

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-85-1 Objective. This chapter is intended to clarify and implement chapters 453 and 463E, Hawaii Revised Statutes, adopted by the board of medical examiners, hereafter referred to as "board," to the end that the provisions thereunder may be best effectuated and the public interest most effectively protected. [Eff 1/27/79; am and ren §16-85-1, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12) (Imp: HRS §§453-5.1, 463E-12)

§16-85-2 Notification and filing of names, addresses, and changes. Any person holding a license or certificate shall file the person's mailing address with the board and shall immediately notify the board in writing of any and all changes which occur within thirty days of the change. Any requirements that the board provide notice to licensees and certificate holders shall be deemed met if notice is sent to the address on file with the board. [Eff 1/27/79; am and ren §16-85-2, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12) (Imp: HRS §§453-5.1, 453-33, 463E-12)

§16-85-3 Renewal. All licenses and certificates shall expire on January 31 of the even-numbered year. Before December 1 of the odd-numbered year the board or the board's delegate shall mail to every licensee or certificate holder, except those whose license or certificate has been forfeited, suspended, or revoked, a renewal application to the address of the licensee or certificate holder on record.

Renewal fees paid by mail shall be considered as paid when due if the envelope bears the postmark of January 31 of the even-numbered year or earlier. [Eff 1/27/79; am and ren §16-85-3, 6/12/81; am and comp 7/27/87; am and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12) (Imp: HRS §§453-5.3, 453-6, 453-32, 463E-5)

§16-85-4 Preliminary review and investigation. (a) The board may delegate to the executive secretary any of the board's powers the board deems reasonable and proper. However, the board shall not delegate the board's powers and duties to:

- (1) Adopt, amend, or repeal rules;
- (2) Order disciplinary action against a licensee or certificate holder; and
- (3) Grant, deny, renew, refuse to renew, or otherwise condition a license or certificate unless the granting, refusal to renew, or conditioning of a license or certificate does not require the exercise of the board's expertise and discretion.

(b) The executive secretary of the board shall preliminarily review each application for licensure or certification by endorsement or examination or for a limited and temporary license or certificate filed with the board, and shall advise the applicant with regard to proper compliance with the laws and rules governing the application; provided that nothing in this section shall be construed to limit the board's authority and responsibility to ultimately pass upon the applicant's qualifications.

(c) The executive secretary of the board may initiate preliminary investigations of applicants for license or certificate by endorsement or examination or for a limited and temporary license or certificate, in conjunction with the investigatory staff of the department of commerce and consumer affairs. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12) (Imp: HRS §§453-3, 453-4, 453-31, 463E-6)

Historical note: Section 16-85-4 is based substantially on repealed sections 16-85-9 and 16-85-10. [Eff 1/27/79; am and ren §§16-85-9, 16-85-10, 6/12/81; am and comp 7/27/87; am and comp 10/28/89; comp 8/25/90; R 12/22/97]

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§16-85-5 Fees. (a) The fees for the board of medical examiners shall be as adopted by the director in chapter 16-53, after hearing, pursuant to chapter 91, HRS.

(b) The fees, if in the form of a money order or check shall be made payable to the department of commerce and consumer affairs.

(c) The dishonoring of any check upon first deposit shall be considered a failure to meet requirements. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12) (Imp: HRS §§453-5.3, 453-6, 453-32, 463E-5)

SUBCHAPTER 2

PHYSICIANS' APPLICATIONS

§16-85-7 Application. (a) An application for license by examination or by endorsement shall be made under oath on a form to be provided by the board. The form shall require the applicant to provide:

- (1) The appropriate fees, including the application fee which shall not be refunded;
- (2) The applicant's full name;
- (3) The applicant's birthplace, and birthdate;
- (4) A completed Federation Discipline Report from the Federation of State Medical Boards;
- (5) A completed discipline report from the National Practitioners Data Bank;
- (6) A completed profile from the American Medical Association;
- (7) Evidence of passage of the requisite examinations;
- (8) If a graduate of a medical school accredited by the Liaison Committee on Medical Education, evidence of graduation from a medical school accredited by the Liaison Committee on Medical Education, and evidence of having served, for at least one year, in a residency program accredited by the Accreditation Council for Graduate Medical Education (ACGME) or in a program whose standards are equivalent to the ACGME standards as determined by the board;
- (9) If a foreign graduate, evidence that the applicant is a graduate of a foreign medical school, has served for at least two years in a residency program accredited by the ACGME, and holds the national certificate of the Educational Commission for Foreign

- Medical Graduates, (ECFMG) or the certificate of the Fifth Pathway Program of the American Medical Association;
- (10) Evaluation reports relating to the applicant's conduct and competency from every hospital at which the applicant has applied for or held consultation or teaching appointments or privileges or has been employed in a residency program within the immediate three years preceding the application;
 - (11) If applicable, evidence of any licenses held or once held in other jurisdictions indicating the status of the license and documenting any disciplinary proceedings pending or taken by any jurisdiction;
 - (12) Information regarding any conviction of any crime which has not been annulled or expunged; and
 - (13) Any other information the board may require to investigate the applicant's qualifications for license.
- (b) An application for a limited and temporary license shall be made under oath on a form provided by the board, and in addition to the items in subsection (a), shall require the applicant to provide:
- (1) If applying for a license due to absence or shortage of physicians in a particular locality;
 - (A) Evidence of valid and current licensure in another state or U.S. territory; and
 - (B) A statement from an official of the respective county medical society or from some other person or entity which in the sole discretion of the board satisfies the board as to the absence or shortage of physicians in the particular locality;
 - (2) If applying as an employee of an agency or department of the state or county government;
 - (A) Evidence of valid and current licensure in another state or U.S. territory; and
 - (B) A statement from an official of the state or county agency or department confirming employment;
 - (3) If applying to practice only while under the direction of a physician or physicians holding a current and valid license in this State;
 - (A) A statement that the applicant intends to take the licensing examination within the next eighteen months; and
 - (B) A signed statement from the licensed physician, also referred to as sponsor or the alternate sponsor, as the case may be, that the sponsor and alternate sponsor will be responsible for supervising the applicant.

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- (4) If applying to practice as a resident in training, a letter signed by an authority at the institution verifying starting and ending dates of employment as a resident or verifying acceptance for residency training;
- (5) If applying for license due to a public emergency;
 - (A) A statement describing the nature of the emergency; and
 - (B) Evidence of valid and current licensure in another state or U.S. territory; and
- (6) If applying for an educational teaching license;
 - (A) A written summary of the applicant's medical, educational, and professional background;
 - (B) Evidence of licensure in another state, U.S. territory, or country, and verification from the licensing authority of the state, U.S. territory, or country in which the applicant is licensed that the license is current and in good standing; and
 - (C) A letter signed by the chief of service of a clinical department of a hospital attesting that the chief of service is licensed in this State and is requesting to sponsor and monitor the applicant while the applicant is engaged in educational or teaching activities for the hospital.

(c) It shall be each applicant's responsibility to furnish any information and documentation requested by the board. In the event of any change of information provided, the applicant shall notify the board in writing within thirty days of any change.

(d) Every application and all references shall be signed by the applicant or the person attesting to the education, experience, and reputation of the applicant. [Eff 1/27/79; am and ren §16-85-7, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §§453-3.2, 453-4)

§16-85-8 Examination and reexamination. (a) An applicant for licensure shall take and pass the National Board of Medical Examiners (NBME), or the Federation Licensing Examination (FLEX), or the three steps of the United States Medical Licensing Examination (USMLE), or an approved combination of these examinations.

- (b) Approved combinations prior to the year 2000 are as follows:
 - (1) Each part of the NBME may be credited for the corresponding step of the USMLE;

- (2) FLEX component 1 may be credited for steps 1 and 2 of the USMLE; and
- (3) FLEX component 2 may be credited for step 3 of the USMLE.

(c) Applicants for the USMLE shall file the examination application, examination fees, and evidence of education and residency training directly with the testing agency contracted by the board to administer the examinations.

(d) The USMLE shall be administered at least two times per year and the passing grade for each step shall be a score of at least seventy-five.

(e) Applicants shall have passed all three steps of the USMLE within seven years. Failure to obtain passing scores for each step within seven years shall result in the forfeiture of the score of the step taken outside of the seven year period. The seven year period begins on the date of administration of the first examination which the applicant passed. The applicant shall be required to retake a failed step and obtain a passing score within the seven year period. [Eff 1/27/79; am and ren §16-85-8, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §453-4)

§16-85-9 Repealed. [R 12/22/97]

§16-85-10 Repealed. [R 12/22/97]

§16-85-11 Limited and temporary license. (a) Absence or shortage of licensed physicians:

- (1) "Absence or shortage of licensed physician in a particular locality" means that a physician is not available to provide adequate medical care in a certain area of the State;
 - (2) The board shall consider a certified statement from the respective county medical society as evidence of "absence or shortage" of physicians when it is corroborated by a board member; and
 - (3) The license shall be valid for a period of eighteen months from the date of issuance and shall not be renewed.
- (b) Practice under the direction of a regularly licensed physician:
- (1) Sponsor and alternate sponsor defined. "Sponsor", and "alternate sponsor" mean a regularly licensed physician of the State who undertakes to assume responsibility for exercising direction over another physician with a limited and temporary license;

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- (2) A physician may have one alternate sponsor who shall serve only in the absence of the sponsor. No sponsor shall be recognized unless the sponsor has been designated by the applicant and a notarized affidavit completed by the sponsor is filed with the board;
 - (3) The sponsor shall notify the board in writing within five days after termination of sponsorship;
 - (4) Mere willingness on the part of the sponsor to assume the responsibility for the actions of the physician under the sponsor's direction is not enough. However, specific and detailed direction is not necessary as long as the direction is sufficiently reasonable, comprehensive, and honest, and includes every act performed by the physician;
 - (5) A sponsor or alternate sponsor shall direct the work of the physician under the sponsor's direction from the same office building complex or hospital;
 - (6) A physician may, under the direction of a sponsor or alternate sponsor, sign birth and death certificates and prescriptions; and
 - (7) The license shall be valid for no more than eighteen months from the date of issuance, unless extended by the board and the license shall not be renewed.
- (c) Educational teaching license:
- (1) A physician may provide education and teach at more than one hospital; provided the chief of service of each hospital submits a letter attesting that the chief of service requests to sponsor and monitor the physician; and provided further that the period of providing education and teaching is within the twelve month period from the date of issuance of the original license.
 - (2) The license shall be valid for no more than twelve months from the date of issuance, and shall not be renewed. [Eff 1/27/79; am and ren §16-85-11, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §§453-3, 453-3.2)

§16-85-12 Repealed. [R 12/22/97]

SUBCHAPTER 3

§16-85-15 Repealed. [R 10/28/89]

§16-85-16 Repealed. [R 10/28/89]

§16-85-17 Repealed. [R 10/28/89]

§16-85-18 Repealed. [R 10/28/89]

§16-85-19 Repealed. [R 10/28/89]

§16-85-20 Repealed. [R 10/28/89]

SUBCHAPTER 4

INFORMED CONSENT

§16-85-24 Authority and purpose. The rules in this subchapter are adopted pursuant to authority granted by section 671-3, HRS, and are intended to effectuate the purpose of that section. The board has determined that it is not practicable to set standards that include the substantive content of the information to be given a patient to insure that a patient's consent to treatment is an informed consent. [Eff 1/27/79; am and ren §16-85-24, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §§453-5.1, 463E-12) (Imp: HRS §671-3)

§16-85-25 General standards for categories of information. (a) Except as provided in subsection (b), where standards of medical practice indicate that a health care provider should provide the patient, or the patient's guardian, with information prior to obtaining consent for proposed medical or surgical treatment, or for a diagnostic procedure, information satisfying the following categories shall be supplied to the patient or the patient's guardian:

- (1) The condition to be treated or the suspected existence of which is the indication for a diagnostic procedure;
- (2) A description of the proposed medical or surgical treatment or diagnostic procedure;
- (3) The intended and anticipated result;

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- (4) The recognized alternative treatments or diagnostic procedures, including the option of not providing treatment or performing the diagnostic procedure;
 - (5) The recognized substantial risks of serious complication or mortality associated with the proposed treatment or diagnostic procedure, with the recognized alternative treatments or diagnostic procedures, and with not undertaking treatment or diagnosis; and
 - (6) The recognized benefits of the proposed treatment or diagnostic procedure, of recognized alternative treatments or diagnostic procedures, and of not undertaking treatment or diagnosis.
- (b) The disclosure of information required by subsection (a) may be withheld if in the judgment of the health care provider the information would be detrimental to the patient's mental or physical health, or not in the best interest of the patient, provided that such action is consistent with general standards of medical and surgical practice. [Eff 1/27/79; am and ren §16-85-25, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §§453-5.1, 463E-12) (Imp: HRS §671-3)

§16-85-26 Manner of disclosure. The information to be disclosed may be presented in writing, orally, or by means of audio visual aids, and shall be in language the patient or guardian can reasonably be expected to understand; provided that any written form of consent need not be in a language other than English. [Eff 1/27/79; am and ren §16-85-26, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §§453-5.1, 463E-12) (Imp: HRS §671-3)

§16-85-27 Refusal of information. A patient may elect not to be given any part or all of the information that would otherwise be provided in accordance with section 16-85-25. [Eff 1/27/79; am and ren §16-85-27, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §§453-5.1, 463E-12) (Imp: HRS §671-3)

§16-85-28 Repealed. [R 7/27/87]

§16-85-29 Breast cancer treatment guidelines. The board adopted "Breast Cancer Treatment Alternatives" developed by the Hawaii Medical Association and the American Cancer Society as they existed on September 15, 1993 to establish

standards for health care providers to follow in giving information to a patient or a patient's guardian, to ensure that the patient's consent to the performance of a mastectomy is an informed consent. [Eff and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §671-3)

SUBCHAPTER 5

CONTINUING MEDICAL EDUCATION

§16-85-32 Authority and purpose. The rules in this part are adopted pursuant to authority granted by section 453-5.1, HRS, and are intended to effectuate the provisions of section 453-6, HRS, relating to the requirement for continuing medical education (CME). [Eff 5/15/80; am and ren §16-85-32, 6/12/81; comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §453-6)

§16-85-32.5 Definition. Whenever used in this subchapter, unless the context otherwise provides:

"Continuing medical education" or "CME" means educational activities which serve to maintain, develop, or increase the knowledge, skills, and professional performance and relationships that a physician uses to provide services for patients, the public, or the profession. The content of CME is that body of knowledge and skills generally recognized and accepted by the medical profession as within the basic medical sciences, the discipline of clinical medicine, and the provision of health care to the public. [Eff and comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §453-6)

§16-85-33 Biennial renewal. At the time of the biennial renewal, not later than January 31 in each even-numbered year, each licensee shall have completed the CME requirements of section 16-85-34 for the two calendar years preceding the renewal date as follows:

- (1) Licensees initially licensed in the first year of the biennium shall have completed twenty category 1 CME hours and thirty category 2 CME hours, or fifty category 1 CME hours;
- (2) Licensees initially licensed in the second year of the biennium shall not be required to complete any CME hours; and

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- (3) All other licensees, except licensees who were issued limited and temporary licenses, shall have completed forty category 1 CME hours, and sixty category 2 CME hours, or one hundred category 1 CME hours. [Eff 5/15/80; am and ren §16-85-33, 6/12/81; am and comp 7/27/87; am and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §453-6)

§16-85-33.5 Annual renewal. Annually, not later than January 31, all licensees who were issued limited and temporary licenses under section 453-3(2), HRS, shall have completed twenty category 1 CME hours and thirty category 2 CME hours, or fifty category 1 CME hours in the calendar year immediately preceding the annual renewal date. [Eff and comp 7/27/87; am and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §453-6)

§16-85-34 Approved CME. (a) Licensees may comply with the one hundred biennial hours CME requirements by:

- (1) Having a current American Medical Association Physician Recognition Award (PRA); or
 - (2) Holding certification that the licensee has met the CME requirements of a medical or specialty society which has reciprocal arrangements with the American Medical Association's Council on Medical Education (ACCME).
- (b) Category 1 CME hours may be obtained by:
- (1) Attendance at activities conducted by an institution or organization accredited for CME by the ACCME;
 - (2) Completing full-time training in a residency program accredited by the Accreditation Council for Graduate Medical Education (ACGME) or a fellowship in the United States which shall equal fifty hours; provided that participating in an accredited residency program at least one-half of each day which may be credited at the rate of one-half hour per week; or
 - (3) Completing a full academic year of education in a medically related field leading to an advanced degree other than M.D. which shall equal fifty hours; provided that part-time study in a medically related field leading to an advanced degree other than M.D. may be credited on a pro rata basis of one hour per each five days.

(c) Category 2 CME hours may be obtained by attendance at educational activities that meet the definition of category 2 CME as defined by the American Medical Association PRA program and fit one of the descriptions of CME which follows:

- (1) CME lectures and seminars not designated as category 1 by an accredited sponsor;
- (2) Medical teaching;
- (3) Articles, publications, books, and exhibits;
- (4) Non-supervised individual CME including self-instruction, consultation, patient care review, and self assessment; or
- (5) Other meritorious learning experiences. [Eff 5/15/80; am and ren §16-85-34, 6/12/81; am and comp 7/27/87; am and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §453-6)

§16-85-35 Record keeping. (a) In order for a licensee to obtain credit for CME activities in category 1, the sponsoring organization shall:

- (1) Maintain accurate records of the names of all licensees attending or participating;
- (2) Record accurately in such records the exact number of hours of such attendance or participation;
- (3) Make available to the licensee who has attended or participated in any CME activities under the auspices of the sponsor, or to anyone designated by the sponsor, the records or pertinent parts thereof, requested by the licensee for examination or audit; and
- (4) Maintain records in compliance with all applicable accreditation requirements.

(b) Licensees shall be responsible for maintaining their own CME records, either through applying for the PRA, maintaining the records themselves, or contracting with an agency to do so. [Eff 5/15/80; am and ren §16-85-35, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §453-6)

§16-85-36 CME hours; definition. Except as specifically provided otherwise, one clock hour spent satisfying the requirements of any category of CME activities shall equal one credit hour for the purpose of satisfying the CME credit hour requirements. For category 1 and category 2 credits, the sponsoring organization shall specify the credit hours to be credited for the activity, provided that the credit hours specified for an activity shall not exceed the clock hours

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spent engaged in the activity. [Eff 5/15/80; am and ren §16-85-36, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §453-6)

§16-85-37 Certification of compliance. At the time of renewal, each licensee shall certify on a form provided by the board, that the licensee has complied with the CME requirements as set forth herein. The certification shall be under oath if required by the board. The board may require any licensee to submit, in addition to the certification, further evidence satisfactory to the board demonstrating compliance with the CME requirements set forth herein. [Eff 5/15/80; am and ren §16-85-37, 6/12/81; am and comp 7/27/87; am and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §453-6)

§16-85-38 False certification; penalty. A false certification to the board by a licensee shall be deemed a violation of sections 453-8(a)(9), (10), and (15), HRS, and subject the licensee to disciplinary proceedings. [Eff 5/15/80; am and ren §16-85-38, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §§453-6, 453-8)

§16-85-39 Waiver or modification of requirements. Any licensee seeking renewal of license without full compliance with the CME requirements shall submit with the renewal application, the required fee, a notarized affidavit setting forth the facts explaining the reasons for noncompliance, and a request for waiver or modification on the basis of the facts. The board shall consider each case on an individual basis and may grant waiver or modification of the requirements based on:

- (1) Practice in isolated geographical areas with an absence of opportunities for CME by taped programs or otherwise; or
- (2) Inability to devote sufficient hours to CME because of incapacity, undue hardship, or any other extenuating circumstances. [Eff 5/15/80; am and ren §16-85-39, 6/12/81; am and comp 7/27/87; am and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §453-6)

§16-85-40 Repealed. [R 7/27/87]

SUBCHAPTER 6

CERTIFYING PHYSICIAN ASSISTANTS

§16-85-44 Authority and purpose. The purpose of this subchapter is to implement section 453-5.3, HRS, which delegates to the board of medical examiners the responsibility to adopt rules regarding standards of medical education and training governing physician assistants, such standards to equal but not be limited by existing national education and training standards, and the degree of supervision required by a supervising physician. [Eff 6/30/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §§453-5.1, 453-5.3) (Imp: HRS §453-5.3)

§16-85-44.5 Definition. As used in this subchapter:

"Physician assistant" means an individual who has been certified by the board to practice medicine with physician supervision. A physician assistant may perform those duties and responsibilities delegated by the physician assistant's supervising physician.

"Supervising physician" means a physician or group of physicians or an osteopathic physician and surgeon licensed to practice medicine and surgery in this State who accepts the responsibility for the supervision of services rendered by physician assistants. The supervising physician shall direct and exercise supervision at all times.

"Supervision" means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Supervision shall be continuous but shall not be construed as necessarily requiring the physical presence of the supervising physician at the time and place the services are rendered. [Eff and comp 7/27/87; am and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §§453-5.1, 453-5.3) (Imp: HRS §453-5.3)

§16-85-45 Education. All physician assistant educational programs approved and accredited by the American Medical Association's Committee on Allied Health Education and Accreditations, or its successor agency shall be approved by the board of medical examiners. [Eff 6/30/81; comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §§453-5.1, 453-5.3) (Imp: HRS §453-5.3)

§16-85-46 Certification application. (a) An application for certification shall be made under oath on a form to be provided by the board. The form may require the applicant to provide:

- (1) The appropriate fees including the application fee which shall not be refunded;
- (2) The applicant's full name;
- (3) Evidence of graduation from a board approved school or training program;
- (4) Evidence of passage of the national certification examination developed by the National Commission on Certification of Physician's Assistants (NCCPA);
- (5) Evidence of current NCCPA certification;
- (6) Information regarding any conviction of any crime which has not been annulled or expunged;
- (7) A completed Federation Discipline Report from the Federation of State Medical Boards;
- (8) If applicable, evidence of any certifications held or once held in other jurisdictions indicating the status of the certification and documenting any disciplinary action;
- (9) Any other information the board may require to investigate the applicant's qualifications for certification;
- (10) A statement signed by the licensed physician or group of physicians, as the case may be, stating that the physician or group of physicians will direct and supervise the physician assistant and that the physician assistant will be considered the agent of the physician or group of physicians; and
- (11) The name of the employer.

(b) An application for a temporary certificate shall be made under oath on a form to be provided by the board. The form shall require the applicant to provide verification from the NCCPA that the applicant is scheduled to take the next scheduled examination and items listed in subsection (a) above with the exception of items (4) and (5). Graduation from a board approved school or training program shall have occurred within twelve months of the date of application.

(c) It shall be the applicant's responsibility to furnish any information and documentation requested by the board. In the event of any change of information provided, the applicant shall notify the board of any change within thirty days of any change.

(d) Every application and all references shall be signed by the applicant or the person attesting to the applicant's education, experience, employment, and

reputation. [Eff 6/30/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §§453-5.1, 453-5.3) (Imp: HRS §453-5.3)

§16-85-47 Certification document and identification. (a) Upon approval of the application, the board shall issue a physician assistant certificate which recognizes that the applicant is competent to perform under appropriate supervision those duties and functions specifically delegated to the applicant by a physician or group of physicians. The certificate is subject to biennial renewal, and the appropriate fees shall be paid to maintain current certification.

(b) A physician assistant who meets all requirements for certification but who is not employed as a physician assistant shall be certified on an inactive status.

(c) The physician assistants shall introduce themselves as physician assistants to all patients for whom the physician assistants may provide services. [Eff 6/30/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §§453-5.1, 453-5.3) (Imp: HRS §453-5.3)

§16-85-48 Renewal. To be eligible for renewal of physician assistant certification, the physician assistant shall maintain national certification by the NCCPA. [Eff 6/30/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §§453-5.1, 453-5.3) (Imp: HRS §453-5.3)

§16-85-49 Degree of supervision. (a) The supervising physician shall:

- (1) Possess a current unrestricted Hawaii license to practice medicine and surgery that is in good standing with the board;
- (2) Submit a statement that the supervising physician will direct and exercise supervision over any subordinate physician assistant in accordance with this subchapter and recognizes that the supervising physician retains full professional and legal responsibility for the performance of the physician assistant and the care and treatment of the patient;
- (3) Permit the physician assistant to be utilized in any setting authorized by the supervising physician including, but not limited to, clinics, hospitals, ambulatory centers, patient homes, nursing homes, other lodging, and other institutional settings;

- (4) Provide adequate means for direct communication between the physician assistant and the supervising physician; provided that where the physical presence of the supervising physician is not required, the direct communication may occur through the use of technology which may include but is not limited to, two way radio, telephone, fax machine, modem, or other telecommunication device;
- (5) Personally review the records of each patient seen by the physician assistant within seven working days;
- (6) Designate an alternate supervising physician in the physician's absence;
- (7) Supervise no more than two physician assistants at any one time; and
- (8) Be authorized to allow the physician assistant to prescribe, dispense, and administer medications and medical devices to the extent delegated by the supervising physician and subject to the following requirements:
 - (A) Prescribing and dispensing of medications may include Schedule III through V and all legend medications. No physician assistant may prescribe Schedule II medications;
 - (B) A physician assistant who has been delegated the authority to prescribe Schedule III through V medications shall register with the Drug Enforcement Administration (DEA);
 - (C) Each prescription written by a physician assistant shall include the name, address, and phone number of the supervising physician and physician assistant. The printed name of the supervising physician shall be on one side of the form and the printed name of the physician assistant shall be on the other side. A physician assistant who has been delegated the authority to prescribe shall sign the prescription next to the printed name of the physician assistant;
 - (D) A physician assistant employed or extended privileges by a hospital or extended care facility may, if allowed under the bylaws, rules, and regulations of the hospital or extended care facility, write orders for medications Schedule II through V, for inpatients under the care of the supervising physician;
 - (E) The board of medical examiners shall notify the pharmacy board in writing, at least annually or more frequently if

required by changes, of each physician assistant authorized to prescribe;

- (F) A physician assistant may request, receive, and sign for professional samples and may distribute professional samples to patients; and
- (G) All dispensing activities shall comply with appropriate federal and state regulations.

(b) The supervising physician or physicians and the physician assistant shall notify the board within ten days of severance of supervision or employment of the physician assistant. [Eff 6/30/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §§453-5.1, 453-5.3) (Imp: HRS §§453-5.1, 453-5.3, 460-1)

§16-85-49.1 Scope of practice. (a) A physician assistant shall be considered the agents of the physician assistant's supervising physician in the performance of all practice-related activities as established in writing by the employer.

(b) Medical services rendered by the physician assistants may include, but are not limited to:

- (1) Obtaining patient histories and performing physical examinations;
- (2) Ordering, interpreting, or performing diagnostic and therapeutic procedures;
- (3) Formulating a diagnosis;
- (4) Developing and implementing a treatment plan;
- (5) Monitoring the effectiveness of therapeutic interventions;
- (6) Assisting at surgery;
- (7) Offering counseling and education to meet patient needs; and
- (8) Making appropriate referrals.

(c) Physician assistants may not advertise in any manner without the name or names of the supervising physician or physicians, as the case may be, or in any manner which implies that the physician assistant is an independent practitioner. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-5.3) (Imp: HRS §§453-5.1, 453-5.3)

§16-85-50 Automatic inactivation for failing to be under supervision; restoration. (a) Certification shall be automatically inactivated if the physician assistant is no longer supervised by a physician or group of physicians.

(b) Certification may be reactivated provided the applicant pays all applicable fees, including renewal fees as applicable, and submits:

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- (1) A statement signed by the licensed physician or group of physicians, as the case may be, who will direct and supervise the physician assistant;
 - (2) The name of the hospital or clinic employing the physician assistant if appropriate; and
 - (3) Evidence of current certification by the NCCPA.
- (c) The board may, when reviewing any application for reactivation, deny or reject the application in accordance with section 16-85-107. [Eff and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §§453-5.1, 453-5.3)

§16-85-51 Revocation, limitation, suspension, or denial of certification. Any certification to practice as a physician assistant may be revoked, limited, or suspended by the board at any time in accordance with section 16-85-120 or may be denied for any one or more acts listed in chapter 453, HRS or this chapter. [Eff and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §§453-5.1, 453-5.3) (Imp: HRS §453-5.3)

§16-85-52 Repealed. [R 12/22/97]

SUBCHAPTER 7

CERTIFYING EMERGENCY MEDICAL SERVICE PERSONNEL

§16-85-53 Authority and purpose. The purpose of this subchapter is to implement section 453-33, HRS, which delegates to the board the authority to adopt rules regarding certification of individuals as qualified in emergency medical services. [Eff 12/17/82; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-33) (Imp: HRS §453-33)

§16-85-53.5 Definitions. As used in this subchapter:

"Advanced life support" shall be defined as provided in chapter 321, HRS, and its subsequent amendments which are incorporated into and made a part of this subchapter.

"Basic life support" shall be as provided in chapter 321, HRS, and its subsequent amendments which are incorporated into and made a part of this subchapter.

"Designated MEDICOM base station hospital" means a state department of health designated acute care hospital emergency department from which authorized physicians provide medical direction and assistance to emergency medical personnel in the delivery of prehospital emergency medical services.

"Emergency medical technician-basic" or "EMT-Basic," or "EMT-B" means an individual certified by the board to perform basic life support services to a patient at the site of an emergency and in transit to, or between, a medical facility or facilities.

"Emergency medical technician-paramedic" or "EMT-Paramedic," or "EMT-P" or "paramedic" means an individual certified by the board to perform basic and advanced life support services to a patient at the site of an emergency and in transit to, or between, a medical facility or facilities.

"MEDICOM" means the state department of health two-way radio communications system between dispatch centers, ambulances, and medical facilities.

"Mobile intensive care technician" or "MICT" means an individual certified by the board as an EMT-Paramedic. [Eff and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-33) (Imp: HRS §§321-222, 453-33)

§16-85-54 Certification application. (a) There shall be two classes of emergency medical service personnel: EMT-B and EMT-P.

(b) An application for certification shall be made under oath on a form to be provided by the board and shall require the applicant to provide:

- (1) For EMT-B certification:
 - (A) The appropriate fees including the application fee which shall not be refunded;
 - (B) The applicant's full name;
 - (C) Evidence of completion of an EMT-Basic course of training which equals or exceeds the curriculum listed in section 16-85-56;
 - (D) Evidence of passage of the National Registry Emergency Medical Technicians (National Registry) EMT-Basic examination;
 - (E) Evidence of current certification from the National Registry of Emergency Medical Technicians;

- (F) Information regarding any conviction of any crime which has not been annulled or expunged; and
 - (G) If applicable, evidence of any certifications held or once held in other jurisdictions indicating the status of the certification and documenting any disciplinary action;
 - (H) Any other information the board may require to investigate the applicant's qualifications for certification.
- (2) For EMT-P certification:
- (A) All items listed in subparagraphs (1) (A), (B), (E), (F), (G) and (H);
 - (B) Evidence of completion of an EMT-Paramedic course of training which equals or exceeds the curriculum listed in section 16-85-56; and
 - (C) Evidence of passage of the National Registry's EMT-Paramedic examination.
- (c) An application for temporary certification shall be made under oath on a form to be provided by the board and shall require the applicant to provide:
- (1) All items listed in subparagraphs (1) (A), (B), and (H);
 - (2) Evidence of completion of the appropriate training program within the past twelve months from the date of application;
 - (3) The name of the applicant's employer for whom the applicant will be performing services; and
 - (4) Application to take the first available examination after the date of application.

Temporary certification may be issued only once to an applicant.

(d) It shall be the applicant's responsibility to furnish any information requested by the board. In the event of any change of information provided, the board shall be notified within thirty days of any change.

(e) Every application and all references shall be signed by the applicant or the person attesting to the applicant's education, experience, and reputation. [Eff 12/17/82; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-33) (Imp: HRS §§453-33, 453-32.5)

§16-85-55 Recertification requirements. (a) Certificate holders may comply with recertification requirements by having a current certificate from the National Registry of Emergency Medical Technicians (NREMT).

(b) Certificate holders who do not have a current certificate from the NREMT shall submit evidence of continuing education (CE) requirements that includes:

- (1) For EMT-Basic:
 - (A) State approved EMT refresher training - twenty-four hour minimum;
 - (B) Annual cardiopulmonary resuscitation (CPR) certification; and
 - (C) Forty-eight hours of additional continuing education in any of the subjects listed in section 16-85-56(a).
 - (2) For EMT-Paramedic:
 - (A) Forty-eight hours of paramedic refresher training, which shall include advanced cardiac life support (ACLS) certification or training deemed to be equivalent to that required for ACLS certification by the medical director of the training program;
 - (B) Annual CPR certification;
 - (C) Twenty-four hours of additional continuing education in any of the subjects listed in section 16-85-56(b); and
 - (D) Documentation of skill maintenance.
- (c) There shall be no CE requirement at the time of a certificate holder's first recertification if the certificate holder was initially certified in the twelve-month period prior to the January 31 recertification date.
- (d) Certificate holders who were certified in the first calendar year of the previous biennial registration period, shall provide evidence of one-half of the CE requirements noted above.
- (e) Temporary certification shall be valid from the date of issuance of temporary certification to the date of release of results of the first examination following issuance of certification and the temporary certification shall not be extended.
- (f) At the time of recertification each certificate holder shall certify on a form provided by the board that the certificate holder has complied with the CE requirements. The certification shall be under oath if required by the board. The board may require any certificate holder to submit, in addition to the certification, further evidence demonstrating compliance with the CE requirement set forth in this section.
- (g) A false certification to the board by a certificate holder shall be deemed a violation of section 453-8(a)(15), HRS, and subject the certificate holder to disciplinary proceedings.
- (h) Failure to recertify and present such CE evidence as required shall constitute a forfeiture of certification, which may be restored within two years from the date of forfeiture provided the applicant pays all applicable fees, including renewal fees as applicable, and provides evidence of meeting the CE requirements.

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(i) The board may, when reviewing application for restoration, deny or reject the application in accordance with section 16-85-107. [Eff 12/17/82; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-33) (Imp: HRS §§453-32, 453-32.1, 453-32.5)

§16-85-56 Courses of training. (a) The EMT-Basic course of training shall be as follows:

- (1) The course of training shall be based on, but not limited to, the national Emergency Medical Technician Ambulance (EMT-A) curriculum of the United States department of transportation;
- (2) The course shall include the minimum theoretical knowledge necessary to provide for the application of basic life support skills in the delivery of prehospital emergency services in the following subjects for a minimum of one hundred eighty hours:
 - (A) Standards and policies of the emergency medical services system;
 - (B) Human systems and patient assessment;
 - (C) Respiratory emergencies;
 - (D) Cardiovascular emergencies;
 - (E) Neurological emergencies;
 - (F) Musculoskeletal injuries;
 - (G) Obstetrical and gynecological emergencies;
 - (H) Pediatric emergencies;
 - (I) Medical emergencies;
 - (J) Trauma;
 - (K) Shock;
 - (L) Basic knowledge of behavioral disorders;
 - (M) Extrication and rescue techniques; and
 - (N) Introduction to communications;
- (3) The course shall include both hospital and emergency ambulance clinical experience to enable the student to demonstrate competency in basic life support skills required for certification. The course of clinical experience shall be for a minimum of one hundred thirty-five hours; and
- (4) The course of training shall include the following skills:
 - (A) Perform cardiopulmonary resuscitation;
 - (B) Obtain basic patient history and physical examination;
 - (C) Obtain and monitor vital signs;
 - (D) Establish and maintain airways;

- (E) Administer free-flow one hundred per cent oxygen;
 - (F) Ventilate with bag-mask;
 - (G) Apply and use mechanical automatic heart and lung resuscitator;
 - (H) Control hemorrhage;
 - (I) Apply bandages;
 - (J) Immobilize or splint fractures, dislocations, and sprains;
 - (K) Immobilize and extricate automobile injury victims;
 - (L) Perform light rescue and triage;
 - (M) Perform emergency delivery of baby, and provide newborn care;
 - (N) Initiate intervention with behavioral disorders;
 - (O) Apply antishock trousers (MAST);
 - (P) Operate a medical communications system;
 - (Q) Operate an emergency medical vehicle; and
 - (R) Perform twelve-lead electrocardiogram (EKG).
- (b) The EMT-Paramedic course of training shall be as follows:
- (1) The course of training shall be based on, but not limited to, the national Emergency Medical Technician-Paramedic (EMT-P) curriculum of the United States department of transportation;
 - (2) The course shall include all knowledge and skills required at the EMT-Basic level in addition to the minimum theoretical knowledge necessary to provide advanced life support skills in the delivery of prehospital emergency medical services in the following subjects, for a minimum of four hundred hours:
 - (A) Standards and policies of the emergency medical services system;
 - (B) Human systems and detailed patient assessment;
 - (C) Respiratory emergencies;
 - (D) Cardiovascular emergencies;
 - (E) Neurological emergencies;
 - (F) Musculoskeletal injuries;
 - (G) Obstetrical and gynecological emergencies;
 - (H) Neonatal and pediatric emergencies;
 - (I) Medical emergencies;
 - (J) Trauma;
 - (K) Shock and fluid therapy;
 - (L) Behavioral disorders;
 - (M) Extrication and rescue techniques;
 - (N) Communication with base station and physicians; and
 - (O) Pharmacology;

- (3) The course shall include a hospital and an emergency ambulance clinical internship to enable the student to demonstrate competency in advanced life support skills required for certification. The course of clinical internship shall be for a minimum of eight hundred fifteen hours; and
- (4) The course of training shall include the following skills:
 - (A) Perform all skills included in EMT basic life support skills in subsection (a)(4);
 - (B) Perform adult and pediatric advanced cardiac life support;
 - (C) Perform history taking and physical exam assessing illness or degree of injury of patient;
 - (D) Communicate with emergency physicians at designated MEDICOM hospitals;
 - (E) Perform procedures, and administer medications included in board-approved EMT-Paramedic course of training and as published in protocols, via the following routes:
 - (i) Oral;
 - (ii) Sublingual;
 - (iii) Subcutaneous;
 - (iv) Intramuscular;
 - (v) Intravenous;
 - (vi) Endotracheal; and
 - (vii) Intraosseous;
 - (F) Perform tracheal intubation;
 - (G) Perform intravenous therapy to include:
 - (i) Intravenous fluids; and
 - (ii) Intravenous medications;
 - (H) Perform twelve-lead electrocardiogram (EKG), interpret life-threatening arrhythmias, and recognize abnormalities;
 - (I) Perform defibrillation and cardioversion;
 - (J) Administer appropriate medications to treat:
 - (i) Shock;
 - (ii) Poisoning;
 - (iii) Severe pain;
 - (iv) Hypotension;
 - (v) Anaphylaxis;
 - (vi) Hypoglycemia;
 - (vii) Acidosis;
 - (viii) Asthma;
 - (ix) Cardiac arrhythmias;
 - (x) Acute myocardial infarction;

- (xi) Fluid overload;
- (xii) Seizure;
- (xiii) Post-partum hemorrhage;
- (xiv) Tetany;
- (xv) Congestive heart failure;
- (xvi) Pulmonary edema; and
- (xvii) Hyperkalemia;
- (K) Apply and use rotating tourniquets;
- (L) Insert nasogastric tubes;
- (M) Perform gastric lavage;
- (N) Perform closed chest needle thoracostomy;
- (O) Perform pericardiocentesis;
- (P) Perform cricothyroid needle insertion;
- (Q) Perform direct laryngoscopy for McGill forcep removal of foreign body;
- (R) Perform techniques for reflex vagocardiac stimulation; and
- (S) Operate medical communications system. [Eff 12/17/82, am and comp 7/27/87; am and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-33) (Imp: §§453-31, 453-32)

§16-85-57 Repealed. [R 12/22/97]

§16-85-58 Repealed. [R 12/22/97]

§16-85-59 Scope of practice. (a) The scope of practice of an EMT-Basic shall be restricted to the performance of the basic life support services.

(b) The scope of practice of an EMT-Paramedic shall be restricted to the performance of the basic and advanced life support services. [Eff 4/27/83; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-33) (Imp: HRS §§453-31, 453-32)

§16-85-60 Supervision; responsibility. (a) Supervision of certified EMT-Paramedics providing services within the practice of medicine shall be by:

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- (1) Standing orders for life-threatening situations where morbidity or mortality may be increased without immediate medical intervention approved:
 - (A) By the department of health for emergencies requiring immediate life-saving medical care; and
 - (B) By the chief of the emergency department of a designated MEDICOM hospital; and
- (2) Emergency physicians at a state-designated MEDICOM base station hospital who communicate with emergency medical services personnel via radio or telephone and provide medical direction on-site and in-transit to a medical facility in accordance with the knowledge and skills required for State-certified treatment, transfer, and triage protocols approved by the State department of health.
 - (b) Responsibility of EMT-Paramedics. Advance life-support treatment shall rest with the EMT-Paramedic and the physician and:
 - (1) Recognition is to be made that the designated emergency physician's communications are dependent on accurate and precise description of medical assessment by EMT-Paramedics, since the physician is not physically present at the scene;
 - (2) Recognition is to be made that the emergency physician communicating with EMT-Paramedics is dependent upon the skills of the EMT-Paramedic in performing procedures as directed, since the physician is not physically present at the scene; and
 - (3) If the emergency physician is not compensated for the communication by the patient, the ambulance service, or the hospital, the emergency physician is deemed to be acting in good faith as a good samaritan and is to be protected by Hawaii state law as performing a good samaritan act. [Eff 4/27/83; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-33) (Imp: HRS §§453-32, 663-1.5)

§16-85-61 Repealed. [R 12/22/97]

§16-85-62 Revocation, limitation, suspension, or denial of certification. Any certification granted pursuant to this subchapter, may be revoked, limited, suspended, or denied by the board at any time in accordance with section 16-85-120 for any one or more of the acts listed in chapter 453, HRS or this chapter. [Eff and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-33) (Imp: HRS §453-32)

§16-85-63 Repealed. [R 12/22/97]

SUBCHAPTER 8

PODIATRIC MEDICINE

§16-85-70 Authority and purpose. The purpose of this subchapter is to clarify and to implement the administration of chapter 463E, HRS, in accordance with section 463E-12, HRS. [Eff and comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §463E-12) (Imp: HRS §463E-12)

§16-85-71 Definition. Whenever used in this subchapter, unless the context otherwise provides:

"Continuing education" or "CE" means post-graduate work or continuing education in podiatric medicine. [Eff and comp 10/28/89; am and comp 8/25/90; comp 12/22/97] (Auth: HRS §463E-12) (Imp: HRS §463E-5)

§16-85-72 Application. (a) An application for license shall be made under oath on a form to be provided by the board. The form shall require the applicant to provide;

- (1) The applicant's full name;
- (2) All applicable fees, including the application fee which shall not be refunded;
- (3) Evidence that the applicant is a graduate in podiatric medicine from a college approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association;
- (4) Evidence of passage of all parts of the National Board of Podiatric Medical Examination (NB) and the Podiatric Medical Licensing Examination for States (PMLEXIS);
- (5) A report from the Federation of Podiatric Medical Boards relating to public action records;
- (6) Information regarding any conviction of any crime which has not been annulled or expunged;
- (7) If applicable, evidence of any licenses held or once held in other jurisdictions indicating the status of the license and documenting any disciplinary action; and

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(8) Any other information the board may require to investigate the applicant's qualifications for license.

(b) It shall be the applicant's responsibility to furnish any information and documentation requested by the board. In the event of any change of information provided, the applicant shall notify the board of any change of information within thirty days of any change.

(c) Every application and all references shall be signed by the applicant or the person attesting to the applicant's education, experience, and reputation. [Eff and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §463E-12) (Imp: HRS §§463E-3, 463E-4)

§16-85-73 Repealed. [R 12/22/97]

§16-85-73.5 PMLexis examination. (a) The PMLexis examinations shall be conducted in Honolulu on the second Tuesday of June and the first Tuesday in December or an alternative date designated by the National Board of Podiatric Medical Examiners. A completed application for examination shall be filed at least sixty days prior to the examination date and shall be accompanied by the required fees.

(b) Applicants for the PMLexis examination shall:

(1) Pass with a score of at least seventy-five; and

(2) Be allowed postponements after being scheduled for an examination if the applicant's written request is received by the board thirty days prior to the scheduled examination date. Failure to meet this deadline shall result in the forfeiture of the applicant's examination administration fee.

(c) The board may accept evidence of passage of the PMLexis in another jurisdiction in lieu of passage of the PMLexis examination administered in Hawaii. [Eff and comp 8/25/90; am and comp 12/22/97] (Auth: HRS §463E-12) (Imp: HRS §463E-4)

§16-85-74 Biennial renewal. (a) At the time of the biennial renewal, not later than January 31 in each even-numbered year, each licensee that was issued a license before the previous biennial renewal, shall present evidence that the licensee has performed forty hours of CE during the previous biennium.

(b) At the time of the biennial renewal, each licensee who was licensed in the first calendar year of the previous biennial period, shall present evidence of

performing twenty hours of CE in the calendar year immediately preceding the renewal date.

(c) There shall be no CE requirement at the time of the licensee's first renewal if the licensee was initially licensed in the twelve-month period prior to the January 31 renewal date. [Eff and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §463E-12) (Imp: HRS §463E-5)

§16-85-75 CE requirements. Licensees may comply with the continuing education requirements by:

- (1) Completing postgraduate work in an institution or college of podiatric medicine approved or accredited by the American Podiatric Medical Association (APMA) Council on Podiatric Medical Education (CPME) during the previous biennium; or
- (2) Completing continuing education in podiatric medicine in a program that has been approved by the APMA CPME during the previous biennium. [Eff and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS: §463E-12) (Imp: HRS §463E-5)

§16-85-76 Record keeping. Each licensee shall be responsible for maintaining the licensee's own CE records or by contracting with an agency to do so. [Eff and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §463E-12) (Imp: HRS §463E-5)

§16-85-77 Credit hour; definition. One clock hour spent satisfying the requirements of CE activities shall equal one credit hour for the purpose of satisfying the CE credit hour requirements. The CE sponsoring organization shall specify the credit hours to be credited for the activity, provided that the credit hours specified for an activity shall not exceed the clock hours spent engaged in the activity. [Eff and comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §463E-12) (Imp: HRS §463E-5)

§16-85-78 Certification of compliance. At the time of renewal, each licensee shall certify on a form provided by the board, that the licensee has complied with the CE requirements set forth in this subchapter. The certification shall be under oath if required by the board. The board may require any licensee to submit, in addition to certification, further evidence satisfactory to the board

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demonstrating compliance with the CE requirements. [Eff and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §463E-12) (Imp: HRS §463E-5)

§16-85-79 False certification; penalty. A false certification to the board by a licensee shall be deemed a violation of section 463E-6(a)(17), HRS, and subject the licensee to disciplinary proceedings. [Eff and comp 10/28/89; comp 8/25/90; comp 12/22/97] (Auth: HRS §463E-12) (Imp: HRS §§463E-5, 463E-6)

§16-85-80 Waiver or modification of CE requirements. Any licensee seeking renewal of license without full compliance with the CE requirements shall submit the renewal application, the required fee, a notarized affidavit setting forth the facts explaining the reasons for non-compliance, and a request for waiver or modification on the basis of the facts. The board shall consider each case on an individual basis and may grant waiver or modification of the requirements based on:

- (1) Practice in isolated geographical areas with an absence of opportunities for CE by taped programs or otherwise; or
- (2) Inability to devote sufficient hours to CE because of incapacity, undue hardship, or any other extenuating circumstances. [Eff and comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §463E-12) (Imp: HRS §463E-5)

§16-85-81 Repealed. [R 12/22/97]

SUBCHAPTER 9

ORAL TESTIMONY

Historical Note: Subchapter 8 of Chapter 16-85 is renumbered as Subchapter 9 of Chapter 16-85 without any change in substance. [Eff and comp 7/27/87; ren and comp 10/28/89]

§16-85-98 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony is requested to notify the board not later than forty-eight hours prior to the meeting, and at that time to state the item on which testimony is to be presented;
 - (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
 - (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
 - (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
 - (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
 - (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.
- (b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding, subject to the hearings relief, declaratory relief, or rule relief of chapter 16-201.
- (c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §453-5.1) (Imp: HRS §92-3)

SUBCHAPTER 10

PRACTICE AND PROCEDURE

Historical Note: Subchapter 9 of Chapter 16-85 is renumbered as Subchapter 10 of Chapter 16-85 without any change in substance. [Eff and comp 7/27/87; ren and comp 10/28/89]

§16-85-101 Administrative practice and procedure. The rules of practice and procedure for the board of medical examiners shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and

consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97] (Auth: HRS §§91-2, 453-5.1) (Imp: HRS §91-2, 453-5.1)

SUBCHAPTER 11

DENIAL, REJECTION, FORFEITURE

§16-85-107 Denial or rejection of application. (a) An application for issuance of a license or certificate shall be denied when an application is insufficient or incomplete or when an applicant has failed to provide satisfactory proof that the applicant meets the requirements under chapters 453 or 463E, HRS, or this chapter. In addition, the board may deny issuance of a license or certificate:

- (1) When the applicant has committed any of the acts for which a license or certificate may be suspended or revoked under sections 453-8 or 463E-6, HRS, or section 16-85-112;
- (2) If the applicant fails to demonstrate that the applicant possesses a good reputation for honesty, truthfulness, fairness, and financial integrity; or
- (3) If the applicant has had disciplinary action taken by any jurisdiction, including any federal or state regulatory body.

(b) An application shall be automatically rejected and the applicant shall be denied licensure or certification when the applicant, after having been notified to do so:

- (1) Fails to pay the appropriate fees within six months from notification; or
- (2) Fails to submit, after notification, any of the information or documentation requested to comply with any of the requirements for licensure or certification within six months of notification.

(c) Any application which has been denied or rejected shall remain in the possession of the board and shall not be returned.

(d) An applicant, whose application has been denied or rejected, may file for an administrative hearing pursuant to chapter 91, HRS. [Eff and comp 12/22/97] (Auth: HRS §§453-3, 453-33, 463E-12) (Imp: HRS §§91-9, 91-9.5,

91-10, 91-11, 91-12, 453-3, 453-4, 453-4.5, 453-5.1, 453-5.3, 453-33, 463E-3)

§16-85-108 Automatic forfeiture for failure to renew; restoration. (a) The failure to timely renew the license or certificate, pay the applicable fees, present evidence of complying with any continuing education requirements, or paying fees with a check which is dishonored upon first deposit shall cause the license or certificate to be automatically forfeited.

(b) A license or certificate which has been forfeited may be restored within two years after the date of forfeiture provided the applicant pays the appropriate fees including restoration fees, and submits any continuing education hours that would have been required had the licensee or certificate holder maintained licensure or certification.

(c) The board may, when reviewing the application for restoration, deny or reject the application in accordance with section 16-95-107.

(d) An individual whose license or certificate has been forfeited and who fails to restore the license or certificate as provided above, shall apply as a new applicant. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12, 436B-4) (Imp: HRS §§453-5.3, 453-6, 453-32.1, 463E-5)

SUBCHAPTER 12

DISCIPLINARY SANCTIONS

§16-85-112 Grounds for refusal to renew, reinstate or restore, and for revocation, suspension, denial, or condition of license or certificate. In addition to any other acts or conditions provided in sections 436B-19 and 453-8, HRS, the board may refuse to renew, reinstate, or restore, or may deny, revoke, suspend, or condition in any manner, any license or certificate for any one or more of the following acts or conditions:

- (1) Failure to comply with, observe, or adhere to any law in a manner such that the board deems the licensee or certificate holder to be an unfit or improper person to hold a license or certificate;
- (2) Employing, utilizing, or attempting to employ or utilize at any time any person not licensed or certified where licensure or certification is required; or
- (3) Violating this chapter, the applicable licensing laws, or any rule or order of the board. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12, 436B-19) (Imp: HRS §§453-5.3, 453-8, 453-8.1, 453-32, 463E-6, 436B-19)

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§16-85-113 Suspended license or certificate. No license or certificate shall be suspended by the board for a period exceeding five years. A person whose license or certificate has been suspended may apply for reinstatement of the license or certificate to the extent authorized by law and upon complete compliance with any term or condition imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees, including but not limited to reinstatement fees and any compliance resolution fund fees. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12, 436B-4) (Imp: HRS §§453-5.3, 453-32, 436B-20)

§16-85-114 Revoked license or certificate. A person may apply for a new license or certificate after five years from the effective date of the revocation of the license or certificate by filing an application and complying with all current requirements for new applicants. The board may waive any applicable education or examination requirements upon being satisfied that the applicant whose license or certificate has been previously revoked, has submitted documentation that the applicant has maintained equivalent knowledge, competence, and qualifications through work experience, training, or education. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12, 436B-4) (Imp: HRS §§453-5.3, 453-32, 436B-21)

§16-85-115 Relinquishment no bar to jurisdiction. The forfeiture, nonrenewal, surrender, or voluntary relinquishment of a license or certificate by a licensee or certificate holder shall not bar jurisdiction by the board to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the license or certificate, or fine the licensee or certificate holder. [Eff and comp 12/22/97] (Auth: HRS §§436-5.1, 453-33, 463E-12, 436B-4) (Imp: HRS §436B-22)

§16-85-116 Summary suspension. (a) Notwithstanding any law to the contrary, the board or the board's delegate may cause the immediate suspension or restriction of a license or certificate, subject to subsequent notice and hearing or other adequate procedures, upon a specific determination that the failure to take such an action may result in:

- (1) An immediate and unreasonable threat to personal safety; or
- (2) Fraud or misrepresentation upon consumers, and that, for the protection of the public from the possible consequences of

practices, the licensee's license or certificate holder's certification should be immediately suspended or restricted.

(b) The board or the board's delegate may order the summary suspension of the license or certificate for a period not to exceed twenty days. The order of suspension shall be served upon the licensee or certificate holder at the same time as the notice of hearing for disciplinary action, and the hearing shall be scheduled prior to the expiration of the order of suspension. The period of suspension prior to the hearing shall not be extended beyond twenty days except upon request of the licensee or certificate holder for a reasonable continuance to adequately prepare the licensee's or certificate holder's defense. Any attempt by the licensee or certificate holder to continue the licensed activity while the license or certificate has been summarily suspended shall of itself be sufficient to warrant a permanent revocation of the license or certificate and shall subject the licensee or certificate holder to all penalties prescribed by this chapter, the applicable licensing laws, or any rule or order of the board. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12, 436B-4) (Imp: HRS §436B-23)

§16-85-117 Civil and criminal sanctions for unlicensed or uncertified activity; fines; injunctive relief; damages; forfeiture. (a) Any licensee or certificate holder aiding or abetting an unlicensed or uncertified person to directly or indirectly evade this chapter or the applicable licensing laws, or combining or conspiring with an unlicensed or uncertified person, or permitting one's license or certificate to be used by an unlicensed or uncertified person, or acting as agent, partner, associate, or otherwise, of an unlicensed or uncertified person with the intent to evade this chapter or the applicable laws may be fined up to \$1,000 for the first offense; up to \$2,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for the second offense; and up to \$5,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for any subsequent offense. For purposes of this section, "contract price" means the total monetary consideration offered by the consumer for the provision of goods and services.

(b) Any person, who engages in an activity requiring a license or certificate issued by the board and who fails to obtain the required license or certificate, or who uses any word, title, or representation to induce the false belief that the person is licensed or certified to engage in the activity, other than a circumstance of first instance involving the inadvertent failure to renew a previously existing license or certificate, shall be guilty of a misdemeanor and be subject to a fine of not more than \$1,000 or imprisoned not more than one year, or both, and each day's violation shall be deemed a separate offense.

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(c) The board or any person may maintain a suit to enjoin the performance or the continuance of any act or acts by a person acting without a license or certificate where a license or certificate is required by law, and if injured thereby, for the recovery of damages. The board may also seek the imposition of fines provided by subsection (a). The plaintiff or petitioner in a suit for an injunction need not allege or prove actual damages to prevail. Reasonable attorney fees and costs shall be allowed by the court to the plaintiff or petitioner as the prevailing party.

(d) All tools, implements, armamentariums, documents, materials, or any other property used by any person to provide professional services without a license or certificate required by law shall be declared forfeited to the State by the court and turned over to the department of commerce and consumer affairs for disposition as it deems appropriate. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12, 436B-4) (Imp: HRS §§453-5.3, 453-33, 436B-28)

§16-85-118 Remedies or penalties cumulative. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12, 436B-4) (Imp: HRS §436B-28)

§16-85-119 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12, 436B-4) (Imp: HRS §§91-9, 91-9.5, 91-10, 91-11, 91-12, 436B-29)

§16-85-120 Hearings; judicial review. Unless otherwise provided by law, in every case in which the board refuses to issue, renew, restore, or reinstate a license or certificate, or proposes to take disciplinary action or other licensing sanctions against a licensee or certificate holder, the proceeding shall be conducted in accordance with chapter 91. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12, 436B-4) (Imp: HRS §§91-9, 91-9.5, 91-10, 91-11, 91-12, 436B-24)

§16-85-121 Criminal conviction. (a) When an applicant, licensee, or certificate holder has been convicted of a crime related to the profession and it is determined that the conviction may be considered under section 831-3.1, HRS, or chapters 453 or 463E, HRS, the board may request the following documents from the applicant, licensee, or certificate holder:

- (1) Copies of any court records, orders, or other documents that state the facts and statutes upon which the applicant was convicted, the verdict of the court with regard to that conviction, the sentence imposed, and the actual terms of the sentence; and
- (2) Affidavits from any parole officer, employer, other physicians, or other persons who can attest to a firm belief that the applicant has been sufficiently rehabilitated to practice.

(b) The applicant, licensee, or certificate holder shall provide any documents requested within thirty days of the request. [Eff and comp 12/22/97] (Auth: HRS §§453-5.1, 453-33, 463E-12) (Imp: HRS §§453-3, 453-4, 453-4.5, 453-5.1, 453-5.3, 453-7.5, 453-8.3, 453-33, 463E-3)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments and Compilation of Chapter 16-85
Hawaii Administrative Rules

September 12, 1997

SUMMARY

1. §§16-85-2 and 16-85-3 are amended.
2. A new §16-85-4 is added.
3. A new §16-85-5 is added.
4. §§16-85-7 and 16-85-8 are amended.
5. §§16-85-9 and 16-85-10 are repealed.
6. §16-85-11 is amended.
7. §16-85-12 is repealed.
8. §16-85-29 is amended.
9. §§16-85-33 through 16-85-34 are amended.
10. §§16-85-36 and 16-85-37 are amended.
11. §16-85-39 is amended.
12. §§16-85-44.5 through 16-85-47 are amended.
13. §16-85-49 is amended.
14. A new §16-85-49.1 is added.
15. A new §16-85-50 is added.
16. §16-85-51 is amended.
17. §16-85-52 is repealed.

18. §§16-85-53 through 16-85-56 are amended.
19. §§16-85-57 and 16-85-58 are repealed.
20. §§16-85-59 and 16-85-60 are amended.
21. §16-85-61 is repealed.
22. §16-85-62 is amended.
23. §16-85-63 is repealed.
24. §16-85-72 is amended.
25. §16-85-73 is repealed.
26. §§16-85-73.5 through 16-85-76 are amended.
27. §16-85-78 is amended.
28. §16-85-80 is amended.
29. §16-85-81 is repealed.
30. §§16-85-98 and 16-85-101 are amended.
31. A new subchapter 11 (§§16-85-107 and 16-85-108) is added.
32. A new subchapter 12 (§§16-85-112 through 16-85-121) is added.
33. Chapter 85 is compiled.

Amendments to and compilation of chapter 16-85, Hawaii Administrative Rules, on the Summary page dated September 12, 1997, were adopted on September 12, 1997, following a public hearing held on August 8, 1997, after public notices were given in The Honolulu Advertiser, Hawaii Tribune-Herald, West Hawaii Today, Maui News and The Garden Island on June 29, 1997.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ William E. Iaconetti
WILLIAM E. IACONETTI, M.D.
Chairperson, Board of Medical Examiners

APPROVED AS TO FORM: Date 11/26/97

/s/ James F. Nagle
Deputy Attorney General

APPROVED: Date 12/2/97

/s/ Kathryn S. Matayoshi
KATHRYN S. MATAYOSHI, Director
Commerce and Consumer Affairs

APPROVED: Date 12/10/97

/s/ Benjamin J. Cayetano
BENJAMIN J. CAYETANO
Governor
State of Hawaii

December 11, 1997
Filed