

# Hawaii

## Hawaii Const. Art. I, § 6. RIGHT TO PRIVACY.

The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

“**The constitutional history of this section** indicates that the provision was added for two purposes: to protect against “possible abuses in the use of highly personal and intimate information in the hands of the government or private parties”; and, to ensure freedom of choice “in certain highly personal and intimate matters (as those relating to birth control and abortion).” 94 Haw. Op. Att’y Gen. No. 01 (1994).

## 2023 Hi. ALS 2 , 2023 Hi. Act 2 , 2023 Hi. SB 1

**SECTION 4.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### “Chapter **REPRODUCTIVE HEALTH CARE SERVICES**

#### § -1 Definitions.

As used in this chapter, unless the context otherwise requires:

- “Person” includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons or legal entity, or any combination thereof.
- “Reproductive health care services” includes all medical, surgical, pharmaceutical, counseling, or referral services relating to the human reproductive system, including but not limited to services relating to pregnancy, contraception, or the termination of a pregnancy.

#### § -2 Disclosures prohibited.

(a) Except as provided in rules 504, 504.1, and 505.5 of the Hawaii rules of evidence and subsection (b) or as authorized under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and federal regulations promulgated thereunder, in any civil action or any proceeding preliminary thereto or in any probate, legislative, or administrative proceeding, no covered entity, as defined in title 45 Code of Federal Regulations section 160.103, or as the same as may be from time to time amended or modified, shall disclose:

(1) Any communication made to the covered entity, or any information obtained by the covered entity from a patient or the conservator, guardian, or other authorized legal representative of a patient relating to reproductive health care services that are permitted under the laws of the State; or

(2) Any information obtained by personal examination of a patient relating to reproductive health care services that are permitted under the laws of the State, unless the patient or that patient’s conservator, guardian, or other authorized legal representative explicitly consents to the disclosure in writing in the form of a release of protected health information compliant with the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended. A covered entity shall inform the patient or the patient’s conservator, guardian, or other authorized legal representative of the patient’s right to withhold the written consent.

(b) Written consent of the patient or the patient's conservator, guardian, or other authorized legal representative shall not be required for the disclosure of the communication or information:

(1) If the records relate to a patient who is a plaintiff in a complaint pending before a court of competent jurisdiction alleging health care negligence and a request for records has been served on a named defendant in that litigation;

(2) If the records are requested by a licensing authority, as defined in section 436B-2, and the request is made in connection with an investigation of a complaint to the licensing authority and the records are related to the complaint, unless the complaint is made solely on the basis that the licensee, acting within the licensee's scope of practice, provided reproductive health care services that are lawful in this State;

(3) To the director of health for records of a patient of a covered entity in connection with an investigation of a complaint, if the records are related to the complaint; or

(4) If child abuse, abuse of an individual who is sixty years of age or older, abuse of an individual who is physically disabled or incompetent, or abuse of an individual with an intellectual disability is known or in good faith suspected.

(c) Nothing in this section shall be construed to impede the lawful sharing of medical records as permitted by state or federal law or the rules of the court, except in the case of a subpoena or warrant issued by a court, government agency, or legislative body of another state commanding the production, copying, or inspection of medical records relating to reproductive health care services.

#### **§ -3 Subpoenas; when allowed.**

Notwithstanding sections 624-27 and 624D-3 or any other law to the contrary, no court or clerk of a court shall order the issuance of a subpoena requested by an officer, appointed according to the laws or usages of another state or government, or by any court of the United States or of another state or government, in connection with an out-of-state or interstate investigation or proceeding relating to reproductive health care services legally performed in the State.

#### **§ -4 Agencies prohibited from providing information or expending resources.**

(a) No agency, as defined in section 92F-3, or employee, appointee, officer, official, or any other person acting on behalf of an agency shall provide any information or expend or use time, money, facilities, property, equipment, personnel, or other resources in furtherance of any out-of-state or interstate investigation or proceeding seeking to impose civil or criminal liability upon a person or entity for:

(1) The provision, seeking, paying for, receipt of, or inquiring about reproductive health care services that are legal in the State; or

(2) Assisting any person or entity providing, seeking, receiving, paying for, or responding to an inquiry about reproductive health care services that are legal in the State.

(b) This section shall not apply to any investigation or proceeding where the conduct subject to potential liability under the investigation or proceeding would be subject to liability under the laws of this State if committed in this State.

#### **§ -5 Prohibition on state action.**

The State shall not penalize, prosecute, or otherwise take adverse action against an individual based on the individual's actual, potential, perceived, or alleged pregnancy outcomes. The State shall not penalize, prosecute, or otherwise take adverse action against a person for aiding or assisting a pregnant individual accessing reproductive health care services in accordance with the laws of the State and with the pregnant individual's voluntary consent.

#### **§ -6 Denial of demands for surrender.**

Notwithstanding any provision of chapter 832 to the contrary, the governor shall deny any demand made by the executive authority of any state for the surrender of any person charged with a crime under the laws of that state when the alleged crime involves the provision or receipt of, paying for, or assistance with, reproductive health care services, unless the acts forming the basis of the prosecution would also constitute a criminal offense in this State. This section shall not apply to demands made under Article IV, section 2, of the United States Constitution.

**§ -7 Laws contrary to the public policy of this State.**

(a) A law of another state authorizing a civil action or criminal prosecution based on any of the following is declared to be contrary to the public policy of this State:

- (1) Receiving, seeking, or paying for reproductive health care services;
- (2) Providing reproductive health care services;
- (3) Engaging in conduct that assists or aids or abets the provision or receipt of reproductive health care services; or
- (4) Attempting or intending to engage in or providing material support for (or any other theory of vicarious, attempt, joint, several or conspiracy liability derived therefrom) conduct described in paragraphs (1) to (3), in accordance with the laws of this State.

(b) No law described in subsection (a) shall be applied to a case or controversy heard in the courts of this State.”

**SECTION 13.** Chapter 636C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§ 636C- Enforcement of foreign penal civil actions relating to protected reproductive health care services.**

(a) No judgment or other order arising from a foreign penal civil action or other penal law banning, restricting, burdening, punishing, penalizing, or otherwise interfering with the provision of protected reproductive health care services shall be enforced in this State.

(b) As used in this section:

“Foreign penal civil action” means an action authorized by the law of a state, or of any municipality or other governmental entity within a state, other than this State, the essential character and effect of which is to punish an offense against the public justice of that state, municipality, or other governmental entity.

“Protected reproductive health care services” means medical, surgical, pharmaceutical, counseling, or referral services relating to the human reproductive system, including but not limited to services relating to pregnancy, contraception, or termination of a pregnancy, that are protected under the Hawaii State Constitution or otherwise lawful under the laws of this State or that would be constitutionally protected or otherwise lawful if performed within this State.”

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**§ 442-9. License refusal, revocations, suspension, fine, limitation, restriction, probation, reissuance.**

(a) In addition to any other actions authorized by law, the board shall refuse to issue or may order any license issued under this chapter to be revoked, suspended, limited, restricted, or placed under

probation at any time in a proceeding before the board or fine a licensee for any cause authorized by law, including but not limited to the following:

- (1) Procuring or aiding or abetting in procuring an abortion that is unlawful under the laws of this State or that would be unlawful under the laws of this State if performed within this State;
  - (2) Employing what is popularly known as a “capper” or “steerer”;
  - (3) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
  - (4) Wilfully betraying patient confidentiality;
  - (5) Making any untruthful statement in advertising one’s practice or business under this chapter;
  - (6) False, fraudulent, or deceptive advertising;
  - (7) Advertising directly or indirectly, or in substance upon any card, sign, newspaper advertisement, or other written or printed sign of advertisement that the holder of a license or the licensee’s employer or employee will treat, cure, or attempt to treat or cure any venereal disease, or will treat or cure, or attempt to treat or cure, any person afflicted with any sexual disease, lost manhood, sexual weakness, or sexual disorder or any disease of the sexual organs;
  - (8) Being habitually intemperate;
  - (9) Habitually using any habit-forming drug, including opium, or any of its derivatives, morphine, heroin, cocaine, or any other habit-forming drug;
  - (10) The advertising of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed;
  - (11) Procuring a license through fraudulent misrepresentation or deceit;
  - (12) Professional misconduct or gross carelessness or manifest incapability in the practice of chiropractic;
  - (13) Violating section 453-2; and
  - (14) Knowingly recording, registering, or filing, or offering for recordation, registration, or filing, with the department of commerce and consumer affairs any written statement that has been falsely made, completed, or altered, or in which a false entry has been made, or that contains a false statement or false information.
- (b) At any time following the suspension, fine, limitation, restriction, or placement under probation of a license, the board may restore the license with all of its original rights and privileges. Any person to whom these rights have been restored shall pay a restoration fee upon the reissuance of the license.
- (c) Any person making application for reinstatement or restoration of a license or the original rights and privileges to practice under a license which has been suspended, restricted, limited, or placed under probation may be required, as part of the relief granted, to complete an approved course of continuing education or to complete such study or training as the board may require.
- (d) Any person who violates this chapter or the rules adopted pursuant thereto shall be fined not more than \$1,000.

***§ 453-8. Revocation, limitation, suspension, or denial of licenses.***

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- (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, an abortion that is unlawful under the laws of this State or that would be unlawful under the laws of this State if performed within this State;
  - (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 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, except when the revocation, suspension, or other disciplinary action was based on the provision or assistance in receipt or provision of medical, surgical, pharmaceutical, counseling, or referral services relating to the human reproductive system, including but not limited to services relating to pregnancy, contraception, or the termination of a pregnancy, so long as the provision or assistance in receipt or provision of the services was in accordance with the laws of this State or would have been in accordance with the laws of this State if it occurred within this State;

(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, except when the conviction was based on the provision or assistance in receipt or provision of medical, surgical, pharmaceutical, counseling, or referral services relating to the human reproductive system, including but not limited to services relating to pregnancy, contraception, or the termination of a pregnancy, so long as the provision or assistance in receipt or provision of the services was in accordance with the laws of this State or would have been in accordance with the laws of this State if it occurred within this State;

(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 by another state or federal agency, 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;

provided that the board shall not impose as a condition for licensure any of the requirements pursuant to this subsection if the disciplinary action related to the practice of medicine taken

against the applicant was based on the provision or assistance in receipt or provision of medical, surgical, pharmaceutical, counseling, or referral services relating to the human reproductive system, including but not limited to services relating to pregnancy, contraception, or the termination of a pregnancy, so long as the provision or assistance in receipt or provision of the services was in accordance with the laws of this State or would have been in accordance with the laws of this State if it occurred within this State.

(c) Notwithstanding any other law to the contrary, the board may deny a license to any applicant who has been disciplined by another state or federal agency, except on the basis of discipline for the provision or assistance in receipt or provision of medical, surgical, pharmaceutical, counseling, or referral services relating to the human reproductive system, including but not limited to services relating to pregnancy, contraception, or the termination of a pregnancy, so long as the provision or assistance in receipt or provision of the services was in accordance with the laws of this State or would have been in accordance with the laws of this State if it occurred within this State. Any final order of discipline taken pursuant to this subsection shall be a matter of public record.

(d) 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. In addition:

(1) 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 to determine whether the licensee is able to practice medicine with reasonable skill and safety to protect patients;

(2) 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;

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

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

(e) Any person licensed by the board, including 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 immunity afforded by this section shall be in addition to any immunity afforded by section 663-1.7, if applicable, and shall not be construed to affect the availability of any absolute privilege under sections 663-1.7 and 671D-10.

## [HRS § 453-8](#)

### ***§ 453-8.6 Discipline based on action taken by another state or federal agency; conditions; prohibition on practice.***

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(a) Upon receipt of evidence of revocation, suspension, or other disciplinary action against a licensee by another state or federal agency, the board may issue an order imposing disciplinary action upon the licensee on the following conditions:

(1) The board shall serve the licensee with a proposed order imposing disciplinary action as required by chapter 91;

(2) The licensee shall have the right to request a hearing pursuant to chapter 91 to show cause why the action described in the proposed order should not be imposed;

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

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

provided that the board shall not issue an order imposing disciplinary action upon the licensee if the revocation, suspension, or other disciplinary action against a licensee by another state was based on the provision or assistance in receipt or provision of medical, surgical, pharmaceutical, counseling, or referral services relating to the human reproductive system, including but not limited to services relating to pregnancy, contraception, or the termination of a pregnancy, so long as the provision or assistance in receipt or provision of the services was in accordance with the laws of this State or would have been in accordance with the laws of this State if it occurred within this State.

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

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

(1) The licensee was the subject of disciplinary action by another state, except where the disciplinary action against the licensee by another state was based on the provision or assistance in receipt or provision of medical, surgical, pharmaceutical, counseling, or referral services relating to the human reproductive system, including but not limited to services relating to pregnancy, contraception, or the termination of a pregnancy, so long as the provision or assistance in receipt or provision of the services was in accordance with the laws of this State or would have been in accordance with the laws of this State if it occurred within this State; and

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

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

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

#### [HRS § 453-8.6](#)

#### ***§ 453-16. Intentional termination of pregnancy; refusal to perform.***

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(a) A licensed physician or surgeon or licensed osteopathic physician and surgeon may provide abortion care. A licensed physician assistant may provide medication or aspiration abortion care in the first trimester of pregnancy.

(b) The State shall not deny or interfere with a pregnant person's right to choose to:

(1) Obtain an abortion; or

(2) Terminate a pregnancy if the termination is necessary to protect the life or health of the pregnant person.

(c) Nothing in this section shall require any hospital or any person to participate in an abortion nor shall any hospital or any person be liable for a refusal.

(d) For purposes of this section:

“Abortion” means an intentional termination of the pregnancy of a nonviable fetus.

“Nonviable fetus” means a fetus that does not have a reasonable likelihood of sustained survival outside of the uterus.

#### [HRS § 453-16](#)

***§ 457-8.7. Advanced practice registered nurses; abortions by medication or aspiration; refusal to perform.***

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(a) Notwithstanding section 453-16 or any other law to the contrary, an advanced practice registered nurse may provide medication or aspiration abortion care in the first trimester of pregnancy, so long as the advanced practice registered nurse:

- (1) Has prescriptive authority;
- (2) Practices within the advanced practice registered nurse's practice specialty; and
- (3) Has a valid, unencumbered license obtained in accordance with this chapter.

(b) The State shall not deny or interfere with a pregnant person's right to choose to:

- (1) Obtain an abortion; or
- (2) Terminate a pregnancy if the termination is necessary to protect the life or health of the pregnant person.

(c) Nothing in this section shall require any hospital or any person to participate in an abortion, nor shall any hospital or any person be liable for a refusal.

(d) For purposes of this section, "abortion" and "nonviable fetus" shall have the same meaning as defined in section 453-16.

[HRS § 457-8.7](#)

**§ 836-2. Summoning witness in this State to testify in another state.**

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If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this State certifies under the seal of that court that there is a criminal prosecution pending in that court, or that a grand jury investigation has commenced or is about to commence, that a person in this State is a material witness in the prosecution or grand jury investigation, and that the person's presence will be required for a specified number of days, upon presentation of the certificate to any judge of a court of record in this State in the judicial district in which the person is, the judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give to the witness protection from arrest and the service of civil and criminal process, the judge shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons, except that no judge shall issue a summons in a case where prosecution is pending, or where a grand jury investigation has commenced or is about to commence for a criminal violation of a law of another state involving the provision, paying for, receipt of, or assistance with reproductive health care services as defined in section -1 unless the acts forming the basis of the prosecution or investigation would also constitute an offense in this State. In any hearing, the certificate shall be prima facie evidence of all the facts stated therein.

If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure the witness' attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be forthwith brought before the judge for the hearing; and the judge at the hearing being satisfied of the desirability of the custody and delivery, for which determination the certificate shall be prima facie proof of the desirability

may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned pursuant to this section, after being paid or tendered by some properly authorized person a sum equivalent to the cost of round-trip air fare to the place where the prosecution is pending and \$30 for each day, that the witness is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

[HRS § 836-2](#)