - (2) Record all information required to be on a prescription, including, but not limited to:
    - (A) The date of issuance of the original prescription;
    - (B) The number of refills authorized on the original prescription;
    - (C) The date the original prescription was dispensed;
    - (D) The number of valid refills remaining and the date of the last refill;
    - (E) The out-of-state pharmacy's name, address, and DEA registration number, and the original prescription number from which the prescription information was transferred; and
    - (F) The name of the transferor pharmacist.
  - (d) A pharmacist who fills or refills an out-of-state prescription shall be responsible if the prescription is not written in the form prescribed by Hawaii laws and rules.
  - (e) The pharmacist shall follow all labeling procedures established by the department for filling and refilling an out-of-state prescription. The label shall also appropriately identify the prescription as "Out-of-State Filled" or "Out-of-State Refilled," and shall state the date of filling or refilling and the local address of the person whose name appears on the prescription.
  - (f) All transferred prescriptions shall be maintained for a period of five years from the date of filling or refilling. Filled out-of-state prescriptions shall be kept in a special file for five years. The department may establish additional recordkeeping and reporting procedures for filled and refilled out-of-state prescriptions.
  - (g) This section shall not apply to prescriptions for controlled substances and habit forming drugs.

**§328- Record of prescriptions.** Every licensed physician or pharmacist who compounds, sells, or delivers any prescription containing any poisonous drug, or substance deleterious to human life, to be used as medicine, shall enter upon the physician's or pharmacist's books the prescription written out in full, with the date thereof, with the physician's or pharmacist's own name appended thereto, or the name of the physician who prescribed the same, and the person to whom the same was delivered. No prescription shall be compounded, sold, or delivered unless the name of the person compounding, selling, or delivering the same, or the name of the physician prescribing the same, is appended to the prescription in full, and every prescription shall be preserved for a period of not less than five years. The books and prescriptions shall be subject at all times to the inspection of the director of health or the director's agent."

SECTION 2. Section 328-99, Hawaii Revised Statutes, is amended to read

as follows:

**“§328-99 Exceptions.** Out-of-state prescriptions filled pursuant to section [328-101] 328- shall be exempt from this part.”

SECTION 3. Section 453-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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] 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, [gross negligence,] 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 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 substances 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.”

SECTION 4. Section 328-100, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 328-101, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 12, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.