



Department of Law

CIVIL DIVISION

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David Logan, DDS
2237 North Jordan Ave.
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Dear Dr. Logan:

Your June 14, 2013 letter to the Attorney General regarding Alaska's immunity statute for health care providers has been referred to me. I am an assistant attorney general in the Attorney General's Office in Anchorage and I represent the Division of Corporations, Business and Professional Licensing in disciplinary proceedings against licensed professionals, such as dentists.

You have inquired (1) whether a courtesy license issued by the Board of Dental Examiners is considered a State of Alaska professional license, (2) whether a nonresident dentist or dental hygienist who has been issued a courtesy license is considered to be a provider "licensed in this state to provide health care services" under AS 09.65.300(a)(1), and (3) whether, under AS 09.65.300, immunity is extended to professionals who have been issued a courtesy license by the Board of Dental Examiners. With regard to the first question, we answer in the affirmative. As to your second and third questions, we cannot provide you with a definite answer, as the above immunity statute has never been interpreted by the Alaska Supreme Court.

As to your first question, all professional boards may establish criteria for issuing temporary courtesy licensees to nonresidents who enter the state so that, on a temporary basis, they may practice the occupation regulated by that board. AS 08.01.062(a). As you have noted, the Board of Dental Examiners has established such criteria for a courtesy license under 12 AAC 28.955. While limited in scope and time, the holder of the courtesy license is nevertheless obligated to uphold the standards of practice identified in AS 08.32 (which covers dental hygienists) and AS 08.36 (which covers dentists) and is subject to all the relevant disciplinary provisions found in AS 08.32 and AS 08.36 while practicing under the courtesy license. 12 AAC 28.955(g). Therefore, since the holder of a courtesy license is subject to the same standards of practice as a dental hygienist licensed under AS 08.32 or a dentist licensed under AS 08.36, and is subject to the same disciplinary provisions as those hygienists and dentists, we would consider a courtesy license issued by the Board of Dental Examiners to be a professional license. You should also be aware that such disciplinary provisions would apply even if a courtesy license holder were determined not to be liable for civil damages under AS 09.65.300, discussed below.

The answer to your other two questions involve the interpretation of AS 09.65.300, the Volunteer Health Care Provider Immunity Act of 2004. The ultimate interpretation of this statute will have to come from the courts. That interpretation is likely to occur in the course of private litigation, for example between an allegedly injured patient and the patient's dentist. Because the meaning of the law will be interpreted by a court, and not the Attorney General's Office, you should retain private counsel to advise you on the possible outcome of a judicial interpretation.

To assist you and your counsel, we have reviewed the legislative history of AS 09.65.300. As set forth below, the original purpose of the statute was to allow retired physicians to volunteer their services:

The legislature finds that

- (1) many of the state's most senior and experienced physicians will be retiring in the next five to 10 years; retiring physicians deciding to reside in Alaska could continue to benefit our local communities by volunteering their medical services;
- (2) historically, Alaska has had difficulty in attracting and maintaining adequate numbers of qualified physicians; currently, Alaska ranks 49th in the number of physicians per capita, while Alaska's physicians continue to grow older, reaching an average age of 51 years;
- (3) without civil liability protection, retired physicians would be unwilling to provide free services to the indigent and elderly;
- (4) 43 states have enacted legislation limiting liability for retired physicians, thus encouraging retired physicians to continue in providing voluntary medical services; and
- (5) removing liability requirements for retired physicians would be in the best interests of the state; retired physicians unhindered by expensive malpractice insurance would be more inclined to volunteer necessary and important medical services to all Alaskans.

§ 2, ch. 56 SLA (2004), 2004 Temporary and Special Acts.

This legislative finding adds some degree of confusion. By its terms, AS 09.65.300 provides that a "health care provider" who provides health care services to another person is not liable for civil damages resulting from an act or omission in providing the health care services, so long as five conditions are met, one of them being that the provider is "licensed in this state to provide health care services."

AS 09.65.300(a)(1). Although the legislature only used the word "physicians" when describing its purpose, the plain wording of the statute defines "health care provider" much more broadly than just physicians; it specifically includes dentists and dental hygienists. AS 09.65.300 (c)(1). The legislative findings also only discuss retired

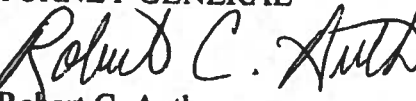
physicians residing in Alaska, not actively practicing out of state professionals who travel to Alaska and obtain a courtesy license for a specific event. On the other hand, the health care provider need only be "licensed in this state to provide health care services" to meet the criteria in AS 09.65.300 (a)(1) and a courtesy license could be interpreted to meet that criteria, especially given our view that a courtesy license is a professional license for the purpose of enforcing state disciplinary provisions. Also, during a legislative hearing on AS 09.65.300, one legislator, in response to a question about what "retired" meant, stated that the legislation meant that the health care provider, "retired or not", was providing services for free. Hearing on H.B. 260, before the House Labor & Commerce Committee, April 28, 2003. We did not find any testimony before any legislative committee that reflected an intent to exclude out of state professionals holding courtesy licenses from operation of the statute.

While we cannot definitively answer your question regarding the interpretation and application of AS 09.65.300(a)(1), we believe a compelling argument can be made that immunity would be extended to out of state professionals who have been issued a courtesy license, based on the plain language of the statute and the legislative history. We appreciate your efforts in organizing the Mission of Mercy event. We also understand that a presentation about the event was made to the Board of Dental Examiners at their May 3, 2013 meeting and, as indicated in the meeting minutes, the Board plans to write a letter of support.

If you have any questions about this letter, you can reach me at 269-5200.

Sincerely,

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By: 
Robert C. Auth
Assistant Attorney General

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