

JAN 27 2016

---

---

A BILL FOR AN ACT

RELATING TO PHYSICIAN DISCIPLINE.

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

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

4 "§453- Discipline based on action taken by another state  
5 or federal agency; conditions; prohibition on practice. (a)  
6 Upon receipt of evidence of revocation, suspension, or other  
7 disciplinary action against a licensee by another state or  
8 federal agency, the board may issue an order imposing the same  
9 disciplinary action upon the licensee on the following  
10 conditions:

- 11 (1) The board shall serve the licensee with a proposed  
12 order imposing disciplinary action as required by  
13 chapter 91;  
14 (2) The licensee shall have the right to request a hearing  
15 pursuant to chapter 91 to show cause why the action  
16 described in the proposed order should not be imposed;

1       (3) Any request for a hearing shall be made in writing and  
2       filed with the board within twenty days after mailing  
3       of the proposed order to the licensee; and

4       (4) If the licensee does not submit a written request for  
5       a hearing within twenty days after mailing of the  
6       proposed order, the board may issue a final order  
7       imposing the disciplinary action described in the  
8       proposed order.

9       (b) A certified copy of the disciplinary action by another  
10      state or federal agency shall constitute prima facie evidence of  
11      the disciplinary action.

12      (c) A licensee against whom the board has issued a  
13      proposed order under this section shall be prohibited from  
14      practicing in this State until the board issues a final order  
15      if:

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

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

20      (d) In addition to the provisions of this section, the  
21      board may take any other action authorized by this chapter or  
22      chapter 436B."

1 SECTION 2. Section 453-8, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) In addition to any other actions authorized by law,  
4 any license to practice medicine and surgery may be revoked,  
5 limited, or suspended by the board at any time in a proceeding  
6 before the board, or may be denied, for any cause authorized by  
7 law, including but not limited to the following:

- 8 (1) Procuring, or aiding or abetting in procuring, a  
9 criminal abortion;
- 10 (2) Employing any person to solicit patients for one's  
11 self;
- 12 (3) Engaging in false, fraudulent, or deceptive  
13 advertising, including but not limited to:
- 14 (A) Making excessive claims of expertise in one or  
15 more medical specialty fields;
- 16 (B) Assuring a permanent cure for an incurable  
17 disease; or
- 18 (C) Making any untruthful and improbable statement in  
19 advertising one's medical or surgical practice or  
20 business;
- 21 (4) Being habituated to the excessive use of drugs or  
22 alcohol; or being addicted to, dependent on, or a

- 1           habitual user of a narcotic, barbiturate, amphetamine,  
2           hallucinogen, or other drug having similar effects;
- 3           (5) Practicing medicine while the ability to practice is  
4           impaired by alcohol, drugs, physical disability, or  
5           mental instability;
- 6           (6) Procuring a license through fraud, misrepresentation,  
7           or deceit, or knowingly permitting an unlicensed  
8           person to perform activities requiring a license;
- 9           (7) Professional misconduct, hazardous negligence causing  
10          bodily injury to another, or manifest incapacity in  
11          the practice of medicine or surgery;
- 12          (8) Incompetence or multiple instances of negligence,  
13          including but not limited to the consistent use of  
14          medical service, which is inappropriate or  
15          unnecessary;
- 16          (9) Conduct or practice contrary to recognized standards  
17          of ethics of the medical profession as adopted by the  
18          Hawaii Medical Association, the American Medical  
19          Association, the Hawaii Association of Osteopathic  
20          Physicians and Surgeons, or the American Osteopathic  
21          Association;
- 22          (10) Violation of the conditions or limitations upon which  
23          a limited or temporary license is issued;

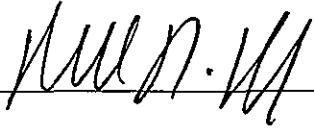
- 1           (11) Revocation, suspension, or other disciplinary action  
2                    by another state or federal agency of a license,  
3                    certificate, or medical privilege [~~for reasons as~~  
4                    ~~provided in this section~~];
- 5           (12) Conviction, whether by nolo contendere or otherwise,  
6                    of a penal offense substantially related to the  
7                    qualifications, functions, or duties of a physician or  
8                    osteopathic physician, notwithstanding any statutory  
9                    provision to the contrary;
- 10          (13) Violation of chapter 329, the uniform controlled  
11                    substances act, or any rule adopted thereunder except  
12                    as provided in section 329-122;
- 13          (14) Failure to report to the board, in writing, any  
14                    disciplinary decision issued against the licensee or  
15                    the applicant in another jurisdiction within thirty  
16                    days after the disciplinary decision is issued; or
- 17          (15) Submitting to or filing with the board any notice,  
18                    statement, or other document required under this  
19                    chapter, which is false or untrue or contains any  
20                    material misstatement or omission of fact."

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

S.B. NO. 2864

1 SECTION 4. This Act, upon its approval, shall take effect  
2 on July 1, 2016.

3  
4  
5

INTRODUCED BY:   
BY REQUEST

S . B. NO. 2864

**Report Title:**

Physician Discipline; Conditions

**Description:**

Authorizes the Hawaii Medical Board 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 the licensee from practicing until a final order of discipline is issued if the licensee has been prohibited from practicing in another state.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO PHYSICIAN DISCIPLINE.

PURPOSE: To authorize the Hawaii Medical Board (Board), under certain conditions, to impose the same disciplinary action against a licensee as was taken by another state or federal agency.

MEANS: Add a new section to chapter 453, Hawaii Revised Statutes (HRS), and amend section 453-8, HRS.

JUSTIFICATION: Under existing law, the Board may take disciplinary action against a licensee whose license has been revoked, suspended, or was otherwise disciplined by another state or federal agency for reasons provided in section 453-8, HRS. Generally, any disciplinary action imposed by the Board as a result of action taken by another state or federal agency follows standard investigation and hearing processes, both of which can be time consuming and expend staff resources.

Many state medical boards impose discipline on a physician who has been disciplined in another state. According to the National Practitioner Data Bank, about half of all disciplinary actions taken against Illinois-licensed physicians between 2004 and 2014 were based on actions taken in other states. The Federation of State Medical Boards has also reported an increase in reciprocal actions from 1,078 in 2008 to 1,306 in 2012. This proposal is intended to expedite the disciplinary process when a Hawaii licensee is disciplined by another state or federal agency.



Specifically, the bill provides that, upon evidence of disciplinary action taken by another state or federal agency, the Board may issue an order imposing the same discipline under specific conditions. The bill provides that a certified copy of the disciplinary action by another state or federal agency shall constitute prima facie evidence of the disciplinary action.

In addition, the bill prohibits a licensee from practicing in Hawaii until the Board issues a final order of discipline if the licensee has been prohibited from practicing in another state. This provision will protect the safety of Hawaii patients during the disciplinary process established in the bill.

The bill will promote the Board's timely response when a Hawaii licensee is disciplined elsewhere in a manner that ensures adequate notice and the opportunity to be heard to the affected licensee.

Impact on the public: The impact from this measure is expected to be positive. The bill will allow the Board to act expeditiously to protect consumers from physician licensees who have been disciplined by another state or federal agency.

Impact on the department and other agencies: The bill will enhance the Board's authority to impose discipline in a timely and appropriate manner. No impact upon other agencies is anticipated.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-112.

OTHER AFFECTED  
AGENCIES:

None.

**SB. NO. 2844**

EFFECTIVE DATE:

July 1, 2016.