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PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH STATE LEGISLATURE  
REGULAR SESSION, 2013

MONDAY, FEBRUARY 25, 2013  
2:30 P.M.

TESTIMONY ON HOUSE BILL NO. 847 H.D.1  
RELATING TO ENFORCEMENT TOOLS TO IMPROVE PATIENT SAFETY

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND TO THE HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 847 H.D.1, Relating to Enforcement Tools to Improve Patient Safety. My name is Daria Loy-Goto. I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department strongly supports this Administration bill.

House Bill No. 847 H.D.1 amends chapter 453, Hawaii Revised Statutes ("HRS"), to authorize the Hawaii Medical Board ("Board") to: (1) summarily suspend a license; and (2) require a licensee to submit to a mental or physical examination. The bill also has a defective effective date.

The Hawaii Medical Association ("HMA") expressed some concerns in testimony before the House Committee on Health. RICO and the HMA worked on consensus language and the attached proposed House Draft 2 is the result of those efforts. RICO notes the proposed House Draft 2 is identical to Senate Bill No. 1078 S.D.1 as passed out by the Senate Committee on Commerce and Consumer Protection.

Like the original bill, the proposed House Draft 2 seeks to prevent situations where consumers may face an immediate threat to their personal safety or may be at risk of receiving medical care from a licensee who is unable to practice with reasonable skill and safety. The proposed House Draft 2 revises House Bill No. 847 H.D.1 to: (1) shorten the time within which the Board shall hold a hearing upon receipt of a licensee's request for a hearing to show cause; (2) limit the duration of a summary suspension order to not more than thirty business days; (3) provide immunity from civil liability for licensees who provide information to the Board indicating that a licensee may have engaged in unprofessional conduct or may be impaired due to alcohol or drug abuse or mental illness; and (4) provide for a July 1, 2013, effective date.

The proposed House Draft 2 will enable the Board to respond swiftly and appropriately for the protection of consumers. RICO recognizes the unusual circumstances in which a request for summary suspension or medical or psychiatric evaluation may be made, but believes these actions are sometimes necessary to protect patients.

Thank you for the Committee's careful consideration of the proposed House Draft 2 and for the opportunity to testify on House Bill No. 847 H.D.1. I will be happy to answer any questions the Committee members may have.

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# A BILL FOR AN ACT

RELATING TO ENFORCEMENT TOOLS TO IMPROVE PATIENT SAFETY.

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

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

4           "§453- Summary suspension. (a) The Hawaii medical  
5 board may summarily suspend any license issued under this  
6 chapter upon a specific determination that the failure to take  
7 such an action may result in an immediate and unreasonable  
8 threat to personal safety or fraud upon consumers and that, for  
9 the protection of the public from the possible consequences of  
10 practices, the license should be immediately suspended or  
11 restricted.

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

16           (c) A licensee served with an order of summary suspension  
17 shall have the right to request a hearing to show cause why the  
18 order of summary suspension should be terminated. Any request  
19 for a hearing shall be made in writing to the board within five  
20 business days of service of the order. The board shall hold a

# H.B. NO. 847 H.D.1

## PROPOSED H.D.2

1 hearing within seven business days of receipt of the licensee's  
2 request for the hearing to show cause.

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

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

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

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

22 **"§453-8 Revocation, limitation, suspension, or denial of**  
23 **licenses.** (a) In addition to any other actions authorized by  
24 law, any license to practice medicine and surgery may be

# H.B. NO. 847 H.D.1

## PROPOSED H.D.2

1   revoked, limited, or suspended by the board at any time in a  
2   proceeding before the board, or may be denied, for any cause  
3   authorized by law, including but not limited to the following:

4       (1)   Procuring, or aiding or abetting in procuring, a  
5             criminal abortion;

6       (2)   Employing any person to solicit patients for one's  
7             self;

8       (3)   Engaging in false, fraudulent, or deceptive  
9             advertising, including but not limited to:

10       (A)   Making excessive claims of expertise in one or  
11             more medical specialty fields;

12       (B)   Assuring a permanent cure for an incurable  
13             disease; or

14       (C)   Making any untruthful and improbable statement in  
15             advertising one's medical or surgical practice or  
16             business;

17       (4)   Being habituated to the excessive use of drugs or  
18             alcohol; or being addicted to, dependent on, or a  
19             habitual user of a narcotic, barbiturate, amphetamine,  
20             hallucinogen, or other drug having similar effects;

# H.B. NO. 847 H.D.1

## PROPOSED H.D.2

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

# H.B. NO. 847 H.D.1

## PROPOSED H.D.2

- 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.



# H.B. NO. 847 H.D.1

## PROPOSED H.D.2

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

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

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

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

17           (4) Further education or training or proof of performance  
18           competency; and

19           (5) Limitation of the medical practice of the licensee in  
20           any reasonable manner to assure the safety and welfare  
21           of the consuming public.

# H.B. NO. 847 H.D.1

## PROPOSED H.D.2

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

9        (1) Any licensee shall be deemed to have consented to  
10 submit to a mental or physical examination when so  
11 directed by the board and to have waived all objection  
12 to the use or referral of information by the board to  
13 determine whether the licensee is able to practice  
14 medicine with reasonable skill and safety to patients;

15        (2) The board may seek to enforce an order directing a  
16 licensee to submit to a mental or physical examination  
17 in the circuit court in the county in which the  
18 licensee resides;

19        (3) Failure of a licensee to submit to an examination  
20 ordered under this subsection shall constitute grounds  
21 for summary suspension of the license; and

# H.B. NO. 847 H.D.1

## PROPOSED H.D.2

1        (4) The board may take any action authorized under this  
2                    chapter based on information obtained under this  
3                    subsection.

4        (d) Any person licensed by the board, including but not  
5 limited to a physician, surgeon, or physician assistant, who  
6 provides information to the board indicating that a board  
7 licensee may be guilty of unprofessional conduct or may be  
8 impaired because of drug or alcohol abuse or mental illness  
9 shall not be liable for any damages in any civil action based on  
10 the communication. The immunity afforded by this section shall  
11 be in addition to any immunity afforded by section 663-1.7, if  
12 applicable, and shall not be construed to affect the  
13 availability of any absolute privilege under sections 663-1.7  
14 and 671D-10."

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

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

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20  
21  
22

**PRESENTATION OF THE  
HAWAII MEDICAL BOARD**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2013

Monday, February 25, 2013  
2:30 p.m.

**TESTIMONY ON HOUSE BILL NO. 847, H.D.1, RELATING TO ENFORCEMENT TOOLS TO  
IMPROVE PATIENT SAFETY.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Danny M. Takanishi, Jr. and I am the Chairperson of the Hawaii Medical Board ("Board"). The Board takes no position on SECTION 1 of the bill which adds a new provision on summary suspension and supports SECTION 2 which amends HRS section 453-8.

Thank you for the opportunity to provide testimony on H.B. No. 847, H.D.1.

# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 25, 2013

The Honorable Angus L. K. McKelvey, Chair  
The Honorable Derek S. K. Kawakami, Vice Chair

House Committee on Consumer Protection and Commerce

**Re: HB 847, HD1 – Relating to Enforcement Tools to Improve Patient Safety**

Dear Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 847, HD1, which establishes criteria for the State Board of Medical Examiners (Board) to summarily suspend a medical license. HMSA supports this measure.

The safety of our members undergoing health and medical treatment is paramount. While we truly believe almost all of our providers absolutely are of the highest caliber, both professionally and ethically, there will be the few that may take actions that jeopardize the health and safety of our members. This measure will provide the Board a tool to further protect our members. At the same time, this Bill affords a licensee the appropriate means to appeal a Board action to also ensure fairness for the licensee.

An action of the Board to suspend or revoke a license must be accompanied with appropriate notice to others in the health care system so that they may take conforming actions. We were informed during the first hearing on this Bill that the agency's action will be appropriately noticed on the departmental website.

Thank you for the opportunity to testify on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "JD", with a long horizontal stroke extending to the right.

Jennifer Diesman  
Vice President  
Government Relations



**HAWAII MEDICAL ASSOCIATION**

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814  
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

**Monday February 25, 2013**

**2:30 P.M.**

**Capitol Rm. 325**

To: HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair

From: Hawaii Medical Association  
Dr. Stephen Kemble, MD, President  
Dr. Linda Rasmussen, MD, Legislative Co-Chair  
Dr. Joseph Zobian, MD, Legislative Co-Chair  
Dr. Christopher Flanders, DO, Executive Director  
Lauren Zirbel, Community and Government Relations

Re: HB 847

**In Support with Amendments**

Chair, Vice Chair, and Committee Members:

The Hawaii Medical Association supports the intent of this measure, however would offer amendments to HB847.

The Hawaii Medical Association has long advocated for the safety of our patients. While we recognize the enforcement role of the Hawaii Medical Board, we urge restraint in the exercise of summary judgment on licensure suspension. There are situations so egregious as to offend common sense which must be acted on quickly and decisively. However these cases are thankfully rare. We support the ability of the Board to act expediently in these instances.

The Hawaii Medical Association offers a number of amendments to this bill, designed to give this potential statute the intended focus. These amendments were developed by the HMA in conjunction and support of the Regulated Industries Complaint Office and Department of Commerce and Consumer Affairs, and have their support. These amendments have been incorporated into HB847's sister bill, SB1078, which has moved through the Senate.

Thank you for the opportunity to provide this testimony.

**OFFICERS**

**PRESIDENT –STEVE KEMBLE , MD, PRESIDENT ELECT – WALTON SHIM, MD**  
**IMMEDIATE PAST PRESIDENT – ROGER KIMURA, MD, SECRETARY - THOMAS KOSASA, MD,**  
**TREASURER – BRANDON LEE, MD, EXECUTIVE DIRECTOR – CHRISTOPHER FLANDERS, DO**

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## 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 [~~or its~~ delegate] 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 [~~or misrepresentation~~] 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 or its delegate within five business days of service of the order. The board or its delegate shall hold a hearing within ten 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 or its delegate shall conduct a hearing for disciplinary action against a licensee whose license has been summarily suspended under this section within [twenty] ten 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.

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 or its delegate to determine whether the licensee is able to practice medicine with reasonable skill and safety to protect patients.

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.

Failure of a licensee to submit to an examination ordered under this subsection shall constitute grounds for summary suspension of the licensee's license.

The board may take any action authorized under this chapter based on information obtained under this subsection."

SECTION 3. In addition to any immunity afforded by section 663-1.7, if applicable, any person licensed by the board, including but not limited to 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 because of drug or alcohol abuse or mental illness, shall not be liable for any damages in any civil action based on the communication. The immunities afforded under this section shall not affect the availability of any absolute privilege under sections 663-1.7 and 671D-10.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act, upon its approval, shall take effect on July 1, 2050.