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# A BILL FOR AN ACT

RELATING TO LICENSING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that a recent Honolulu  
2 Star-Advertiser investigation found dozens of examples of  
3 physicians who were disciplined in other states and either  
4 received new Hawaii licenses or kept their existing medical  
5 licenses for long periods without receiving reciprocal sanctions  
6 in Hawaii. The investigation found that after other states  
7 imposed sanctions on physicians who were also licensed in  
8 Hawaii, Hawaii regulators often took more than two years to  
9 issue reciprocal discipline. Furthermore, Hawaii consumers  
10 often would not learn that a Hawaii-licensed physician faced  
11 sanctions in another state until reciprocal discipline was  
12 issued in Hawaii. In other situations, when other states  
13 declared emergencies to justify immediately pulling a license,  
14 Hawaii failed to take immediate action also. The most egregious  
15 cases uncovered during the investigation involved physicians who  
16 lost the ability to practice in other states, either because of  
17 serious misconduct or to settle misconduct charges, but were



1 able to maintain their Hawaii licenses for months or even years  
2 after that.

3 The legislature further finds that timely action in  
4 reciprocal discipline cases is a vital aspect of consumer  
5 protection. Furthermore, delayed action in reciprocal  
6 discipline cases, particularly in emergency situations, can put  
7 patients unnecessarily at risk. The legislature additionally  
8 finds that ensuring timely reciprocal discipline of physicians  
9 and other health care professionals, including osteopathic  
10 physicians, physician assistants, nurses, dentists, and  
11 pharmacists, is necessary to protect the public.

12 Accordingly, the purpose of this Act is to:

13 (1) Authorize the board of dental examiners, Hawaii  
14 medical board, and board of pharmacy to deny a license  
15 to an applicant who has been disciplined by another  
16 state or federal agency and the board of nursing to  
17 deny a license to an applicant who has been  
18 disciplined by another state agency;

19 (2) Authorize the board of dental examiners, Hawaii  
20 medical board, board of nursing, and board of pharmacy  
21 to impose the same disciplinary action against a



- 1           licensee as was taken by another state or federal
- 2           agency;
- 3           (3) Establish conditions for the disciplinary action;
- 4           (4) Prohibit a licensee from practicing until a final
- 5           order of discipline is issued if disciplinary action
- 6           taken by another state prohibited the licensee from
- 7           practicing in that state; and
- 8           (5) Ensure consumer protection by requiring any final
- 9           order of discipline taken to be public record.

10       SECTION 2. Chapter 448, Hawaii Revised Statutes, is  
 11 amended by adding a new section to be appropriately designated  
 12 and to read as follows:

13       "§448-    Discipline based on action taken by another state  
 14 or federal agency; conditions; prohibition on practice. (a)  
 15 Upon receipt of evidence of revocation, suspension, or other  
 16 disciplinary action against a licensee by another state or  
 17 federal agency, the board may issue an order imposing the same  
 18 disciplinary action upon the licensee on the following  
 19 conditions:



- 1       (1) The board shall serve the licensee with a proposed  
2       order imposing disciplinary action as required by  
3       chapter 91;
- 4       (2) The licensee shall have the right to request a hearing  
5       pursuant to chapter 91 to show cause why the action  
6       described in the proposed order should not be imposed;
- 7       (3) Any request for a hearing shall be made in writing and  
8       filed with the board within twenty days after mailing  
9       of the proposed order to the licensee; and
- 10       (4) If the licensee does not submit a written request for  
11       a hearing within twenty days after mailing of the  
12       proposed order, the board shall issue a final order  
13       imposing the disciplinary action described in the  
14       proposed order.
- 15       (b) A certified copy of the disciplinary action by another  
16       state or federal agency shall constitute prima facie evidence of  
17       the disciplinary action.
- 18       (c) A licensee against whom the board has issued a  
19       proposed order under this section shall be prohibited from  
20       practicing in this State until the board issues a final order  
21       if:



1       (1) The licensee was the subject of disciplinary action by  
2           another state; and

3       (2) The disciplinary action by another state prohibits the  
4           licensee from practicing in that state.

5       (d) In addition to the provisions of this section, the  
6       board may take any other action authorized by this chapter or  
7       chapter 436B.

8       (e) Notwithstanding any law to the contrary, the final  
9       order of discipline taken pursuant to this section shall be a  
10       matter of public record."

11       SECTION 3. Chapter 453, Hawaii Revised Statutes, is  
12       amended by adding a new section to be appropriately designated  
13       and to read as follows:

14       "§453- Discipline based on action taken by another state  
15       or federal agency; conditions; prohibition on practice. (a)

16       Upon receipt of evidence of revocation, suspension, or other  
17       disciplinary action against a licensee by another state or  
18       federal agency, the board may issue an order imposing the same  
19       disciplinary action upon the licensee on the following  
20       conditions:



- 1        (1) The board shall serve the licensee with a proposed  
2        order imposing disciplinary action as required by  
3        chapter 91;
- 4        (2) The licensee shall have the right to request a hearing  
5        pursuant to chapter 91 to show cause why the action  
6        described in the proposed order should not be imposed;
- 7        (3) Any request for a hearing shall be made in writing and  
8        filed with the board within twenty days after mailing  
9        of the proposed order to the licensee; and
- 10       (4) If the licensee does not submit a written request for  
11       a hearing within twenty days after mailing of the  
12       proposed order, the board may issue a final order  
13       imposing the disciplinary action described in the  
14       proposed order.
- 15       (b) A certified copy of the disciplinary action by another  
16       state or federal agency shall constitute prima facie evidence of  
17       the disciplinary action.
- 18       (c) A licensee against whom the board has issued a  
19       proposed order under this section shall be prohibited from  
20       practicing in this State until the board issues a final order  
21       if:

1       (1) The licensee was the subject of disciplinary action by  
2           another state; and

3       (2) The disciplinary action by another state prohibits the  
4           licensee from practicing in that state.

5       (d) In addition to the provisions of this section, the  
6       board may take any other action authorized by this chapter or  
7       chapter 436B.

8       (e) Notwithstanding any law to the contrary, any final  
9       order of discipline taken pursuant to this section shall be a  
10       matter of public record."

11       SECTION 4. Chapter 457, Hawaii Revised Statutes, is  
12       amended by adding a new section to be appropriately designated  
13       and to read as follows:

14       "§457- Discipline based on action taken in another  
15       state; conditions; prohibition on practice. (a) Upon receipt  
16       of evidence of revocation, suspension, or other disciplinary  
17       action against a licensee in another state, the board may issue  
18       an order imposing the same disciplinary action upon the licensee  
19       on the following conditions:



- 1        (1) The board shall serve the licensee with a proposed  
2        order imposing disciplinary action as required by  
3        chapter 91;
- 4        (2) The licensee shall have the right to request a hearing  
5        pursuant to chapter 91 to show cause why the action  
6        described in the proposed order should not be imposed;
- 7        (3) Any request for a hearing shall be made in writing and  
8        filed with the board within twenty days after mailing  
9        of the proposed order to the licensee; and
- 10       (4) If the licensee does not submit a written request for  
11       a hearing within twenty days after mailing of the  
12       proposed order, the board shall issue a final order  
13       imposing the disciplinary action described in the  
14       proposed order.
- 15       (b) A certified copy of the disciplinary action in another  
16       state shall constitute prima facie evidence of the disciplinary  
17       action.
- 18       (c) A licensee against whom the board has issued a  
19       proposed order under this section shall be prohibited from  
20       practicing in this State until the board issues a final order  
21       if:





1        (1) The licensee was the subject of disciplinary action in  
2                    another state; and

3        (2) The disciplinary action in the other state prohibits  
4                    the licensee from practicing in that state.

5        (d) In addition to the provisions of this section, the  
6 board may take any other action authorized by this chapter or  
7 chapter 436B.

8        (e) Notwithstanding any law to the contrary, the final  
9 order of discipline taken pursuant to this section shall be a  
10 matter of public record."

11        SECTION 5. Chapter 461, Hawaii Revised Statutes, is  
12 amended by adding a new section to be appropriately designated  
13 and to read as follows:

14        "§461- Discipline based on action taken by another state  
15 or federal agency; conditions; prohibition on practice. (a)  
16 Upon receipt of evidence of revocation, suspension, or other  
17 disciplinary action against a licensee by another state or  
18 federal agency, the board may issue an order imposing the same  
19 disciplinary action upon the licensee on the following  
20 conditions:



- 1        (1) The board shall serve the licensee with a proposed  
2        order imposing disciplinary action as required by  
3        chapter 91;
- 4        (2) The licensee shall have the right to request a hearing  
5        pursuant to chapter 91 to show cause why the action  
6        described in the proposed order should not be imposed;
- 7        (3) Any request for a hearing shall be made in writing and  
8        filed with the board within twenty days after mailing  
9        of the proposed order to the licensee; and
- 10       (4) If the licensee does not submit a written request for  
11       a hearing within twenty days after mailing of the  
12       proposed order, the board shall issue a final order  
13       imposing the disciplinary action described in the  
14       proposed order.
- 15       (b) A certified copy of the disciplinary action by another  
16       state or federal agency shall constitute prima facie evidence of  
17       the disciplinary action.
- 18       (c) A licensee against whom the board has issued a  
19       proposed order under this section shall be prohibited from  
20       practicing in this State until the board issues a final order  
21       if:



1       (1) The licensee was the subject of disciplinary action by  
2           another state; and

3       (2) The disciplinary action by another state prohibits the  
4           licensee from practicing in that state.

5       (d) In addition to the provisions of this section, the  
6       board may take any other action authorized by this chapter or  
7       chapter 436B.

8       (e) Notwithstanding any law to the contrary, the final  
9       order of discipline taken pursuant to this section shall be a  
10       matter of public record."

11       SECTION 6. Section 448-17, Hawaii Revised Statutes, is  
12       amended by amending subsection (a) to read as follows:

13       "(a) The board shall refuse to issue a license to any  
14       applicant who fails to meet all of the requirements imposed by  
15       this chapter and may refuse to issue a license to any applicant  
16       who has [~~previously committed any act that would, if committed~~  
17       ~~by a licensee, result in the revocation or suspension of the~~  
18       ~~license.] been disciplined by another state or federal agency.  
19       Notwithstanding any law to the contrary, a final order denying  
20       the issuance of a license to any applicant based on the~~



1 applicant's discipline by another state or federal agency shall  
2 be a matter of public record."

3 SECTION 7. Section 453-8, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§453-8 Revocation, limitation, suspension, or denial of  
6 licenses. (a) In addition to any other actions authorized by  
7 law, any license to practice medicine and surgery may be  
8 revoked, limited, or suspended by the board at any time in a  
9 proceeding before the board, or may be denied, for any cause  
10 authorized by law, including but not limited to the following:

- 11 (1) Procuring, or aiding or abetting in procuring, a  
12 criminal abortion;
- 13 (2) Employing any person to solicit patients for one's  
14 self;
- 15 (3) Engaging in false, fraudulent, or deceptive  
16 advertising, including but not limited to:
  - 17 (A) Making excessive claims of expertise in one or  
18 more medical specialty fields;
  - 19 (B) Assuring a permanent cure for an incurable  
20 disease; or



- 1 (C) Making any untruthful and improbable statement in
- 2 advertising one's medical or surgical practice or
- 3 business;
- 4 (4) Being habituated to the excessive use of drugs or
- 5 alcohol; or being addicted to, dependent on, or a
- 6 habitual user of a narcotic, barbiturate, amphetamine,
- 7 hallucinogen, or other drug having similar effects;
- 8 (5) Practicing medicine while the ability to practice is
- 9 impaired by alcohol, drugs, physical disability, or
- 10 mental instability;
- 11 (6) Procuring a license through fraud, misrepresentation,
- 12 or deceit, or knowingly permitting an unlicensed
- 13 person to perform activities requiring a license;
- 14 (7) Professional misconduct, hazardous negligence causing
- 15 bodily injury to another, or manifest incapacity in
- 16 the practice of medicine or surgery;
- 17 (8) Incompetence or multiple instances of negligence,
- 18 including but not limited to the consistent use of
- 19 medical service, which is inappropriate or
- 20 unnecessary;



- 1           (9)    Conduct or practice contrary to recognized standards  
2                   of ethics of the medical profession as adopted by the  
3                   Hawaii Medical Association, the American Medical  
4                   Association, the Hawaii Association of Osteopathic  
5                   Physicians and Surgeons, or the American Osteopathic  
6                   Association;
- 7           (10)   Violation of the conditions or limitations upon which  
8                   a limited or temporary license is issued;
- 9           (11)   Revocation, suspension, or other disciplinary action  
10                   by another state or federal agency of a license,  
11                   certificate, or medical privilege [~~for reasons as~~  
12                   ~~provided in this section~~];
- 13           (12)   Conviction, whether by nolo contendere or otherwise,  
14                   of a penal offense substantially related to the  
15                   qualifications, functions, or duties of a physician or  
16                   osteopathic physician, notwithstanding any statutory  
17                   provision to the contrary;
- 18           (13)   Violation of chapter 329, the uniform controlled  
19                   substances act, or any rule adopted thereunder except  
20                   as provided in section 329-122;



1 (14) Failure to report to the board, in writing, any  
2 disciplinary decision issued against the licensee or  
3 the applicant in another jurisdiction within thirty  
4 days after the disciplinary decision is issued; or

5 (15) Submitting to or filing with the board any notice,  
6 statement, or other document required under this  
7 chapter, which is false or untrue or contains any  
8 material misstatement or omission of fact.

9 (b) If disciplinary action related to the practice of  
10 medicine has been taken against the applicant [~~in any~~  
11 ~~jurisdiction that would constitute a violation under this~~  
12 ~~section,~~] by another state or federal agency, or if the  
13 applicant reveals a physical or mental condition that would  
14 constitute a violation under this section, then the board may  
15 impose one or more of the following requirements as a condition  
16 for licensure:

17 (1) Physical and mental evaluation of the applicant by a  
18 licensed physician or osteopathic physician approved  
19 by the board;

20 (2) Probation, including conditions of probation as  
21 requiring observation of the licensee by an



1 appropriate group or society of licensed physicians,  
2 osteopathic physicians, or surgeons;

3 (3) Limitation of the license by restricting the fields of  
4 practice in which the licensee may engage;

5 (4) Further education or training or proof of performance  
6 competency; and

7 (5) Limitation of the medical practice of the licensee in  
8 any reasonable manner to assure the safety and welfare  
9 of the consuming public.

10 (c) Notwithstanding any other law to the contrary, the  
11 board may deny a license to any applicant who has been  
12 disciplined by another state or federal agency. Any final order  
13 of discipline taken pursuant to this subsection shall be a  
14 matter of public record.

15 [~~e~~] (d) Where the board has reasonable cause to believe  
16 that a licensee is or may be unable to practice medicine with  
17 reasonable skill and safety to protect patients, the board may  
18 order the licensee to submit to a mental or physical examination  
19 or any combination thereof, by a licensed practitioner approved  
20 by the board, at the licensee's expense. The examination may





1 include biological fluid testing and other testing known to  
2 detect the presence of alcohol or other drugs. In addition:

3 (1) Any licensee shall be deemed to have consented to  
4 submit to a mental or physical examination when so  
5 directed by the board and to have waived all objection  
6 to the use or referral of information by the board to  
7 determine whether the licensee is able to practice  
8 medicine with reasonable skill and safety to protect  
9 patients;

10 (2) The board may seek to enforce an order directing a  
11 licensee to submit to a mental or physical examination  
12 in the circuit court in the county in which the  
13 licensee resides;

14 (3) Failure of a licensee to submit to an examination  
15 ordered under this subsection shall constitute grounds  
16 for summary suspension of the licensee's license; and

17 (4) The board may take any action authorized under this  
18 chapter based on information obtained under this  
19 subsection.

20 [~~(d)~~] (e) Any person licensed by the board, including a  
21 physician, surgeon, or physician assistant, who provides



1 information to the board indicating that a board licensee may be  
2 guilty of unprofessional conduct or may be impaired because of  
3 drug or alcohol abuse or mental illness shall not be liable for  
4 any damages in any civil action based on the communication. The  
5 immunity afforded by this section shall be in addition to any  
6 immunity afforded by section 663-1.7, if applicable, and shall  
7 not be construed to affect the availability of any absolute  
8 privilege under sections 663-1.7 and 671D-10."

9 SECTION 8. Section 457-12, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§457-12 Discipline; grounds; proceedings; hearings.** (a)

12 In addition to any other actions authorized by law, the board  
13 shall have the power to deny, revoke, limit, or suspend any  
14 license to practice nursing as a registered nurse or as a  
15 licensed practical nurse applied for or issued by the board in  
16 accordance with this chapter, and to fine or to otherwise  
17 discipline a licensee for any cause authorized by law, including  
18 but not limited to the following:

19 (1) Fraud or deceit in procuring or attempting to procure  
20 a license to practice nursing as a registered nurse or  
21 as a licensed practical nurse;



- 1 (2) Gross immorality;
- 2 (3) Unfitness or incompetence by reason of negligence,  
3 habits, or other causes;
- 4 (4) Habitual intemperance, addiction to, or dependency on  
5 alcohol or other habit-forming substances;
- 6 (5) Mental incompetence;
- 7 (6) Unprofessional conduct as defined by the board in  
8 accordance with its own rules;
- 9 (7) Wilful or repeated violation of any of the provisions  
10 of this chapter or any rule adopted by the board;
- 11 (8) Revocation, suspension, limitation, or other  
12 disciplinary action by another state of a nursing  
13 license [~~for reasons as provided in this section~~];
- 14 (9) Conviction, whether by nolo contendere or otherwise,  
15 of a penal offense substantially related to the  
16 qualifications, functions, or duties of a nurse,  
17 notwithstanding any statutory provision to the  
18 contrary;
- 19 (10) Failure to report to the board any disciplinary action  
20 taken against the licensee in another jurisdiction



- 1           within thirty days after the disciplinary action  
2           becomes final;
- 3           (11) Submitting to or filing with the board any notice,  
4           statement, or other document required under this  
5           chapter, which is false or untrue or contains any  
6           material misstatement of fact, including a false  
7           attestation of compliance with continuing competency  
8           requirements; or
- 9           (12) Violation of the conditions or limitations upon which  
10          any license is issued.

11          (b) Notwithstanding any other law to the contrary, the  
12 board may deny a license to any applicant who has been  
13 disciplined by another state. Any final order entered pursuant  
14 to this subsection shall be a matter of public record.

15          ~~(b)~~ (c) Any fine imposed by the board after a hearing in  
16 accordance with chapter 91 shall be no less than \$100 and no  
17 more than \$1,000 for each violation.

18          ~~(e)~~ (d) The remedies or penalties provided by this  
19 chapter are cumulative to each other and to the remedies or  
20 penalties available under all other laws of this State."



1 SECTION 9. Section 461-4.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) In addition to any other powers and duties authorized  
4 by law, the board:

5 (1) Shall adopt, amend, and repeal rules pursuant to  
6 chapter 91, as it deems proper for the purposes of  
7 this chapter, Public Law 100-293, and 21 Code of  
8 Federal Regulations part 205;

9 (2) Shall examine, license, reinstate, and renew the  
10 licenses of qualified applicants for registered  
11 pharmacists and wholesale prescription drug  
12 distributors, and issue and renew permits to operate  
13 pharmacies;

14 (3) May require the inspection of any wholesale  
15 prescription drug distributor premises in the State to  
16 ensure compliance with this chapter and rules adopted  
17 under this chapter, or may require an applicant for a  
18 pharmacy license to submit a statement that the  
19 premises, including but not limited to security and  
20 sanitation, are in conformance with the board's  
21 requirements and that the applicant possesses the



1 reference materials and technical clinical equipment  
2 and supplies as may be specified in rules adopted  
3 under this chapter; [~~and~~]

4 (4) May fine, suspend, or revoke any license or permit for  
5 any cause prescribed by this chapter, or for any  
6 violation of the rules adopted under this chapter, and  
7 refuse to grant or renew any license or permit for any  
8 cause which would be ground for revocation or  
9 suspension of a license or permit [-]; and

10 (5) May deny a license to any applicant who has been  
11 disciplined by another state or federal agency.

12 Notwithstanding any law to the contrary, a final order  
13 of disciplinary action taken pursuant to this  
14 paragraph shall be a matter of public record."

15 SECTION 10. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 11. This Act shall take effect on July 1, 2016.

18



**Report Title:**

Licensing; Applicants for Licensure; Reciprocal Discipline;  
Discipline; Board of Dental Examiners; Hawaii Medical Board;  
Board of Nursing; Board of Pharmacy

**Description:**

Authorizes the board of dental examiners, Hawaii medical board, and board of pharmacy to deny a license to an applicant who has been disciplined by another state or federal agency and the board of nursing to deny a license to an applicant who has been disciplined by another state agency. Authorizes the board of dental examiners, Hawaii medical board, board of nursing, and board of pharmacy to impose the same disciplinary action against a licensee as was taken by another state or federal agency. Establishes conditions for the disciplinary action. Prohibits a licensee from practicing until a final order of discipline is issued if the licensee has been prohibited from practicing in another state. Requires any final order of discipline taken to be public record. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

