

ACT 219

H.B. NO. 847

A Bill for an Act Relating to Enforcement Tools to Improve Patient Safety.

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 be appropriately designated and to read as follows:

“§453- Summary suspension. (a) The board may summarily suspend any license issued under this chapter upon a specific determination that the failure to take such an action may result in an immediate and unreasonable threat to personal safety or of fraud that jeopardizes or endangers the health or safety of patients as determined by the professional standards of care upon consumers, and that, for the protection of the public from the possible consequences of such practices, the license should be immediately suspended or restricted.

(b) The order of summary suspension shall include a brief statement of findings of fact and conclusions of law and shall be served upon the licensee as required by chapter 91. The order of summary suspension shall be effective upon service.

(c) A licensee served with an order of summary suspension shall have the right to request a hearing to show cause why the order of summary suspension should be terminated. Any request for a hearing shall be made in writing and filed with the board within five business days of service of the order. The board shall hold a hearing within seven business days of receipt of the licensee's request for the hearing to show cause.

(d) Notwithstanding any law to the contrary, an order summarily suspending a license issued under this chapter shall remain in effect until the effective date of a final decision and order issued by the board in a disciplinary action or the effective date of an order issued by the board terminating the summary suspension following a hearing to show cause, whichever occurs first, but in either case shall not exceed thirty business days.

(e) The board shall conduct a hearing for disciplinary action against a licensee whose license has been summarily suspended under this section within twenty business days from the effective date of the order of summary suspension.

(f) Any attempt by the licensee to continue the practice of medicine or the practice of medicine by the licensee while the license has been summarily suspended shall be grounds for revocation of the license and shall subject the licensee to any penalties prescribed under this chapter, the applicable licensing laws, or any rule or order of the board.”

SECTION 2. Section 453-8, Hawaii Revised Statutes, is amended to read as follows:

“§453-8 Revocation, limitation, suspension, or denial of licenses. (a) In addition to any other actions authorized by law, any license to practice medicine and surgery may be revoked, limited, or suspended by the board at any time in a proceeding before the board, or may be denied, for any cause authorized by law, including but not limited to the following:

- (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 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, hazardous negligence causing bodily injury to another, or manifest incapacity in the practice of medicine[, osteopathy,] 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, the American Medical Association, the Hawaii Association of Osteopathic Physicians and Surgeons, or the American Osteopathic 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 or osteopathic physician, notwithstanding any statutory provision to the contrary;
- (13) Violation of chapter 329, the uniform controlled substances act, or any rule adopted thereunder except as provided in section 329-122;
- (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 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 or osteopathic physician approved by the board;
- (2) Probation, including conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed physicians, osteopathic 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.

(c) Where the board has reasonable cause to believe that a licensee is or may be unable to practice medicine with reasonable skill and safety to protect patients, the board may order the licensee to submit to a mental or physical examination or any combination thereof, by a licensed practitioner approved by the board, at the licensee's expense. The examination may include biological fluid testing and other testing known to detect the presence of alcohol or other drugs. In addition:

- (1) Any licensee shall be deemed to have consented to submit to a mental or physical examination when so directed by the board and to have waived all objection to the use or referral of information by the board to determine whether the licensee is able to practice medicine with reasonable skill and safety to protect patients;
- (2) The board may seek to enforce an order directing a licensee to submit to a mental or physical examination in the circuit court in the county in which the licensee resides;
- (3) Failure of a licensee to submit to an examination ordered under this subsection shall constitute grounds for summary suspension of the licensee's license; and
- (4) The board may take any action authorized under this chapter based on information obtained under this subsection.

(d) Any person licensed by the board, including a physician, surgeon, or physician assistant, who provides information to the board indicating that a board licensee may be guilty of unprofessional conduct or may be impaired be-

cause of drug or alcohol abuse or mental illness shall not be liable for any damages in any civil action based on the communication. The immunity afforded by this section shall be in addition to any immunity afforded by section 663-1.7, if applicable, and shall not be construed to affect the availability of any absolute privilege under sections 663-1.7 and 671D-10.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 4. This Act, upon its approval, shall take effect on July 1, 2013.

(Approved June 27, 2013.)

Note

1. Edited pursuant to HRS §23G-16.5.