

JAN 22 2016

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) Require dentist, physician, osteopathic physician,
14 physician assistant, nurse, and pharmacist licensee
15 applicants who have had a license, permit, or ability
16 to practice suspended in another jurisdiction to
17 undergo a hearing and investigation to determine
18 competency prior to being issued a license to practice
19 in Hawaii;
- 20 (2) Require the board of dental examiners, Hawaii medical
21 board, board of nursing, and board of pharmacy to



1 summarily suspend a Hawaii license upon a
 2 determination that a licensee has had a license,
 3 registration, or ability to practice suspended or
 4 revoked in any other jurisdiction, pending a hearing
 5 to prove competency; and

6 (3) Ensure consumer protection by requiring an order of
 7 summary suspension or any disciplinary action taken to
 8 be public record.

9 SECTION 2. Section 448-16.5, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 " ~~[f]~~ §448-16.5 ~~[+]~~ Board of dental examiners; summary
 12 suspension. (a) The board of dental examiners ~~[may]~~ shall
 13 summarily suspend any license issued under this chapter upon a
 14 specific determination that the failure to take such an action
 15 may result in an immediate and unreasonable threat to personal
 16 safety or of fraud that jeopardizes or endangers the health or
 17 safety of patients as determined by the professional standards
 18 of care upon consumers, and that, for the protection of the
 19 public from the possible consequences of such practices, the
 20 license should be immediately suspended or restricted.



1 (b) The board shall summarily suspend any license issued
2 under this chapter upon a determination that the licensee has
3 had a license, registration, or the ability to practice
4 dentistry suspended or revoked in any other jurisdiction.

5 [~~b~~] (c) The order of summary suspension shall include a
6 brief statement of findings of fact and conclusions of law and
7 shall be served upon the licensee as required by chapter 91.
8 The order of summary suspension shall be effective upon service.

9 [~~e~~] (d) A licensee served with an order of summary
10 suspension shall have the right to request a hearing to show
11 cause why the order of summary suspension should be terminated.
12 Any request for a hearing shall be made in writing and filed
13 with the board of dental examiners within five business days of
14 service of the order. The board shall hold a hearing within
15 seven business days of receipt of the licensee's request for the
16 hearing to show cause.

17 [~~d~~] (e) Notwithstanding any law to the contrary, an
18 order summarily suspending a license issued under this chapter
19 shall remain in effect until the effective date of a final
20 decision and order issued by the board of dental examiners in a
21 disciplinary action or the effective date of an order issued by



1 the board of dental examiners terminating the summary suspension
2 following a hearing to show cause, whichever occurs first, but
3 in either case shall not exceed thirty business days[-];
4 provided that for a licensee served with an order of summary
5 suspension under subsection (b), the order summarily suspending
6 the license shall remain in effect until the effective date of a
7 final decision and order issued by the board terminating the
8 summary suspension following a hearing to show cause, but shall
9 not in any case exceed ninety business days.

10 [~~e~~] (f) The board of dental examiners shall conduct a
11 hearing for disciplinary action against a licensee whose license
12 has been summarily suspended under this section within twenty
13 business days from the effective date of the order of summary
14 suspension.

15 (g) Notwithstanding any law to the contrary, an order of
16 summary suspension or any disciplinary action taken pursuant to
17 this section shall be a matter of public record.

18 [~~f~~] (h) Any attempt by the licensee to continue the
19 practice of dentistry or the practice of dentistry by the
20 licensee while the license has been summarily suspended shall be
21 grounds for revocation of the license."



1 SECTION 3. Section 448-17, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The board shall refuse to issue a license to any
4 applicant who fails to meet all of the requirements imposed by
5 this chapter and may refuse to issue a license to any applicant
6 who has previously committed any act that would, if committed by
7 a licensee, result in the revocation or suspension of the
8 license[-]; provided that if the disciplinary action against an
9 applicant in any jurisdiction resulted in the suspension or
10 revocation of a license, certificate, or ability to practice
11 dentistry by the applicant in that jurisdiction, and would
12 constitute a violation of the requirements under this chapter,
13 the board shall refuse to grant a license until the applicant
14 has undergone a hearing, in accordance with this chapter and
15 chapter 91, to show cause why the suspension or revocation
16 should be terminated. Notwithstanding any law to the contrary,
17 any disciplinary action taken pursuant to this subsection shall
18 be a matter of public record."

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



1 "§453-8 Revocation, limitation, suspension, or denial of
2 licenses. (a) In addition to any other actions authorized by
3 law, any license to practice medicine and surgery may be
4 revoked, limited, or suspended by the board at any time in a
5 proceeding before the board, or may be denied, for any cause
6 authorized by law, including but not limited to the following:

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



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



1 chapter, which is false or untrue or contains any
2 material misstatement or omission of fact.

3 (b) If disciplinary action related to the practice of
4 medicine has been taken against the applicant in any
5 jurisdiction that would constitute a violation under this
6 section, or if the applicant reveals a physical or mental
7 condition that would constitute a violation under this section,
8 then the board may impose one or more of the following
9 requirements as a condition for licensure:

10 (1) Physical and mental evaluation of the applicant by a
11 licensed physician or osteopathic physician approved
12 by the board;

13 (2) Probation, including conditions of probation as
14 requiring observation of the licensee by an
15 appropriate group or society of licensed physicians,
16 osteopathic physicians, or surgeons;

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

19 (4) Further education or training or proof of performance
20 competency; and



1 (5) Limitation of the medical practice of the licensee in
2 any reasonable manner to assure the safety and welfare
3 of the consuming public.

4 (c) Notwithstanding any other law to the contrary, if the
5 disciplinary action against an applicant in any jurisdiction
6 resulted in the suspension or revocation of a license,
7 certificate, or medical privilege of the applicant in that
8 jurisdiction, and would constitute a violation under this
9 section, the board shall refuse to grant a license until the
10 applicant has undergone a hearing, in accordance with this
11 chapter and chapter 91, to show cause why the suspension or
12 revocation should be terminated. Notwithstanding any law to the
13 contrary, any disciplinary action taken pursuant to this
14 subsection shall be a 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 5. Section 453-8.4, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[~~f~~]§453-8.4[+] Summary suspension. (a) The board [~~may~~]
12 shall summarily suspend any license issued under this chapter
13 upon a specific determination that the failure to take such an
14 action may result in an immediate and unreasonable threat to
15 personal safety or of fraud that jeopardizes or endangers the
16 health or safety of patients as determined by the professional
17 standards of care upon consumers; and that, for the protection
18 of the public from the possible consequences of such practices,
19 the license should be immediately suspended or restricted.

20 (b) The board shall summarily suspend any license issued
21 under this chapter upon a determination that the licensee has



1 had a license, registration, or medical privilege suspended or
2 revoked in any other jurisdiction.

3 ~~[(b)]~~ (c) The order of summary suspension shall include a
4 brief statement of findings of fact and conclusions of law and
5 shall be served upon the licensee as required by chapter 91.
6 The order of summary suspension shall be effective upon service.

7 ~~[(e)]~~ (d) A licensee served with an order of summary
8 suspension shall have the right to request a hearing to show
9 cause why the order of summary suspension should be terminated.
10 Any request for a hearing shall be made in writing and filed
11 with the board within five business days of service of the
12 order. The board shall hold a hearing within seven business
13 days of receipt of the licensee's request for the hearing to
14 show cause.

15 ~~[(d)]~~ (e) Notwithstanding any law to the contrary, an
16 order summarily suspending a license issued under this chapter
17 shall remain in effect until the effective date of a final
18 decision and order issued by the board in a disciplinary action
19 or the effective date of an order issued by the board
20 terminating the summary suspension following a hearing to show
21 cause, whichever occurs first, but in either case shall not



1 exceed thirty business days[-]; provided that for a licensee
2 served with an order of summary suspension under subsection (b),
3 the order summarily suspending the license shall remain in
4 effect until the effective date of a final decision and order
5 issued by the board terminating the summary suspension following
6 a hearing to show cause, but shall not in any case exceed ninety
7 business days.

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

12 (g) Notwithstanding any law to the contrary, an order of
13 summary suspension or any disciplinary action taken pursuant to
14 this section shall be a matter of public record.

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



1 SECTION 6. Section 457-12, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§457-12 Discipline; grounds; proceedings; hearings. (a)
4 In addition to any other actions authorized by law, the board
5 shall have the power to deny, revoke, limit, or suspend any
6 license to practice nursing as a registered nurse or as a
7 licensed practical nurse applied for or issued by the board in
8 accordance with this chapter, and to fine or to otherwise
9 discipline a licensee for any cause authorized by law, including
10 but not limited to the following:

- 11 (1) Fraud or deceit in procuring or attempting to procure
12 a license to practice nursing as a registered nurse or
13 as a licensed practical nurse;
- 14 (2) Gross immorality;
- 15 (3) Unfitness or incompetence by reason of negligence,
16 habits, or other causes;
- 17 (4) Habitual intemperance, addiction to, or dependency on
18 alcohol or other habit-forming substances;
- 19 (5) Mental incompetence;
- 20 (6) Unprofessional conduct as defined by the board in
21 accordance with its own rules;



- 1 (7) Wilful or repeated violation of any of the provisions
2 of this chapter or any rule adopted by the board;
- 3 (8) Revocation, suspension, limitation, or other
4 disciplinary action by another state of a nursing
5 license for reasons as provided in this section;
- 6 (9) Conviction, whether by nolo contendere or otherwise,
7 of a penal offense substantially related to the
8 qualifications, functions, or duties of a nurse,
9 notwithstanding any statutory provision to the
10 contrary;
- 11 (10) Failure to report to the board any disciplinary action
12 taken against the licensee in another jurisdiction
13 within thirty days after the disciplinary action
14 becomes final;
- 15 (11) Submitting to or filing with the board any notice,
16 statement, or other document required under this
17 chapter, which is false or untrue or contains any
18 material misstatement of fact, including a false
19 attestation of compliance with continuing competency
20 requirements; or



1 (12) Violation of the conditions or limitations upon which
2 any license is issued.

3 (b) Notwithstanding any other law to the contrary, if the
4 disciplinary action against an applicant in any other
5 jurisdiction resulted in the suspension or revocation of a
6 license, certificate, or ability to practice nursing of the
7 applicant in that jurisdiction, and would constitute a violation
8 under this section, the board shall refuse to grant a license
9 until the applicant has undergone a hearing, in accordance with
10 this chapter and chapter 91, to show cause why the suspension or
11 revocation should be terminated.

12 (c) The board shall order the summary suspension of a
13 license issued under this chapter upon a determination that a
14 licensee has had a license, certificate, or the ability to
15 practice nursing suspended or revoked in any other jurisdiction;
16 provided that the summary suspension shall be delegated in
17 accordance with this section and section 436B-23; provided
18 further that:

19 (1) The order summarily suspending the license shall
20 remain in effect until the effective date of a final
21 decision and order issued by the board terminating the



1 summary suspension following a hearing to show cause,
2 but shall not in any case exceed ninety business days;
3 (2) Within twenty business days from the effective date of
4 the order of summary suspension, the board shall
5 conduct a hearing to show cause why the summary
6 suspension of a license pursuant to this subsection
7 should be terminated; and
8 (3) Notwithstanding any law to the contrary, an order of
9 summary suspension or any disciplinary action taken
10 pursuant to this subsection or subsection (b) shall be
11 a matter of public record.

12 ~~[(b)]~~ (d) Any fine imposed by the board after a hearing in
13 accordance with chapter 91 shall be no less than \$100 and no
14 more than \$1,000 for each violation.

15 ~~[(e)]~~ (e) The remedies or penalties provided by this
16 chapter are cumulative to each other and to the remedies or
17 penalties available under all other laws of this State."

18 SECTION 7. Section 461-4.5, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

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



- 1 (1) Shall adopt, amend, and repeal rules pursuant to
2 chapter 91, as it deems proper for the purposes of
3 this chapter, Public Law 100-293, and 21 Code of
4 Federal Regulations part 205;
- 5 (2) Shall examine, license, reinstate, and renew the
6 licenses of qualified applicants for registered
7 pharmacists and wholesale prescription drug
8 distributors, and issue and renew permits to operate
9 pharmacies;
- 10 (3) May require the inspection of any wholesale
11 prescription drug distributor premises in the State to
12 ensure compliance with this chapter and rules adopted
13 under this chapter, or may require an applicant for a
14 pharmacy license to submit a statement that the
15 premises, including but not limited to security and
16 sanitation, are in conformance with the board's
17 requirements and that the applicant possesses the
18 reference materials and technical clinical equipment
19 and supplies as may be specified in rules adopted
20 under this chapter; and



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

7 (5) Shall order the summary suspension of a license issued
8 under this chapter upon a determination that a
9 licensee has had a license, certificate, or ability to
10 practice pharmacy suspended or revoked in any other
11 jurisdiction; provided that the summary suspension
12 shall be delegated in accordance with this section and
13 section 436B-23; provided further that:

14 (A) The order summarily suspending the license shall
15 remain in effect until the effective date of a
16 final decision and order issued by the board
17 terminating the summary suspension following a
18 hearing to show cause, but shall not in any case
19 exceed ninety business days;

20 (B) Within twenty business days from the effective
21 date of the order of summary suspension, the



1 board shall conduct a hearing to show cause why
2 the summary suspension of a license pursuant to
3 this subsection should be terminated; and
4 (C) Notwithstanding any law to the contrary, an order
5 of summary suspension or any disciplinary action
6 taken pursuant to this paragraph shall be a
7 matter of public record."

8 SECTION 8. Section 461-5, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Any applicant for a license as a pharmacist shall
11 submit an application on a form prescribed by the board and
12 shall provide evidence to the board that the applicant:

- 13 (1) Is at least eighteen years of age;
- 14 (2) Holds a degree from a school or college of pharmacy or
15 department in a university which is recognized and
16 accredited by the American Council of Pharmaceutical
17 Education;
- 18 (3) Has a minimum of fifteen hundred hours of practical
19 experience in any state or territory of the United
20 States, or the District of Columbia, under the
21 supervision of a pharmacist who is duly registered or



1 licensed in the state, territory, or district where
2 the experience is obtained. Service and experience
3 under the supervision of a registered pharmacist as
4 required in this section shall be predominantly
5 related to the practice of pharmacy as defined under
6 section 461-1. In the event an applicant has no
7 practical experience as required, the applicant may
8 take the examination and upon passing the examination,
9 shall not receive a license until after the applicant
10 fulfills the practical experience requirement;

11 (4) Has passed an examination as may be prescribed by the
12 board; and

13 (5) Does not have an encumbered license or a pending
14 disciplinary action or unresolved complaint in the
15 practice of pharmacy in any state or territory of the
16 United States, or the District of Columbia, or if any
17 license has been or is encumbered, the applicant shall
18 provide all information requested by the board[-];
19 provided that if the disciplinary action against an
20 applicant in any jurisdiction resulted in the
21 suspension or revocation of a license, certificate, or



1 ability to practice pharmacy by the applicant in that
 2 jurisdiction, and would constitute a violation of the
 3 qualifications and requirements under this chapter,
 4 the board shall refuse to grant a license until the
 5 applicant has undergone a hearing, in accordance with
 6 chapter 91, to show cause why the license should be
 7 granted; provided further that notwithstanding any law
 8 to the contrary, any disciplinary action taken
 9 pursuant to this paragraph shall be a matter of public
 10 record."

11 SECTION 9. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 10. This Act shall take effect upon its approval.
 14

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S.B. NO. 2675

Report Title:

Licensing; Applicants for Licensure; Competency; Discipline; Summary Suspension; Hearing; Board of Dental Examiners; Hawaii Medical Board; Board of Nursing; Board of Pharmacy

Description:

Requires dentist, physician, osteopathic physician, physician assistant, nurse, and pharmacist licensee applicants who have had a license, permit, or ability to practice suspended in another jurisdiction to undergo a hearing to show cause why suspension should be terminated prior to being issued a license to practice in Hawaii. Requires the board of dental examiners, Hawaii medical board, board of nursing, and board of pharmacy to summarily suspend a Hawaii license upon a determination that a licensee has had a license, registration, or ability to practice suspended or revoked in any other jurisdiction, pending a hearing to show cause. Requires orders of summary suspension or disciplinary action taken due to actions arising in other jurisdictions to be public record.

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

