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Radford
3/16/18

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 268()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES GARA, Tuck

A BILL

FOR AN ACT ENTITLED

"An Act relating to the prescription of opioids; relating to the Department of Health and Social Services; relating to the practice of dentistry; relating to the practice of medicine; relating to the practice of podiatry; relating to the practice of osteopathy; relating to the practice of nursing; and relating to the practice of optometry."

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

*** Section 1.** The uncoded law of the State of Alaska is amended by adding a new section to read:

OPIOID ADDICTION: LEGISLATIVE FINDINGS. The legislature finds that

(1) the state has a considerable moral, public health, and financial interest in reducing opioid and heroin addiction in the state;

(2) it is medically documented that opioid prescription drugs are addictive and that opioid addiction is harmful and expensive to address;

(3) as of 2017, accepted evidence shows that a significant percentage of people who become addicted to heroin were initially addicted to opioid prescription drugs;

(4) opioid prescription drug and heroin addiction interferes with an addict's ability to work and provide for a stable and healthy family;

(5) the state's opioid epidemic damages the health of families and children and affects the chances that a child will receive a healthy upbringing;

(6) the opioid epidemic increases crime in the state, and the presence of heroin dealers in the state poses a public safety threat;

(7) the opioid epidemic costs the state and other entities excessive amounts of money, which is especially problematic in lean budget times;

(8) policies that reduce the number of people who become addicted to opioids and heroin will better serve citizens of the state and foster healthier families;

(9) patients are not always advised of the addictive effects of opioid prescription drug use or that opioid prescription drug use may lead to opioid prescription drug and heroin addiction; and

(10) requiring medical providers to inform patients of the risks associated with opioid prescription drug use can help to reduce opioid prescription drug and heroin addictions in the state.

* **Sec. 2.** AS 08.36.315 is amended to read:

Sec. 08.36.315. Grounds for discipline, suspension, or revocation of license.

The board may revoke or suspend the license of a dentist, or may reprimand, censure, or discipline a dentist, or both, if the board finds, after a hearing, that the dentist

(1) used or knowingly cooperated in deceit, fraud, or intentional misrepresentation to obtain a license;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing or billing for professional dental services or engaging in professional activities;

(3) advertised professional dental services in a false or misleading manner;

(4) received compensation for referring a person to another dentist or dental practice;

(5) has been convicted of a felony or other crime that affects the dentist's ability to continue to practice dentistry competently and safely;

(6) engaged in the performance of patient care, or permitted the performance of patient care by persons under the dentist's supervision, regardless of whether actual injury to the patient occurred,

(A) that did not conform to minimum professional standards of dentistry; or

(B) when the dentist, or a person under the supervision of the dentist, did not have the permit, registration, or certificate required under AS 08.32 or this chapter;

(7) failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board;

(8) continued to practice after becoming unfit due to

(A) professional incompetence;

(B) addiction or dependence on alcohol or other drugs that impair the dentist's ability to practice safely;

(C) physical or mental disability;

(9) engaged in lewd or immoral conduct in connection with the delivery of professional service to patients;

(10) permitted a dental hygienist or dental assistant who is employed by the dentist or working under the dentist's supervision to perform a dental procedure in violation of AS 08.32.110 or AS 08.36.346;

(11) failed to report to the board a death that occurred on the premises used for the practice of dentistry within 48 hours;

(12) falsified or destroyed patient or facility records or failed to maintain a patient or facility record for at least seven years after the date the record was created;

(13) prescribed or dispensed an opioid in excess of the maximum dosage authorized under AS 08.36.355; [OR]

(14) procured, sold, prescribed, or dispensed drugs in violation of a law, regardless of whether there has been a criminal action or harm to the patient; or

(15) habitually and without good cause failed to provide oral and written information on opioids under AS 08.36.357 before initially prescribing an

outpatient supply of an opioid to patients.

* **Sec. 3.** AS 08.36 is amended by adding a new section to read:

Sec. 08.36.357. Opioid prescription information; relationship to causes of action. (a) Before a licensee initially prescribes an outpatient supply of an opioid to a patient, the licensee or an agent of the licensee shall provide to the patient or the person authorized to make health care decisions for the patient

(1) an oral statement that, in the licensee's or agent's own words, includes

(A) the licensee's reasons for prescribing the opioid;

(B) reasonable non-opioid alternatives to the prescription;

(C) information that

(i) the prescription could potentially lead to opioid addiction;

(ii) the danger of opioid addiction can begin to increase if a prescription is extended over longer periods of time; and

(iii) opioid addiction may pose potentially life-threatening health risks; and

(2) a written statement, which may include graphics, prepared by the Department of Health and Social Services that provides appropriate information conveying the potential addictive and health risks of opioids.

(b) The requirements under (a) of this section do not apply to a patient receiving

(1) hospice care from a licensed provider or facility; and

(2) substance abuse or opioid dependence treatment.

(c) The Department of Health and Social Services shall provide access on the department's Internet website to a printable version of the written statement a licensee is required to distribute under (a)(2) of this section.

(d) Nothing in this section creates a new cause of action or affects an existing cause of action.

* **Sec. 4.** AS 08.64.326(a) is amended to read:

(a) The board may impose a sanction if the board finds after a hearing that a

licensee

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation while providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted, including conviction based on a guilty plea or plea of nolo contendere, of

(A) a class A or unclassified felony or a crime in another jurisdiction with elements similar to a class A or unclassified felony in this jurisdiction;

(B) a class B or class C felony or a crime in another jurisdiction with elements similar to a class B or class C felony in this jurisdiction if the felony or other crime is substantially related to the qualifications, functions, or duties of the licensee; or

(C) a crime involving the unlawful procurement, sale, prescription, or dispensing of drugs;

(5) has procured, sold, prescribed, or dispensed drugs in violation of a law regardless of whether there has been a criminal action or harm to the patient;

(6) intentionally or negligently permitted the performance of patient care by persons under the licensee's supervision that does not conform to minimum professional standards even if the patient was not injured;

(7) failed to comply with this chapter, a regulation adopted under this chapter, or an order of the board;

(8) has demonstrated

(A) professional incompetence, gross negligence, or repeated negligent conduct; the board may not base a finding of professional incompetence solely on the basis that a licensee's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient;

(B) addiction to, severe dependency on, or habitual overuse of alcohol or other drugs that impairs the licensee's ability to practice safely;

(C) unfitness because of physical or mental disability;

(9) engaged in unprofessional conduct, in sexual misconduct, or in lewd or immoral conduct in connection with the delivery of professional services to patients; in this paragraph, "sexual misconduct" includes sexual contact, as defined by the board in regulations adopted under this chapter, or attempted sexual contact with a patient outside the scope of generally accepted methods of examination or treatment of the patient, regardless of the patient's consent or lack of consent, during the term of the physician-patient relationship, as defined by the board in regulations adopted under this chapter, unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating, courtship, or engagement relationship with the licensee;

(10) has violated AS 18.16.010;

(11) has violated any code of ethics adopted by regulation by the board;

(12) has denied care or treatment to a patient or person seeking assistance from the physician if the only reason for the denial is the failure or refusal of the patient to agree to arbitrate as provided in AS 09.55.535(a);

(13) has had a license or certificate to practice medicine in another state or territory of the United States, or a province or territory of Canada, denied, suspended, revoked, surrendered while under investigation for an alleged violation, restricted, limited, conditioned, or placed on probation unless the denial, suspension, revocation, or other action was caused by the failure of the licensee to pay fees to that state, territory, or province; [OR]

(14) prescribed or dispensed an opioid in excess of the maximum dosage authorized under AS 08.64.363; or

(15) habitually and without good cause failed to provide oral and written information on opioids under AS 08.64.371 before initially prescribing an outpatient supply of an opioid to patients.

* **Sec. 5.** AS 08.64 is amended by adding a new section to read:

Sec. 08.64.371. Opioid prescription information; relationship to causes of action. (a) Before a licensee initially prescribes an outpatient supply of an opioid to a

patient, the licensee or an agent of the licensee shall provide to the patient or the person authorized to make health care decisions for the patient

(1) an oral statement that, in the licensee's or agent's own words, includes

(A) the licensee's reasons for prescribing the opioid;

(B) reasonable non-opioid alternatives to the prescription; and

(C) information that

(i) the prescription could potentially lead to opioid addiction;

(ii) the danger of opioid addiction can begin to increase if a prescription is extended over longer periods of time;

(iii) opioid addiction may pose potentially life-threatening health risks; and

(2) a written statement, which may include graphics, prepared by the Department of Health and Social Services that provides appropriate information conveying the potential addictive and health risks of opioids.

(b) The requirements under (a) of this section do not apply to a patient receiving

(1) hospice care from a licensed provider or facility; and

(2) substance abuse or opioid dependence treatment.

(c) The Department of Health and Social Services shall provide access on the department's Internet website to a printable version of the written statement a licensee is required to distribute under (a)(2) of this section.

(d) Nothing in this section creates a new cause of action or affects an existing cause of action.

* **Sec. 6.** AS 08.68.270 is amended to read:

Sec. 08.68.270. Grounds for denial, suspension, or revocation. The board may deny, suspend, or revoke the license of a person who

(1) has obtained or attempted to obtain a license to practice nursing by fraud or deceit;

(2) has been convicted of a felony or other crime if the felony or other

crime is substantially related to the qualifications, functions, or duties of the licensee;

(3) habitually abuses alcoholic beverages, or illegally uses controlled substances;

(4) has impersonated a registered, advanced practice registered, or practical nurse;

(5) has intentionally or negligently engaged in conduct that has resulted in a significant risk to the health or safety of a client or in injury to a client;

(6) practices or attempts to practice nursing while afflicted with physical or mental illness, deterioration, or disability that interferes with the individual's performance of nursing functions;

(7) is guilty of unprofessional conduct as defined by regulations adopted by the board;

(8) has wilfully or repeatedly violated a provision of this chapter or regulations adopted under this chapter or AS 08.01;

(9) is professionally incompetent;

(10) denies care or treatment to a patient or person seeking assistance if the sole reason for the denial is the failure or refusal of the patient or person seeking assistance to agree to arbitrate as provided in AS 09.55.535(a);

(11) has prescribed or dispensed an opioid in excess of the maximum dosage authorized under AS 08.68.705; [OR]

(12) has procured, sold, prescribed, or dispensed drugs in violation of a law, regardless of whether there has been a criminal action or harm to the patient; or

(13) has habitually and without good cause failed to provide oral and written information on opioids under AS 08.68.710 before initially prescribing an outpatient supply of an opioid to patients.

* Sec. 7. AS 08.68 is amended by adding a new section to article 6 to read:

Sec. 08.68.710. Opioid prescription information; relationship to causes of action. (a) Before an advanced practice registered nurse initially prescribes an outpatient supply of an opioid to a patient, the advanced practice registered nurse or an agent of the advanced practice registered nurse shall provide to the patient or the person authorized to make health care decisions for the patient

(1) an oral statement that, in the advanced practice registered nurse's or agent's own words, includes

(A) the advanced practice registered nurse's reasons for prescribing the opioid;

(B) reasonable non-opioid alternatives to the prescription; and

(C) information that

(i) the prescription could potentially lead to opioid addiction;

(ii) the danger of opioid addiction can begin to increase if a prescription is extended over longer periods of time;

(iii) opioid addiction may pose potentially life-threatening health risks; and

(2) a written statement, which may include graphics, prepared by the Department of Health and Social Services that provides appropriate information conveying the potential addictive and health risks of opioids.

(b) The requirements under (a) of this section do not apply to a patient receiving

(1) hospice care from a licensed provider or facility; and

(2) substance abuse or opioid dependence treatment.

(c) The Department of Health and Social Services shall provide access on the department's Internet website to a printable version of the written statement an advanced practice registered nurse is required to distribute under (a)(2) of this section.

(d) Nothing in this section creates a new cause of action or affects an existing cause of action.

* **Sec. 8.** AS 08.72.240 is amended to read:

Sec. 08.72.240. Grounds for imposition of disciplinary sanctions. The board may impose disciplinary sanctions when the board finds after a hearing that a licensee

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;

- (3) advertised professional services in a false or misleading manner;
- (4) has been convicted of a felony or other crime that affects the licensee's ability to continue to practice competently and safely;
- (5) intentionally or negligently engaged in or permitted the performance of patient care by persons under the licensee's supervision that does not conform to minimum professional standards regardless of whether actual injury to the patient occurred;
- (6) failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board;
- (7) continued to practice after becoming unfit due to
- (A) professional incompetence;
- (B) failure to keep informed of or use current professional theories or practices;
- (C) addiction or severe dependency on alcohol or other drugs that impairs the licensee's ability to practice safely;
- (D) physical or mental disability;
- (8) engaged in lewd or immoral conduct in connection with the delivery of professional service to patients;
- (9) failed to refer a patient to a physician after ascertaining the presence of ocular or systemic conditions requiring management by a physician;
- (10) prescribed or dispensed an opioid in excess of the maximum dosage authorized under AS 08.72.276;
- (11) procured, sold, prescribed, or dispensed drugs in violation of a law, regardless of whether there has been a criminal action or harm to the patient; or
- (12) habitually and without good cause failed to provide oral and written information on opioids under AS 08.72.277 before initially prescribing an outpatient supply of an opioid to patients.**

* Sec. 9. AS 08.72 is amended by adding a new section to read:

Sec. 08.72.277. Opioid prescription information; relationship to causes of action. (a) Before a licensee initially prescribes an outpatient supply of an opioid to a patient, the licensee or an agent of the licensee shall provide to the patient or the

person authorized to make health care decisions for the patient

(1) an oral statement that, in the licensee's or agent's own words, includes

(A) the licensee's reasons for prescribing the opioid;

(B) reasonable non-opioid alternatives to the prescription; and

(C) information that

(i) the prescription could potentially lead to opioid addiction;

(ii) the danger of opioid addiction can begin to increase if a prescription is extended over longer periods of time;

(iii) opioid addiction may pose potentially life-threatening health risks; and

(2) a written statement, which may include graphics, prepared by the Department of Health and Social Services that provides appropriate information conveying the potential addictive and health risks of opioids.

(b) The requirements under (a) of this section do not apply to a patient receiving

(1) hospice care from a licensed provider or facility; and

(2) substance abuse or opioid dependence treatment.

(c) The Department of Health and Social Services shall provide access on the department's Internet website to a printable version of the written statement a licensee is required to distribute under (a)(2) of this section.

(d) Nothing in this section creates a new cause of action or affects an existing cause of action.

* **Sec. 10.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Health and Social Services may adopt regulations necessary to implement the changes made by secs. 3, 5, 7, and 9 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the relevant provision of this Act implemented by the regulation.