
Sunset Evaluation Update: Osteopathy

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 92-24
December 1992

Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The State Auditor is responsible for evaluating each program for the Legislature prior to its date of repeal.

This report evaluates the regulation of osteopathy under Chapter 460, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate osteopathic physicians to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Section 26H-5, HRS, the report incorporates in Appendix B the draft legislation to improve the regulatory program.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs, the Board of Osteopathic Examiners, and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the State Auditor to evaluate each licensing statute prior to the repeal date and to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of osteopathic physicians and surgeons under Chapter 460, HRS, complies with policies for occupational regulation in the Sunset Law.

Background

Osteopathic physicians are medical practitioners who emphasize the relationship of the neuro-musculoskeletal system to the other body systems. There are about 55 osteopathic physicians licensed in Hawaii.¹

Their education and training is similar to that of medical doctors (M.D.'s). An undergraduate degree and four years in a college of osteopathic medicine lead to the degree of Doctor of Osteopathy (D.O.). Training covers standard medical-surgical therapy and osteopathic manipulative therapy with special emphasis on the neuro-musculoskeletal system. New D.O.'s serve a 12-month internship in which they rotate among surgery, pediatrics, internal medicine, and other specialties. Like M.D.'s, osteopathic physicians may pursue specialty certification through additional training.

Regulatory program

Chapter 460 governs the regulatory program, including licensing, disciplinary, and reporting requirements for osteopathic medicine. Those who wish to practice in Hawaii must be licensed by the Board of Osteopathic Examiners which is administratively attached to the Department of Commerce and Consumer Affairs. The board is appointed by the governor and serves without compensation. It consists of three osteopathic physicians and two public members.

An executive secretary in the department's Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day operations. The department's Regulated Industries Complaints Office mediates and resolves consumer complaints, pursues disciplinary action against licensees, and seeks court injunctions and fines against

unlicensed persons. Final disciplinary decisions are made by the board following a recommended decision from the department's Office of Administrative Hearings.

Previous sunset report

Our first sunset evaluation of osteopathic medicine in 1985 recommended that Chapter 460 be reenacted to continue the regulation of osteopathic physicians.² Because of the low volume of licensing activity and complaints, we recommended that the Board of Osteopathic Examiners be eliminated and that osteopathic physicians be regulated by the Board of Medical Examiners. The Board of Medical Examiners should then be expanded to add an osteopathic physician as a member.

We also recommended defining osteopathy; strengthening the requirements on reporting and discipline; and deleting many inappropriate requirements on levels of licensure, age, good moral character, and experience. We said that Hawaii should accept the Federation Licensing Examination (FLEX) that is used for M.D.'s, and that Hawaii's oral-practical examinations in osteopathic medicine should be abolished.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of osteopathic physicians complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate osteopathic physicians to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on osteopathic medicine and its regulation. We reviewed statutes and rules on osteopathic physicians in Hawaii and the changes in these since our last sunset evaluation in 1985.

We also reviewed complaints and other evidence of potential harm to consumers. We interviewed members of the Board of Osteopathic

Examiners, personnel from the Department of Commerce and Consumer Affairs, practitioners in the field, and other knowledgeable persons. We obtained information from the American Osteopathic Association and the Hawaii Association of Osteopathic Physicians and Surgeons. At the department, we reviewed licensing, enforcement, correspondence, and other files.

Our work was performed from January through September 1992 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

We recommend that the regulation of osteopathic physicians continue. Most of the recommendations made in our 1985 sunset evaluation have been carried out. For example, the oral-practical examinations were ended, the Federation Licensing Examination (FLEX) was accepted, and the disciplinary and reporting requirements were strengthened. But some concerns that we reported in 1985 persist and other improvements are needed in the statutes, the rules, and the administration of the licensing program.

Summary of Findings

1. There is a need to continue regulating osteopathic physicians to protect the public's health, safety, and welfare.
2. A separate Board of Osteopathic Examiners to regulate osteopathic physicians is unnecessary.
3. Some minor improvements are needed in the statutes.
4. Licensing requirements in the rules do not conform with statute and are incorrect and confusing.
5. The department should ensure that test scores are authentic.
6. The board has not always complied with the Sunshine Law.

State Should Continue to Regulate Osteopathy

The practice of osteopathic medicine has a significant potential for harm to the public's health, safety, and welfare. Chapter 460 should be reenacted to continue the regulation of osteopathic physicians.

Clear potential for harm

Osteopathic physicians, like M.D.'s, have unlimited rights to practice medicine and surgery. The dangers posed to the public by incompetent osteopathic physicians are similar to those posed by medical doctors. Moreover, consumers are not in a position to judge the competence of osteopathic physicians or the quality of the care they provide. Therefore, osteopathic physicians, like M.D.'s, must be regulated to maintain standards of competency adequate to safeguard the public.

All states require osteopathic physicians to be licensed. Every state requires applicants to graduate from an accredited college of osteopathic medicine and to pass examinations.

Evidence of harm

Since our previous sunset report in 1985, about 60 complaints against osteopathic physicians have been filed with the department's Regulated Industries Complaints Office (RICO). Some of these cases were closed for lack of evidence or jurisdiction. But other cases demonstrated the importance of regulation.

For example, RICO determined that certain osteopathic physicians had made false claims of being an M.D., were impaired due to substance abuse, were sexually involved with patients under the guise of medical treatment, failed to disclose disciplinary action from another state, or practiced without a license. RICO has sent advisory letters that identified possible violations and requested corrective action, made settlement agreements with fines and monitoring, and recommended that a license be revoked by the Board of Osteopathic Examiners.

Twenty-nine complaints were filed against one osteopathic physician alleging professional misconduct, unethical practices, unnecessary treatment, incompetency, misrepresentation, negligence, and other violations. The physician subsequently became the subject of criminal investigations. After a circuit-court verdict of criminal sexual assault, the board summarily suspended the physician's license for 20 days. (Hawaii's new Uniform Professional and Vocational Licensing Act, Chapter 436B, HRS, authorizes these summary suspensions to protect the public from practitioners who may pose an immediate and unreasonable threat to personal safety.) Later the physician was sentenced to 10 years in prison on the sexual assault charge and the board revoked his license.

Board of Osteopathic Examiners Is Not Needed

In 1985 we found that there was insufficient regulatory activity to warrant a separate Board of Osteopathic Examiners. We recommended that the Board of Medical Examiners take over the regulation of osteopathic physicians and an osteopathic physician be added to the medical board. The Board of Osteopathic Examiners would be terminated. The Legislature has not implemented this recommendation but we believe it remains valid. Regulatory activity is still low and the medical and osteopathic professions are growing closer.

Minimal activity

There are only about 55 osteopathic physicians in Hawaii. Complaints against osteopathic physicians average about eight per year, and even

fewer if the multiple complaints against one physician are subtracted. Some of the cases are resolved by RICO without even involving the board.

The medical board already regulates over 5,000 M.D.'s, 73 podiatrists, 66 physician assistants, and 571 emergency ambulance personnel.¹ The added responsibility of regulating the state's few osteopathic physicians should not be unduly burdensome.

Convergence with medical profession

The case for having D.O.'s and M.D.'s regulated by the same board is strong because the two fields seem to be moving closer together. Osteopathic physicians claim a number of differences from M.D.'s. They say they place more emphasis on the whole patient; on the body's power to heal itself; on the proper alignment of nerves, muscles, bones, and ligaments; on manual techniques of diagnosis and treatment—namely palpation and manipulation; and on family practice versus specialty practice. But we found that the line between the two fields is blurred.

This is shown in several ways. Both kinds of doctors use a full range of therapy and drugs. Both may take an interest in the whole patient or in family practice. Osteopathic physicians do not necessarily rely on manipulation as an important part of their practice. Nationally, about half of osteopathic physicians specialize in areas similar to those in which M.D.'s specialize. In Hawaii, a recent member of the Board of Osteopathic Examiners is a psychiatrist; two others specialize in occupational medicine.

Furthermore, Chapter 460 which regulates osteopathic physicians has become increasingly similar to Chapter 453 which regulates medical doctors. As we recommended in 1985, Chapter 460 now has just one level of licensure, accepts the FLEX exam, and contains disciplinary provisions much like those for M.D.'s.

The Board of Osteopathic Examiners itself appears to recognize the growing similarity between the professions. Until recently, the statute recognized only those internships in hospitals approved by the American Osteopathic Association and the American College of Osteopathic Surgeons. But during the 1992 legislative session, the board testified in favor of a bill to amend the statute to recognize internships served in a hospital approved by the American *Medical* Association.² Subsequently, this bill was enacted as Act 165.³

Regulate under Board of Medical Examiners

We conclude that it is both appropriate and practical to terminate the Board of Osteopathic Examiners and assign its duties to the Board of Medical Examiners, adding to the medical board a new member who is an osteopathic physician.

The medical board currently has seven physician members and two public members. In other sunset reports this year, we are recommending that a podiatrist, a physician assistant, and a mobile intensive care technician (MICT) be added to the medical board.⁴ Combined with the addition of an osteopathic physician, this would bring the medical board to a total of 13 members.

This would make Hawaii similar to 21 other states where medical boards composed of both M.D.'s and D.O.'s regulate osteopathic medicine. Fourteen of these states have boards composed of several M.D.'s and one D.O. as we are proposing. Only about 15 states regulate osteopathic medicine through boards that include only D.O.'s, and only 8 states use boards that have only M.D.'s.⁵

As needed, the Director of Commerce and Consumer Affairs could obtain additional input by establishing an advisory committee consisting of osteopathic physicians. Chapter 451D, HRS, which was enacted in 1987, authorizes advisory committees as a resource for the department in its investigations and for the health-profession boards in their disciplinary deliberations.

Some Minor Improvements Are Needed in the Statutes

Unnecessary "wilful betrayal" provision

The statute contains a provision on discipline that is unnecessary. Other provisions should be updated and the Federation Licensing Examination (FLEX) should be presented more clearly.

Our 1985 report recommended deleting Section 460-12(3), HRS, which makes "wilfully betraying a professional secret" a reason for discipline. The provision is unclear and redundant. It is there apparently because of testimony that its intent matches Item 1 of the Osteopathic Code of Ethics which states, "The physician shall keep in confidence whatever he may learn about a patient in the discharge of professional duties. Information shall be divulged by the physician when required by law or when authorized by the patient."⁶ However, another provision, Section 460-12(10), authorizes discipline for behavior contrary to the profession's standards of ethics. That should be enough.

Obsolete name

Chapter 460 refers to the National Board of Examiners for Osteopathic Physicians and Surgeons (NBEOPS). The organization has since changed its name to the National Board of Osteopathic Medical Examiners (NBOME) and the rules reflect this. The law should be amended to reflect the organization's current name.

Incomplete reference to FLEX

In our 1985 sunset evaluation we recommended amending the law to give the board the option of accepting from license applicants the results of the FLEX. Act 197 of 1985 made this change but the statute directly refers to the FLEX only in Section 460-9, HRS, dealing with foreign licensees. In its rules and its license applications the board does not limit the FLEX to this group. To avoid possible misunderstandings, Section 460-4 which addresses basic licensing requirements should include a statement that the board in its discretion may accept the FLEX.

Rules on Licensing Requirements Do Not Conform to Statute

The rules on licensing requirements do not accurately reflect the statutes. The rules establish three avenues for licensure: (1) by examination, (2) by endorsement, and (3) by reciprocity.⁷ The differences among these avenues are unclear and confusing. In addition, the rules impose licensing requirements that are not authorized by statute and do not accommodate some alternatives that are permitted by statute.

Board members whom we interviewed could not clarify the rationale for the differences among the three avenues. They apparently are not aware that the rules do not agree with the statutes.

Statutory requirements

The statute contains sections listing basic requirements for licensure. A separate section lists requirements for those with foreign licenses. According to Sections 460-4 and 460-6, the basic requirements for licensure are:

- passing the examination of the National Board of Medical Examiners for Osteopathic Physicians and Surgeons (NBEOPS) (now the NBOME);
- graduating from a college of osteopathy approved by the American Osteopathic Association; and
- having served an internship of at least one year in a hospital approved by the American Osteopathic Association and the American College of Osteopathic Surgeons. (As mentioned above, Act 165, SLH 1992, amended Section 460-6 to include an internship served in a hospital approved by the American Medical Association.)

Section 460-9 governing applicants with foreign licenses—that is, those with licenses from other countries, states, territories, or provinces—does not require an examination if they meet requirements that are practically equivalent to those in Hawaii. Foreign licensees may also be licensed if they have passed the NBOME examination or the FLEX. Finally, the board may issue a license without examination to an osteopathic physician who has graduated from an approved college and has passed an examination for admission to the medical corps of the U.S. Army, Navy, or Public Health Service.

Requirements combined

In adopting rules, the board seems to have combined the basic licensing requirements with those for foreign licenses so that applicants could be licensed by examination, endorsement, or reciprocity.

What is confusing is that licensing by examination and by endorsement are identical and go beyond the requirements of the statutes.

In both cases, applicants must pass the national board examination or FLEX *and* provide verification of licenses held in other jurisdictions. Under the statute basic licensing requirements consist only of the examination, graduation, and internship.

Licensing by reciprocity does not entail examination but applicants must verify that they have valid licenses in other jurisdictions and verify any specialty postdoctoral awards they have received. The addition of a requirement for postdoctoral specialty awards is not authorized by the statute and should not be imposed. These awards are issued by the American Osteopathic Association to osteopathic physicians who pursue specialty training in such fields as pediatrics and orthopedic surgery. Specialty training is irrelevant to the licensing program since it regulates only the basic license to practice as an osteopathic physician and surgeon.

The requirement for applicants to submit information on their specialty residency certificates should be removed and the rules should be amended to accurately reflect the provisions of the statute relating to licensing requirements.

Unauthorized certificates of competency

The rules also require applicants to submit certificates of competency from two licensed osteopathic physicians. These are not called for in the statutes and they are not necessary for licensing purposes.

These certificates are forms developed by the department on which the licensed physicians check whether they consider the applicant to be sober, reliable, and ethical; whether the applicant has been guilty of fraud or dishonesty or other unprofessional practices; and whether the

applicant's abilities are excellent, good, average, or poor. The department verifies only whether or not it receives the certificates and it is not clear that the board can use them as a basis for either awarding or denying a license. Since the requirement is not authorized by statute and serves no useful purpose, it should be removed from the rules.

Test Scores Should Be Authentic

The licensing division does not require applicants to have the results of their NBOME examination forwarded directly to the department. The authenticity of scores could thus be questioned. The licensing division should require that applicants have their original score reports submitted directly to the department from the testing organization.

Board Has Not Always Complied With the Sunshine Law

Chapter 92, HRS, Hawaii's Sunshine Law, requires that board meetings be open to the public with a few exceptions. These exceptions include evaluating personal information relating to applicants, considering personal matters where privacy is involved, consulting with the board's attorney for particular reasons, considering sensitive matters relating to public safety, and investigating matters relating to criminal misconduct. The Board of Osteopathic Examiners has not always complied with the statutes.

We reviewed minutes of the board's open meetings from January 1989 through March 1992 for compliance with the Sunshine Law. According to these minutes, the board went into executive session only once, on March 10, 1989, and the stated reason for going into executive session was to consult with the board's attorney.

The law requires the board to announce the reason for entering executive session. In addition, it requires that the meeting with counsel be limited to consultation on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. The minutes should have specified the nature of the meeting with the counsel to assure the public that the meeting's purpose was lawful.

Section 92-9 also requires that minutes be kept of the executive session. Department staff informed us that minutes have not always been kept. The executive secretary of the board could locate no executive-session minutes.

The department violated the Sunshine Law by not preparing minutes for the executive session. In addition, without executive-session minutes we could not determine whether the activities that actually occurred in the executive session fell within the statutory exceptions and whether the

activities matched the purposes stated in the minutes of the open meeting.

Recommendations

1. The Legislature should reenact Chapter 460, HRS, to continue the regulation of osteopathic medicine. In reenacting the statute, the Legislature should consider amending it to:
 - a. Terminate the Board of Osteopathic Examiners and assign regulation of osteopathic physicians to the Board of Medical Examiners. If this is done, the Legislature should amend Chapter 453 to add an osteopathic physician to the Board of Medical Examiners.
 - b. Delete “wilfully betraying a professional secret” as a ground for discipline.
 - c. Change references from the “National Board of Examiners for Osteopathic Physicians and Surgeons” to the “National Board of Osteopathic Medical Examiners,” the organization’s current name.
 - d. Clarify that the board may accept the Federation Licensing Examination (FLEX).
2. The Board of Osteopathic Examiners should amend its rules on licensure by examination, endorsement, and reciprocity to conform with the statute. Rules on specialty certification and the certificate of competency should be deleted.
3. The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs should require applicants to submit original test score reports directly from testing organizations.
4. The board should comply with the Sunshine Law by accurately stating the reasons for going into executive session and keeping minutes of such sessions.

Notes

Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/Geographic Report* (printout), February 7, 1992, p. 27.
2. Hawaii, The Auditor, *Sunset Evaluation Report: Osteopathy*, Report No. 85-7, Honolulu, January 1985.

Chapter 2

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/Geographic Report* (printout), February 7, 1992, pp. 15-17.
2. Testimony on Senate Bill No. 3436 submitted by the Board of Osteopathic Examiners to the Honorable Mazie Hirono, Chairperson, House Committee on Consumer Protection and Commerce, March 25, 1992.
3. Act 165, SLH 1992.
4. Hawaii, The Auditor, *Sunset Evaluation Update: Podiatrists*, Report No. 92-18, Honolulu, November 1992, pp. 10-11; Hawaii, The Auditor, *Sunset Evaluation Update: Medicine and Surgery*, Report No. 92-25, December 1992, pp. 13, 18.
5. *1991 Yearbook and Directory of Osteopathic Physicians*, Eighty-second edition, Chicago, Illinois, January 1991, pp. 555-62. Some of these boards include public members, representatives of other medical specialties, or both.
6. *1991 Yearbook and Directory of Osteopathic Physicians*, p. 494.
7. Sections 16-93-2 through 16-93-4.1, Hawaii Administrative Rules.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this report to the Board of Osteopathic Examiners and to the Department of Commerce and Consumer Affairs on October 2, 1992. A copy of the transmittal letter to the board is included as Attachment 1. A similar letter was sent to the department. The response from the board is included as Attachment 2 and that from the department is included as Attachment 3.

The board agrees with our recommendation to reenact Chapter 460, Hawaii Revised Statutes. It also agrees with our recommendations to amend Chapter 460 to delete "wilfully betraying a professional secret" as a ground for discipline, to clearly accept the Federation Licensing Examination (FLEX), and to correctly identify the National Board of Osteopathic Medical Examiners (NBOME). It agrees that the rules on examination, endorsement, reciprocity, specialty certification, and certificates of competency should be reviewed. It disagrees, however, with our recommendation to terminate the board and to assign responsibility for regulating osteopathic physicians to the Board of Medical Examiners.

The department says that, in consultation with its advising attorney general, it will take steps to implement our recommendation to require applicants to submit test scores directly from the testing organizations. The department disagrees with our finding that the board violated the Sunshine Law. It says that the board's reason for going into executive session was accurately stated and that the reference to the executive session in the board's public minutes sufficiently meets the public's right to know. It questions our statement in the preliminary draft that the absence of executive session minutes made it impossible for us to determine whether the board's minutes accurately reflect all the executive sessions actually held. It assures us that all executive sessions are noted in the open-meeting minutes. We have removed the statement in question from our final report.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

October 2, 1992

C O P Y

Dr. Ronald H. Kienitz, Chair
Board of Osteopathic Examiners
Department of Commerce and Consumer Affairs
Professional and Vocational Licensing Division
1010 Richards Street
Honolulu, Hawaii 96813

Dear Dr. Kienitz:

Enclosed for your information are six copies, numbered 9 to 14 of our draft report, *Sunset Evaluation Update: Osteopathy*. We ask that you telephone us by Tuesday, October 6, 1992, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, November 2, 1992.

The Director of the Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in its final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script, reading "Marion M. Higa".

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



ROBERT A. ALM
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

BOARD OF OSTEOPATHIC EXAMINERS

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

November 23, 1992

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STATE OF HAWAII

Marion M. Higa, State Auditor
Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, HI 96813-2917

Dear Mrs. Higa:

The Board of Osteopathic Examiners ("Board") thanks you for the opportunity to provide comments on the Sunset Evaluation Update on Osteopathy. The Board appreciates the report's acknowledgment that most of the recommendations made in the 1985 sunset evaluation have been carried out. We are also grateful for the generally objective and well considered findings of the report, and we agree or partially agree with many of the report's points. We will provide comments on the recommendations as they appear chronologically on page 12 of the report.

- 1a. "The Legislature should reenact Chapter 460, Hawaii Revised Statutes, to continue the regulation of osteopathic medicine. In reenacting the statute, the Legislature should amend it to terminate the Board of Osteopathic Examiners and assign regulation of osteopathic physicians to the Board of Medical Examiners. If this is done, the Legislature should amend Chapter 453 to add an osteopathic physician to the Board of Medical Examiners."

The Board appreciates the report's strong statements in support of the regulatory protection afforded to consumers through Chapter 460, HRS. The Board therefore concurs that Chapter 460, HRS, be reenacted, to allow the State to continue to regulate the practice of osteopathy. However, the Board feels the report is far astray in its conclusion that the safety and welfare of the people of Hawaii would be best served by the dissolution of the Board of Osteopathic Examiners, and that regulation of osteopathic physicians be assigned to the Board of Medical Examiners.

It is the assertion of the Board that the people of Hawaii are best protected by maintaining the current and separate Board of Osteopathic Examiners.

The Board disagrees with the report's finding that the Board of Osteopathic Examiners is not needed because "regulatory activity is still low and the medical and osteopathic professions are growing closer" (page 6).

The Board feels that there is clearly sufficient regulatory activity to justify a separate board. This is especially so with the increasing numbers of new doctors of osteopathic medicine being licensed in the state and practicing here, either in the private sector or the military. It should be pointed out that there are many more osteopathic physicians ("D.O.'s") in the military than in the private sector in Hawaii. Many of these D.O.'s supplement their military income by working on a part time basis in civilian clinics. Additionally, we are seeing a rapidly increasing influx of osteopathic medical "residents in training" in Hawaii's post-graduate hospital training programs. (The reason for this is a recent loosening of the American Osteopathic Association standards that previously tended to insist that osteopathic medical graduates pursue their first year of hospital or intern training at an American Osteopathic Association approved training program. It is only in the last few years that this standard has been greatly relaxed to allow osteopathic medical graduates to choose to do their post graduate training in a hospital accredited by the American Council of Graduate Medical Education of the A.M.A. After their first year of training, these new physicians apply for full licensure which allows them also to supplement their income through "moon-lighting" practices.)

Further, many more D.O.'s than in the past are deciding to locate their practices in Hawaii. Until about a little over a decade ago, the people of Hawaii had been served by a very stable group of osteopathic physician, some of whom have resided and practiced here since the 1940's. Their practices often entailed primarily physical medicine involving osteopathic spinal manipulation. As the number of new osteopathic physicians in Hawaii have gradually increased, there has been a steadily increasing acceptance of osteopathy as a complete discipline of medicine. This has had the effect of making it far easier for still further immigration of osteopathic physicians setting up their practices here. We are seeing new practices being

formed in specialty as well as family practice settings. This increase could be said to have entered a geometric phase, and it probably will continue for some time before leveling off. All of this points to a continuing and increasing need for a separate Board of Osteopathic Examiners to attend to the regulatory matters generated by this group of unique practitioners.

The Board disagrees with the report's conclusion that the medical and osteopathic professions are growing closer and that this also constitutes a reason to abolish the Board of Osteopathic Examiners and have the regulation of osteopathic physicians assigned to the Board of Medical Examiners. Although this is true to some extent, the Board feels that there is still sufficient differences in the practice of each form of medicine to justify separate boards. In fact, the Board feels that the health and safety of the public would be compromised by terminating the Board of Osteopathic Examiners. In supporting this conclusion, the Board would point out that its roles regarding osteopathic physicians are changing and their scope is broadening. It is no longer simply issuing licenses and following up on allegations of wrong doing. It also includes:

1. Reviewing adverse and potentially adverse peer review decisions of hospitals, health care institutions, medical societies, and peer review committees to comply with federal law, Public Law 99-660;
2. Acting on any type of disciplinary complaint and settlement agreement that comes before the Board, whether the disciplinary complaint or settlement agreement is based on information provided by consumers, medical claims conciliation panels, insurance companies, self-insured physicians, court clerks, judges and uninsured physicians;
3. Reporting disciplinary actions taken by the Board to the National Practitioners Data Bank to comply with federal law, Public Law 99-660;
4. Providing guidance to consumers, osteopathic physicians, and other interested persons on osteopathic procedures performed, scope of osteopathic practice, permissible advertisements and/or utilization of osteopathic therapeutic techniques.

Allopathic physicians ("M.D.'s") and lay people who know nothing about the osteopathic approach and philosophy cannot competently pass judgment on many of these issues, nor can they be easily taught in 15 to 30 minutes by a lone osteopathic physician board member when these questions come up. The practice of osteopathy involves many unique facets of diagnosis and treatment such as spinal manipulation, myofacial release, cranio-sacral therapy, muscle energy, and counterstrain to mention a few. The combined wisdom of at least three osteopathic physicians similarly trained will be of much greater value than of just one who may be sincerely engrossed in one point of view to the exclusion of other equally valid points of view. A combined wisdom would be serving the public's best interests.

Because of the admitted parallels between the fields of allopathic medicine and osteopathic medicine, it is understandable that it might appear practical that M.D.'s and D.O.'s be regulated by the same board. However, this view ignores the still substantial differences between the fields and the frequently less than adequate understanding that lay people have of these. Although the Board in fact recognizes "the growing similarity between the professions," the point at which the parallels diverge creates ample potential for misunderstandings on a regulatory board which does not have the combined wisdom of several osteopathic physicians.

The Board believes that the report's recommendation that osteopathic physicians be regulated by the Board of Medical Examiners is inadequate, even with the suggestion that one osteopathic be added to the Medical Board, and even with the suggestion that the reconstituted Medical Board could, as needed, "obtain additional input by establishing an advisory committee consisting of osteopathic physicians."

- 1b. "In reenacting the statute (Chapter 460, HRS), the Legislature should amend it to delete 'willfully betraying a professional secret' as a ground for discipline."

The Board agrees with this recommendation. The prohibition against the betrayal of patient confidences is adequately covered in section 460-12(10), HRS, which authorizes discipline for behavior contrary to the osteopathic profession's standards of ethics as adopted by

the American Osteopathic Association. Section 460-12(3), HRS, could therefore be viewed as redundant, and as such, may be deleted.

- 1c. "In reenacting the statute (Chapter 460, HRS), the Legislature should amend it to change references from the 'National Board of Examiners for Osteopathic Physicians and Surgeons' to the 'National Board of Osteopathic Medical Examiners,' the organization's current name."

The Board agrees with this recommendation. Chapter 460, HRS, should be updated to change the name of the examining board when referred to from the National Board of Examiners for Osteopathic Physicians and Surgeons (NBEOPS), to the current term National Board of Osteopathic Medical Examiners (NBOME).

- 1d. "In reenacting the statute (Chapter 460, HRS), the Legislature should amend it to clarify that the board may accept the Federation Licensing Examination (FLEX)."

The Board agrees with this recommendation. Section 460-4, HRS, should be amended to include a statement that the Board in its discretion may accept FLEX. The Board would add that a statutory amendment be made to allow the Board to accept a passing score on the United States Medical Licensing Examination ("USMLE"). If the Auditor's bill does not contain an amendment addressing the USMLE, the Board will sponsor legislation in 1993.

2. "The Board of Osteopathic Examiners should amend its rules on licensure by examination, endorsement, and reciprocity to conform with the statute. Rules on specialty certification and the certificate of competency should be deleted."

Concerning the rules on licensure by examination, endorsement and reciprocity, the Board agrees that these should be reviewed. The current Board has in the past recognized the confusing nature of "licensing by endorsement." The suggestion that this aspect of the rules may need clarification is well taken. The Board suggests deliberation on this and other issues relating to licensure by examination, endorsement and reciprocity. The Board proposes to research and analyze applicable rules, and after appropriate deliberation, undertake amendments pursuant to Chapter 91, HRS. Concerning the rules (sections 16-93-3 and 16-93-4, HAR) that applicants provide information and verification of licenses held in other jurisdictions, the Board feels this is a valid

requirement, whether a physician makes application by examination or by reciprocity. The recently implemented National Practitioner Data Bank system of cross checking physicians' records, though not perfect, has admittedly made this practice somewhat less crucial. Nonetheless, the extra step of requiring license verification provides an added level of security in reviewing an applicant's record. As such, answering questions such as "Have you ever had your license revoked or suspended?", "Have you ever been convicted of a felony?", and the requirement in question are valid requirements to ensure that incompetent or unqualified applicants do not go undetected by the Board.

Concerning the rule (section 16-93-2(c)(5), HAR) that applicants provide verification of any postdoctoral specialty awards they have received, the Board recognizes that this is an example of information that is not specifically required by Chapter 460, HRS. However, the Board believes that sufficient implied authority exists in Chapter 460, HRS, to impose this requirement. The Board strongly feels that this is a valid requirement for obtaining necessary background information on applicants. The Board does however, propose to research and analyze this rule, and after appropriate deliberation, determine whether repeal of this rule is warranted.

Concerning the rule (section 16-93-2(c)(5), HAR) on certificates of competency, although this is not specifically required by Chapter 460, HRS, the Board believes that sufficient implied authority exists in Chapter 460, HRS, to impose this requirement. However, the Board agrees that there is limited value in the practice of requiring applicants to provide certificates of competency from two licensed osteopathic physicians. In light of the added paper work this entails, combined with the minimal relevancy of such a requirement, the Board feels that consideration should be made to repeal this rule.

3. "The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs should require applicants to submit original test score reports directly from testing organizations."

The Board will consider requiring applicants to submit original test score reports directly from the testing organization(s). However, because this suggestion is directed at the Department, the Department will be responding to this more completely.

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4. "The board should comply with the Sunshine Law by accurately stating the reasons for going into executive session and keeping minutes of such sessions."

The Board has been committed to complying with the Sunshine Law. This point will be more fully addressed in the Department's response to the Auditor.

Again, thank you for the opportunity to provide comment.

Very truly yours,

Rae Rae Tom for

Ronald H. Kienitz, D.O.
Chairperson
Board of Osteopathic Examiners

JOHN WAIHEE
GOVERNOR



ROBERT A. ALM
DIRECTOR

SUSAN DOYLE
DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

November 23, 1992

The Honorable Marion M. Higa, State Auditor
Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, HI 96813-2917

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OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Mrs. Higa:

Thank you for providing the Department of Commerce and Consumer Affairs ("department") with the opportunity to comment on the Sunset Evaluation Update on Osteopathy. Additionally, the Board of Osteopathic Examiners has agreed to allow the department to respond to Recommendation #4 found on page 12 of the report, since this recommendation involves the department.

Recommendation #3 applicable to the department reads as follows:

3. "The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs should require applicants to submit original test score reports directly from testing organizations."

The Professional and Vocational Licensing Division ("division") believes that this recommendation is based on paragraph 2, page 11 of the report, which reads as follows:

"The licensing division does not require applicants to have the results of the NBOME examination forwarded directly to the department. The authenticity of test scores could thus be questioned. The licensing division should require that applicants have their original score reports submitted directly to the department from the testing organization."

The division does see merit in recommendation #3. The division consulted with the Board of Osteopathic Examiners ("Board") to obtain their feedback, and the Board also saw merit in this recommendation. At this juncture, both the division and the Board will consult with the Board's advising attorney general to determine whether sufficient authority is contained in the Board's administrative rules to implement this requirement. If the answer is in the affirmative, this requirement will be imposed on future applicants. If the answer is in the negative, then the Board will need to undertake rule amendments so that this requirement may be implemented in the future. Also, under either scenario, the Board will examine whether the current rule requiring submission of the NBOME certificate should be retained.

Although supportive of the above recommendation, we would like to explain the current practice, and its validity.

Section 16-93-3, Hawaii Administrative Rules ("HAR"), requires an applicant for license by examination to submit evidence of a passing grade on the examination given by the National Board of Osteopathic Medical Examiners ("NBOME"). Section 16-93-3, HAR, further requires an applicant to receive a score of 75 or more for each component of the exam. There is no statutory or rule requirement that the applicant have the NBOME mail the test scores of the NBOME directly to the department (or Board).

Section 16-93-3, HAR, is implemented by requiring applicants to submit a photocopy of their NBOME certificate. NBOME certificates are only issued to persons who satisfy all the requirements of the NBOME and pass the NBOME exam with a score of 75 or more for each component. Therefore, the certificate evidences passage of the NBOME and meets the provisions of section 16-93-3, HAR.

In addition, section 16-93-3, HAR, requires applicants to submit verification of any other osteopathic licenses held in other jurisdictions. This information is mailed directly to the division from other state agencies, and contains specific information concerning the examination scores received by the applicant. Therefore, the division receives at least one, and sometimes two, documents evidencing successful passage of the NBOME.

Section 16-93-4, HAR, requires an applicant for license by endorsement to submit verification of the NBOME certificate. In addition, the applicant must submit verification of any other osteopathic licenses held in other jurisdictions. The licensing division uses the same procedures discussed earlier to enable the applicant to satisfy the requirements of section 16-93-4, HAR.

The division has not encountered any problems regarding the authenticity of the NBOME certificate that is supplied by the applicant, nor has the division encountered any problems with the authenticity of the license verification (containing examination information) that is supplied by other state agencies. In addition, section 460-12(7), Hawaii Revised Statutes, expressly authorizes the Board of Osteopathic Examiners to deny or discipline a license in instances where fraud is involved. This statutory provision serves to deter applicants from submitting a fraudulent copy of the NBOME certificate.

Recommendation #4 reads as follows:

4. "The board should comply with the Sunshine Law by accurately stating the reasons for going into executive session and keeping minutes of such sessions."

Within the contents of the report it is cited that the Board's "stated reasons for going into executive session was to consult with the board's attorney . . . (however) the minutes should have specified the nature of the meeting with the counsel to assure the public that the meeting's purpose was lawful." **Exception is taken to this statement.**

Section 92-5(a)(4), Hawaii Revised Statutes, expressly authorizes boards to go into executive session to "consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities." This purpose, consulting with the board's attorney, was stated in the board's public minutes. The report's suggestion and implication that the Board's purpose for going into executive session was not lawful is therefore objectionable. Compliance with section 92-5(a)(4), HRS, was present.

The department is also concerned with the report's following characterizations:

"the department violated the Sunshine Law by not preparing minutes for the executive session."

The department acknowledges that its files do not contain a copy of executive session minutes for that one occasion, almost three years ago, when the Board went into executive session. However, as explained in the following response paragraph, the subject matter of the executive session was clearly evident in the Board's public minutes. Surely a record existed in the public minutes to show the basis for the executive session. On a very technical basis, the Auditor's assertion has merit, however the openness and public's right to know, in compliance with the Sunshine Law, was complied with in sufficient detail through the public minutes.

Further, we would point out the department's practice in advising boards in consistent amongst all 30 regulatory boards, including the Board of Osteopathic Examiners. This advice is that minutes of executive sessions are to be kept. The Auditor acknowledged in another report for this year that there was compliance since 1990 by the department and the Board (of Massage) with the Sunshine Law. The disadvantage for the Auditor is that in the case of the Board of Osteopathic Examiners, the Board did not go into executive session for the last three years. However, we believe the Board's compliance would have been no different than the Massage Board. Further, other reports done by the Auditor this year (Medical and Physical Therapy) describe no problems whatsoever with compliance, by the department or these boards, with the Sunshine Law. This surely lends credibility to current action of the boards to comply with Chapter 92, HRS.

"without executive-session minutes we could not determine whether the activities that actually occurred in the executive session fell within the statutory exceptions; whether the activities matched the purposes stated in the minutes of the open meeting;"

The above speculations that the report presents are objectionable. The report's implication is that the Board discussed matters that they were not authorized to under section 92-5(a)(4), HRS. The public minutes explicitly reference the hearing officer's report concerning the three

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cases that were presented to the Board. The public minutes also explicitly state that the Board entered into executive session to consult with the board's attorney, an action which is expressly authorized by section 92-5(a)(4), HRS. We therefore cannot understand how the report can speculate that the activities that actually occurred in the executive session did not fall within the statutory exceptions, or that the activities did not match the purposes stated in the public minutes. This is particularly perplexing because of the presence of the board's attorney in the executive session, who surely would have cautioned the Board if it engaged in improper or unauthorized conduct.

"without executive-session minutes we could not determine whether the board noted in its open-meeting minutes all the executive sessions actually held."

The Board and department assures the Auditor that the open meeting minutes contain reference to all executive sessions that the Board entered into during the period of the audit. As expressed earlier, the Board of Osteopathic Examiners has not elected to go into executive session, therefore the Auditor would reasonably not find evidence of this. However, to cast doubt that the Board could have had more executive sessions, and to further cast doubt about the accuracy of the minutes, is uncalled for. The facts in this matter is evidenced by the department and Board's records, and they are presented accurately. A factual conclusion to draw therefore is the Board went into only one executive session during the period of the audit. The board minutes reflect this.

Again, thank you for the opportunity to provide comment.

Very truly yours,



ROBERT A. ALM
Director

A BILL FOR AN ACT

RELATING TO OSTEOPATHY.

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

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (c) to read:

4 "(c) The following chapters and sections are hereby
5 repealed effective December 31, 1993:

6 (1) Chapter 452 (Board of Massage)

7 (2) Chapter 453 (Board of Medical Examiners)

8 [(3) Chapter 460 (Board of Osteopathic Examiners)

9 (4)] (3) Chapter 461J (Board of Physical Therapy)

10 [(5)] (4) Chapter 463E (Podiatry)

11 [(6)] (5) Chapter 514E (Time Sharing Plans)"

12 2. By amending subsection (i) to read:

13 "(i) The following chapters are hereby repealed effective
14 December 31, 1999:

15 (1) Chapter 436E (Board of Acupuncture)

16 (2) Chapter 442 (Board of Chiropractic Examiners)

17 (3) Chapter 444 (Contractors License Board)

18 (4) Chapter 448E (Board of Electricians and Plumbers)

19 (5) Chapter 460 (Osteopathy)

1 [(5)] (6) Chapter 464 (Professional Engineers, Architects,
2 Surveyors and Landscape Architects)

3 [(6)] (7) Chapter 465 (Board of Psychology)

4 [(7)] (8) Chapter 468E (Speech Pathology and Audiology)"

5 SECTION 2. Chapter 453, Hawaii Revised Statutes, is amended
6 as follows:

7 1. By amending subsection (a) of section 453-5 to read:

8 "(a) For the purpose of carrying out this chapter and
9 chapter 460 the governor shall appoint a board of medical
10 examiners, whose duty it shall be to examine all applicants for
11 license to practice medicine or surgery[.], including osteopathic
12 medicine and surgery. As used in this chapter, "board" means the
13 board of medical examiners.

14 The board shall consist of [nine] ten persons, seven of whom
15 shall be physicians or surgeons licensed under the laws of the
16 State [and], one of whom shall be an osteopathic physician or
17 surgeon licensed under the laws of the State, and two of whom
18 shall be lay members appointed from the public at large. Of the
19 seven physician or surgeon members, four shall be appointed from
20 the city and county of Honolulu and one each from each of the
21 other counties. Medical societies in the various counties may
22 conduct elections periodically but no less frequently than every

1 two years to determine nominees for the board to be submitted to
2 the governor. In making appointments the governor may consider
3 recommendations submitted by the medical societies and the public
4 at large. Each member shall serve until a successor is appointed
5 and qualified."

6 2. By amending section 453-5.1 to read:

7 "§453-5.1 Powers and duties of board. In addition to other
8 powers and duties authorized by law, the board of medical
9 examiners shall have all the powers necessary or convenient to
10 effectuate the purpose of this chapter[,] and chapter 460,
11 including, without limitation, the following powers:

12 (1) To adopt rules, pursuant to chapter 91; and

13 (2) To enforce this chapter and chapter 460 and rules
14 adopted pursuant thereto."

15 SECTION 3. Chapter 460, Hawaii Revised Statutes, is amended
16 as follows:

17 1. By amending section 460-1 to read:

18 "§460-1 License to practice. No person shall practice as
19 an osteopathic physician and surgeon either gratuitously or for
20 pay, or shall offer to so practice, or shall advertise or
21 announce, either publicly or privately, that the person is
22 prepared or qualified to so practice, or shall append the letters

1 "Dr." or the letters "D.O." to the person's name, with the intent
2 thereby to imply that the person is a practitioner as an
3 osteopathic physician and surgeon, without having a valid
4 unrevoked license, obtained from the board of [osteopathic]
5 medical examiners, in form and manner substantially as
6 hereinafter set forth. As used in this chapter, "board" means
7 the board of medical examiners.

8 Nothing herein shall:

9 (1) Apply to any osteopathic physician and surgeon from
10 another state who is in actual consultation with a
11 licensed physician of this State if the physician from
12 another state is licensed to practice in the state in
13 which the physician resides; provided that the
14 physician from another state shall not open an office,
15 or administer treatment to any patient except in actual
16 temporary consultation with a resident licensed
17 physician of this State; or

18 (2) Prohibit services rendered by any osteopathic
19 physician's assistant when the services are rendered
20 under the supervision, direction, and control of an
21 osteopathic physician and surgeon licensed in this
22 State, as may be specified by rule or statute. The

1 board [of osteopathic examiners] shall adopt rules to
2 define the type of supervision, direction, and control
3 that must be maintained and the extent that the
4 personal presence of the osteopathic physician and
5 surgeon will be required. Any osteopathic physician
6 and surgeon who employs or directs an osteopathic
7 physician's assistant shall retain full professional
8 and personal responsibility for any act which
9 constitutes the practice of osteopathic medicine and
10 surgery when performed by an osteopathic physician's
11 assistant."

12 2. By amending section 460-3 to read:

13 "§460-3 [Board] Examination by board of [osteopathic]
14 medical examiners. No person shall be licensed by the board of
15 [osteopathic] medical examiners to practice as an osteopathic
16 physician and surgeon unless the applicant has been duly examined
17 and found to be possessed of the necessary qualifications, or
18 found to be otherwise qualified as herein provided.

19 The board shall examine all applicants for licenses to
20 practice as osteopathic physicians and surgeons. In lieu of the
21 board's written examination, the board will accept the
22 examination of the National Board of Osteopathic Medical

1 Examiners with scores deemed satisfactory by the board and who
2 otherwise meets the requirements of the laws of this State. The
3 board, in its discretion, may accept the federation licensing
4 examination (FLEX) in lieu of its own examination. Subject to
5 chapter 91 and with the approval of the governor and the director
6 of commerce and consumer affairs, the board may adopt, amend, and
7 repeal all necessary rules relating to the enforcement of this
8 chapter and not inconsistent therewith."

9 3. By repealing section 460-4.

10 ["§460-4 Board; appointment, powers, and duties. The
11 governor shall appoint a board of osteopathic examiners,
12 consisting of five persons, three of whom shall be osteopathic
13 physicians and surgeons licensed under the laws of this State and
14 two of whom shall be public members. As used in this chapter,
15 "board" means the board of osteopathic examiners.

16 The board shall examine all applicants for licenses to
17 practice as osteopathic physicians and surgeons. In lieu of the
18 board's written examination, the board will accept the national
19 board of examiners for osteopathic physicians and surgeons
20 (NBEOPS) with scores deemed satisfactory by the board and who
21 otherwise meets the requirements of the laws of this State.
22 Subject to chapter 91 and with the approval of the governor and

1 the director of commerce and consumer affairs, the board may
2 adopt, amend, and repeal all necessary rules relating to the
3 enforcement of this chapter and not inconsistent therewith."]

4 4. By amending section 460-6 to read:

5 **"§460-6 Application for license.** Each applicant for a
6 license provided for in this chapter shall comply with the
7 following requirements:

8 (1) Apply on a form prescribed by the board [of osteopathic
9 examiners];

10 (2) Submit evidence verified on oath and satisfactory to
11 the board that the applicant is a graduate of a school
12 or college of osteopathy which is approved by the
13 American Osteopathic Association; and

14 (3) Submit satisfactory evidence to the board that the
15 applicant has served an internship of at least one year
16 in a hospital approved by the American Osteopathic
17 Association and the American College of Osteopathic
18 Surgeons, or in a hospital approved by the American
19 Medical Association, or the equivalent of the
20 requirement as determined by the board if the applicant
21 graduated prior to 1943."

22 5. By amending subsections (a) and (b) of section 460-9 to

1 read:

2 "(a) The board [of osteopathic examiners], in its
3 discretion, may issue a license, without examination, to a
4 practitioner who has been licensed in any country, state,
5 territory, or province; provided the requirements for a license
6 in the country, state, territory, or province in which the
7 applicant is licensed, are deemed by the board [of osteopathic
8 examiners] to have been practically equivalent to the
9 requirements for a license in force in this State at the date of
10 the license.

11 (b) The board, in its discretion, may accept the
12 examination of the [national board] National Board of [examiners
13 for osteopathic physicians and surgeons] Osteopathic Medical
14 Examiners in lieu of its own examination and may issue a license
15 to an applicant presenting a certificate from the [national
16 board] National Board of [examiners for osteopathic physicians
17 and surgeons] Osteopathic Medical Examiners upon the basis of the
18 examination of the national board; provided the applicant
19 otherwise meets the requirements of the laws of this State."

20 6. By amending section 460-12 to read:

21 "**§460-12 Refusal, suspension, and revocation of license.**

22 In addition to any other grounds for denial of license or

1 disciplinary action authorized by law, the board may refuse to
2 issue a license, or may suspend or revoke any license at any time
3 in a proceeding before the board for any cause authorized by law,
4 including but not limited to the following:

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

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

9 [(3) Wilfully betraying a professional secret;

10 (4)] (3) Engaging in false, fraudulent, or deceptive
11 advertising, including, but not limited to:

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

14 (B) Assuring a permanent cure for an incurable
15 disease; or

16 (C) Making any untruthful and improbable statement in
17 advertising one's osteopathic practice or
18 business;

19 [(5)] (4) Being habituated to the excessive use of drugs or
20 alcohol; or being addicted to, dependent on, or an
21 habitual user of a narcotic, barbiturate, amphetamine,
22 hallucinogen, or other drug having similar effects;

1 [(6)] (5) Practicing medicine while the ability to practice
2 is impaired by alcohol, drugs, physical disability, or
3 mental instability;

4 [(7)] (6) Procuring a license through fraud,
5 misrepresentation, or deceit or knowingly permitting an
6 unlicensed person to perform activities requiring a
7 license;

8 [(8)] (7) Professional misconduct, gross carelessness, or
9 manifest incapacity in the practice of osteopathy;

10 [(9)] (8) Negligence or incompetence, including, but not
11 limited to, the consistent use of medical service in
12 osteopathy which is inappropriate or unnecessary;

13 [(10)] (9) Conduct or practice contrary to recognized
14 standards of ethics of the osteopathic profession as
15 adopted by the American Osteopathic Association;

16 [(11)] (10) Revocation, suspension, or other disciplinary
17 action by another state of a license or certificate for
18 reasons as provided in this section;

19 [(12)] (11) Conviction, whether by nolo contendere or
20 otherwise, of a penal offense substantially related to
21 the qualifications, functions, or duties of an
22 osteopathic physician and surgeon, notwithstanding any

1 statutory provision to the contrary;

2 [(13)] (12) Violation of chapter 329, the uniform controlled
3 substances law, or any rule adopted thereunder; or

4 [(14)] (13) Failure to report to the board by a licensee, in
5 writing, any disciplinary decision issued in another
6 jurisdiction against the licensee within thirty days
7 after the disciplinary decision is issued, or failure
8 to report to the board by an applicant, in writing, any
9 disciplinary decision issued in another jurisdiction
10 against the applicant prior to the application or
11 during the pendency of the application."

12 7. By amending subsection (a) of section 460-14 to read:

13 "(a) In any proceedings before the board [of osteopathic
14 examiners] for the revocation or suspension of a license under
15 this chapter, upon any of the grounds listed in section 460-12,
16 the person whose license is sought to be revoked or suspended
17 shall be given, pursuant to chapter 91, reasonable written notice
18 of the charge or charges upon which the proceeding is based and
19 of the time and place where a hearing will be held and shall be
20 given reasonable opportunity to be heard and present evidence in
21 the person's defense.

22 In the proceeding, the board may subpoena, administer oaths

1 to, and examine witnesses on any relevant matter in the
2 proceeding. The person whose license is sought in the proceeding
3 to be revoked or suspended shall be entitled to require the board
4 or any member thereof to subpoena and to administer oaths to any
5 witness or witnesses who may be able to present evidence relevant
6 in the proceeding, and shall be entitled to examine the witness
7 and any other witness in the proceeding. The circuit court of
8 the circuit in which the proceeding is held shall have power to
9 enforce by proper proceeding the attendance and testimony of
10 witnesses in the proceeding."

11 8. By amending section 460-17 to read:

12 "**§460-17 Records.** The board [of osteopathic examiners]
13 shall keep a record which shall be open to public inspection at
14 all reasonable times, of its proceedings relating to the
15 issuance, refusal, renewal, suspension, and revocation of
16 licenses to practice osteopathy and surgery. This record shall
17 also contain the name, known place of business and residence, and
18 the date and number of the license of every registered
19 osteopathic physician and surgeon."

20 9. By amending subsection (a) of section 460-19 to read:

21 "(a) The department of commerce and consumer affairs shall
22 review each complaint and information received under sections

1 92-17, 329-44, 460-18, 663-1.7, 671-5, and 671-15. The
2 department shall investigate the complaint or information if it
3 appears that the osteopathic physician and surgeon who is the
4 subject of the complaint or information has violated this
5 chapter. If the department determines that the osteopathic
6 physician and surgeon has violated this chapter, the department
7 shall present the results of its investigation to the board [of
8 osteopathic examiners] for appropriate disciplinary proceedings."

9 SECTION 4. All appropriations, records, equipment,
10 machines, files, supplies, contracts, books, papers, documents,
11 maps, and other personal property heretofore made, used,
12 acquired, or held by the board of osteopathic examiners relating
13 to the functions transferred to the board of medical examiners
14 shall be transferred with the functions to which they relate.

15 SECTION 5. Statutory material to be repealed is bracketed.
16 New statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.

18

19

INTRODUCED BY: _____