

## ACT 248

S.B. NO. 1136

A Bill for an Act Relating to Regulation of Osteopathy.

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

SECTION 1. Chapter 460, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§460- Rules.** The board of medical examiners, established pursuant to chapter 453, shall adopt rules in accordance with chapter 91 for the administration of this chapter.”

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board of acupuncture, board of public accountancy, board of barbering and cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of massage therapy, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners in optometry, [board of osteopathic examiners,] pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 3. Section 453-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For the purpose of carrying out this chapter, the governor shall appoint a board of medical examiners, whose duty it shall be to examine all applicants for license to practice medicine or surgery. As used in this chapter, “board” means the board of medical examiners.

The board shall consist of [nine] 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 [seven physician or surgeon members, four] nine members who are physicians, surgeons, or osteopathic physicians, at least five shall be appointed from the city and county of Honolulu and [one each] 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.”

SECTION 4. Section 460-1, Hawaii Revised Statutes, is amended to read as follows:

“**§460-1 License to practice.** No person shall practice as an osteopathic physician [and surgeon] either gratuitously or for pay, or shall offer to so practice, or shall advertise or announce, either publicly or privately, that the person is prepared or qualified to so practice, or shall append the letters “Dr.” or the letters “D.O.” to the person’s name, with the intent thereby to imply that the person is a practitioner as an osteopathic physician [and surgeon], without having a valid unrevoked license, obtained from the board of [osteopathic] medical examiners, in form and manner substantially as hereinafter set forth.

Nothing herein shall:

- (1) Apply to any osteopathic physician [and surgeon] from another state who is in actual consultation with a licensed physician of this State if the physician from another state is licensed to practice in the state in which the physician resides; provided that the physician from another state shall not open an office, or administer treatment to any patient except in actual temporary consultation with a resident licensed physician of this State; or
- (2) Prohibit services rendered by any osteopathic physician’s assistant when the services are rendered under the supervision, direction, and control of an osteopathic physician [and surgeon] licensed in this State, as may be specified by rule or statute. The board of [osteopathic] medical examiners shall adopt rules to define the type of supervision, direction, and control that must be maintained and the extent that the personal presence of the osteopathic physician [and surgeon] will be required. Any osteopathic physician [and surgeon] who employs or directs an osteopathic physician’s assistant shall retain full professional and personal responsibility for any act which constitutes the practice of osteopathic medicine and surgery when performed by an osteopathic physician’s assistant.”

SECTION 5. Section 460-3, Hawaii Revised Statutes, is amended to read as follows:

“**§460-3 [Board of osteopathic examiners.] License required for osteopathic physicians.** No person shall be licensed by the board of [osteopathic] medical examiners to practice as an osteopathic physician [and surgeon] unless the applicant has been duly examined and found to be possessed of the necessary qualifications, or found to be otherwise qualified as herein provided.

As used in this chapter, “board” means the board of medical examiners.”

SECTION 6. Section 460-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In any proceedings before the board [of osteopathic examiners] for the revocation or suspension of a license under this chapter, upon any of the grounds listed in section 460-12, the person whose license is sought to be revoked or suspended shall be given, pursuant to chapter 91, reasonable written notice of the charge or charges upon which the proceeding is based and of the time and place where a hearing will be held and shall be given reasonable opportunity to be heard and present evidence in the person’s defense.

In the proceeding, the board may subpoena, administer oaths to, and examine witnesses on any relevant matter in the proceeding. The person whose license is sought in the proceeding to be revoked or suspended shall be entitled to require the board or any member thereof to subpoena and to administer oaths to any witness or witnesses who may be able to present evidence relevant in the proceeding, and shall

be entitled to examine the witness and any other witness in the proceeding. The circuit court of the circuit in which the proceeding is held shall have power to enforce by proper proceeding the attendance and testimony of witnesses in the proceeding.”

SECTION 7. Section 460-17, Hawaii Revised Statutes, is amended to read as follows:

“**§460-17 Records.** The board [of osteopathic examiners] shall keep a record which shall be open to public inspection at all reasonable times, of [its] proceedings relating to the issuance, refusal, renewal, suspension, and revocation of licenses to practice osteopathy [and surgery]. This record shall also contain the name, known place of business and residence, and the date and number of the license of every registered osteopathic physician [and surgeon].”

SECTION 8. Section 460-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of commerce and consumer affairs shall review each complaint and information received under sections 92-17, 329-44, 460-18, 663-1.7, 671-5, and 671-15. The department shall investigate the complaint or information if it appears that the osteopathic physician [and surgeon] who is the subject of the complaint or information has violated this chapter. If the department determines that the osteopathic physician [and surgeon] has violated this chapter, the department shall present the results of its investigation to the board [of osteopathic examiners] for appropriate disciplinary proceedings.”

SECTION 9. Section 460-4, Hawaii Revised Statutes, is repealed.

SECTION 10. The term of any member of the board of osteopathic examiners who was appointed before the effective date of this Act shall terminate on the effective date of this Act.

SECTION 11. All rules, guidelines, and other material adopted or developed by the board of osteopathic examiners shall remain in full force and effect until amended or repealed by the board of medical examiners. In the interim, every reference to the board of osteopathic examiners in those rules, guidelines, and other material is amended to refer to the board of medical examiners.

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 14. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

**Note**

1. Edited pursuant to HRS §23G-16.5.