



GOV. MSG. NO. 1138

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

April 29, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on April 29, 2016, the following bill was signed into law:

SB2675 SD1 HD2

RELATING TO LICENSING
ACT 38 (16)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

APR 29 2016

on _____
THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

ACT 038
S.B. NO. 2675
S.D. 1
H.D. 2

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, but were issued
4 new Hawaii medical licenses or their active Hawaii medical
5 licenses were not assessed reciprocal sanctions for long periods
6 of time after the physicians were disciplined. Hawaii
7 regulators often took more than two years to issue reciprocal
8 discipline on licensed physicians after other states imposed
9 sanctions.

10 Often Hawaii consumers would learn that a Hawaii-licensed
11 physician faced sanctions in another state only after Hawaii
12 levied reciprocal discipline. Furthermore, Hawaii failed to
13 take immediate action when other states declared emergencies to
14 justify the immediate revocation of a license. The most
15 egregious cases uncovered during the investigation involved
16 physicians who lost the ability to practice in other states,
17 either because of serious misconduct or to settle misconduct



1 charges, but maintained their Hawaii licenses for months or even
2 years after the fact.

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;
- 19 (2) Authorize the board of dental examiners, Hawaii
20 medical board, board of nursing, and board of pharmacy



- 1 to impose disciplinary action against a licensee who
- 2 was disciplined by another state or federal 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
 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
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 disciplinary action upon the licensee on the
19 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
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 ~~(c)~~ (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 upon its approval.

APPROVED this 29 day of APR, 2016



GOVERNOR OF THE STATE OF HAWAII