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Martin

1/30/13

CS FOR HOUSE BILL NO. 53()**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-EIGHTH LEGISLATURE - FIRST SESSION****BY****Offered:****Referred:****Sponsor(s): REPRESENTATIVE KELLER****A BILL****FOR AN ACT ENTITLED**

1 "An Act establishing a consultation requirement with respect to the prescription of
2 opiates under certain circumstances; relating to pain management specialists; relating to
3 disciplinary sanctions for dentists, prescribers, and persons administering opiates;
4 relating to the controlled substance prescription database; relating to the administration
5 of opiates for treatment of drug abuse; and providing for an effective date."

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

7 * **Section 1.** AS 08.36.315 is amended to read:

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

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

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

13 (2) engaged in deceit, fraud, or intentional misrepresentation in the

1 course of providing or billing for professional dental services or engaging in
2 professional activities;

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

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

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

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

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

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

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

19 (8) continued to practice after becoming unfit due to

20 (A) professional incompetence;

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

23 (C) physical or mental disability;

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

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

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

31 (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) failed to check the controlled substance prescription database created under AS 17.30.200 before prescribing an opiate.

* Sec. 2. AS 08.36 is amended by adding a new section to read:

Sec. 08.36.368. Prescription of opiates; consultation requirement. (a)

Except as provided in (c) of this section, a licensed dentist who prescribes 120 milligrams morphine equivalent or more a day of an opiate to a patient shall consult with a pain management specialist if the patient is still taking 120 milligrams morphine equivalent or more a day of an opiate after four weeks.

(b) The consultation required under (a) of this section must consist of at least one of the following:

(1) an office visit with the patient and the pain management specialist;

(2) a telephone or electronic consultation between the pain management specialist and the licensed dentist; or

(3) an audio-visual evaluation conducted remotely by the pain management specialist, at which the patient is present with either

(A) the licensed dentist; or

(B) a licensed health care practitioner designated by the licensed dentist or pain management specialist.

(c) The consultation requirement under (a) of this section does not apply to

(1) the management of acute pain caused by a dental injury or a dental surgical procedure;

(2) a patient who is following a tapering schedule;

(3) a patient who requires treatment for acute pain that necessitates a temporary escalation in opiate dosage before an expected return to or below the patient's baseline dosage;

(4) a situation in which the licensed dentist documents reasonable attempts to obtain a consultation with a pain management specialist, and the circumstances justify prescribing 120 milligrams morphine equivalent or more a day of an opiate without obtaining a consultation; or

(5) a patient whose pain and function are stable and who is on a nonescalating dose of an opiate.

(d) In this section,

(1) "advanced nurse practitioner" has the meaning given in AS 08.68.850;

(2) "osteopath" means a person licensed to practice osteopathy under AS 08.64;

(3) "pain management specialist" means

(A) a physician, osteopath, podiatrist, or physician assistant approved as a pain management specialist by the State Medical Board under AS 08.64.314; or

(B) an advanced nurse practitioner approved as a pain management specialist by the Board of Nursing under AS 08.68.100(a)(11);

(4) "physician" means a person licensed to practice medicine under AS 08.64;

(5) "physician assistant" means a person licensed to perform medical services under AS 08.64.107;

(6) "podiatrist" means a person licensed to practice podiatry under AS 08.64.

* Sec. 3. AS 08.36.370 is amended by adding a new paragraph to read:

(10) "opiate" has the meaning given in AS 11.71.900.

* Sec. 4. AS 08.64 is amended by adding a new section to read:

Sec. 08.64.314. Pain management specialist. The board shall adopt regulations that define the procedure for the board to approve a physician, osteopath, podiatrist, or physician assistant as a pain management specialist. The regulations must require the physician, osteopath, podiatrist, or physician assistant to have a

(1) certification in pain management care by a credentialing agency or organization acceptable to the board;

(2) minimum of three years of clinical experience acceptable to the board in a pain management care setting; or

(3) current practice at least 30 percent of which consists of the direct

1 provision of pain management care.

2 * Sec. 5. AS 08.64.326(a) is amended to read:

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

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

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

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

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

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

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

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

21 (5) has procured, sold, prescribed, or dispensed drugs in violation of a
22 law regardless of whether there has been a criminal action;

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

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

28 (8) has demonstrated

29 (A) professional incompetence, gross negligence, or repeated
30 negligent conduct; the board may not base a finding of professional
31 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); [OR]

(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) failed to check the controlled substance prescription database created under AS 17.30.200 before prescribing an opiate.

* Sec. 6. AS 08.64 is amended by adding a new section to article 3 to read:

Sec. 08.64.364. Prescription of opiates; consultation requirement. (a)

Except as provided in (c) of this section, a physician, osteopath, podiatrist, or

1 physician assistant who prescribes 120 milligrams morphine equivalent or more a day
2 of an opiate to a patient shall consult with a pain management specialist if the patient
3 is still taking 120 milligrams morphine equivalent or more a day of an opiate after four
4 weeks.

5 (b) The consultation required under (a) of this section must consist of at least
6 one of the following:

7 (1) an office visit with the patient and the pain management specialist;

8 (2) a telephone or electronic consultation between the pain
9 management specialist and the physician, osteopath, podiatrist, or physician assistant;
10 or

11 (3) an audio-visual evaluation conducted remotely by the pain
12 management specialist, at which the patient is present with either

13 (A) the physician, osteopath, podiatrist, or physician assistant;

14 or

15 (B) a licensed health care practitioner designated by the
16 physician, osteopath, podiatrist, physician assistant, or pain management
17 specialist.

18 (c) The consultation requirement under (a) of this section does not apply to

19 (1) the provision of palliative, hospice, or other end-of-life care;

20 (2) the management of acute pain caused by an injury or a surgical
21 procedure;

22 (3) a patient who is following a tapering schedule;

23 (4) a patient who requires treatment for acute pain that necessitates a
24 temporary escalation in opiate dosage before an expected return to or below the
25 patient's baseline dosage;

26 (5) a situation in which the physician, osteopath, podiatrist, or
27 physician assistant documents reasonable attempts to obtain a consultation with a pain
28 management specialist, and the circumstances justify prescribing 120 milligrams
29 morphine equivalent or more a day of an opiate without obtaining a consultation;

30 (6) a patient whose pain and function are stable and who is on a
31 nonescalating dose of an opiate; or

(7) the practice of a physician, osteopath, podiatrist, or physician assistant who is a pain management specialist.

(d) In this section,

(1) "advanced nurse practitioner" has the meaning given in AS 08.68.850;

(2) "pain management specialist" means

(A) a physician, osteopath, podiatrist, or physician assistant approved by the board as a pain management specialist under AS 08.64.314; or

(B) an advanced nurse practitioner approved as a pain management specialist by the Board of Nursing under AS 08.68.100(a)(11).

* Sec. 7. AS 08.64.380 is amended by adding a new paragraph to read:

(7) "opiate" has the meaning given in AS 11.71.900.

* Sec. 8. AS 08.68.100(a) is amended to read:

(a) The board shall

(1) adopt regulations necessary to implement this chapter, including regulations pertaining to practice as an advanced nurse practitioner and a nurse anesthetist, and regulations necessary to implement AS 08.68.331 - 08.68.336 relating to certified nurse aides in order to protect the health, safety, and welfare of clients served by nurse aides;

(2) approve curricula and adopt standards for basic education programs that prepare persons for licensing under AS 08.68.190;

(3) provide for surveys of the basic nursing education programs in the state at the times it considers necessary;

(4) approve education programs that meet the requirements of this chapter and of the board, and deny, revoke, or suspend approval of education programs for failure to meet the requirements;

(5) examine, license, and renew the licenses of qualified applicants;

(6) prescribe requirements for competence before a former nurse may resume the practice of nursing under this chapter;

(7) define by regulation the qualifications and duties of the executive secretary and delegate authority to the executive secretary that is necessary to conduct

board business;

(8) develop reasonable and uniform standards for nursing practice;

(9) publish advisory opinions regarding whether nursing practice procedures or policies comply with acceptable standards of nursing practice as defined under this chapter;

(10) require applicants under this chapter to submit fingerprints and the fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check; the department shall submit the fingerprints and fees to the Department of Public Safety for a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400;

(11) adopt regulations that define the procedure for the board to approve an advanced nurse practitioner as a pain management specialist; the regulations must require the advanced nurse practitioner to have a

(A) certification in pain management care by a credentialing agency or organization acceptable to the board;

(B) minimum of three years of clinical experience acceptable to the board in a pain management care setting; or

(C) current practice at least 30 percent of which consists of the direct provision of pain management care.

* Sec. 9. 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 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 it;

(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 failed to check the controlled substance prescription database created under AS 17.30.200 before prescribing an opiate.

* **Sec. 10.** AS 08.68 is amended by adding a new section to article 6 to read:

Sec. 08.68.701. Prescription of opiates; consultation requirement. (a)

Except as provided in (c) of this section, an advanced nurse practitioner who prescribes 120 milligrams morphine equivalent or more a day of an opiate to a patient shall consult with a pain management specialist if the patient is still taking 120 milligrams morphine equivalent or more a day of an opiate after four weeks.

(b) The consultation required under (a) of this section must consist of at least one of the following:

(1) an office visit with the patient and the pain management specialist;

(2) a telephone or electronic consultation between the pain management specialist and the advanced nurse practitioner; or

(3) an audio-visual evaluation conducted remotely by the pain management specialist, at which the patient is present with either

(A) the advanced nurse practitioner; or

(B) a licensed health care practitioner designated by the advanced nurse practitioner or pain management specialist.

(c) The consultation requirement under (a) of this section does not apply to

- 1 (1) the provision of palliative, hospice, or other end-of-life care;
2 (2) the management of acute pain caused by an injury or surgical
3 procedure;
4 (3) a patient who is following a tapering schedule;
5 (4) a patient who requires treatment for acute pain that necessitates a
6 temporary escalation in opiate dosage before an expected return to or below the
7 patient's baseline dosage;
8 (5) a situation in which the advanced nurse practitioner documents
9 reasonable attempts to obtain a consultation with a pain management specialist, and
10 the circumstances justify prescribing 120 milligrams morphine equivalent or more a
11 day of an opiate without obtaining a consultation;
12 (6) a patient whose pain and function are stable and who is on a
13 nonescalating dose of an opiate; or
14 (7) the practice of an advanced nurse practitioner who is a pain
15 management specialist.

16 (d) In this section,

- 17 (1) "osteopath" means a person licensed to practice osteopathy under
18 AS 08.64;
19 (2) "pain management specialist" means
20 (A) a physician, osteopath, podiatrist, or physician assistant
21 approved as a pain management specialist by the State Medical Board under
22 AS 08.64.314; or
23 (B) an advanced nurse practitioner approved by the board as a
24 pain management specialist under AS 08.68.100(a)(11);
25 (3) "physician" means a person licensed to practice medicine under
26 AS 08.64;
27 (4) "physician assistant" means a person licensed to perform medical
28 services under AS 08.64.107;
29 (5) "podiatrist" means a person licensed to practice podiatry under
30 AS 08.64.

31 * Sec. 11. AS 08.68.850 is amended by adding a new paragraph to read:

(11) "opiate" has the meaning given in AS 11.71.900.

* Sec. 12. AS 08.80.261(a) is amended to read:

(a) The board may deny a license to an applicant or, after a hearing, impose a disciplinary sanction authorized under AS 08.01.075 on a person licensed under this chapter when the board finds that the applicant or licensee, as applicable,

(1) secured or attempted to secure 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 has been convicted of another crime that affects the applicant's or licensee's ability to practice competently and safely;

(5) intentionally or negligently engaged in or permitted the performance of patient care by persons under the applicant's or 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) is incapable of engaging in the practice of pharmacy with reasonable skill, competence, and safety for the public because of

(A) professional incompetence;

(B) failure to keep informed of or use current professional theories or practices;

(C) addiction or severe dependency on alcohol or a drug that impairs the applicant's or licensee's ability to practice safely;

(D) physical or mental disability; or

(E) other factors determined by the board;

(8) engaged in conduct involving moral turpitude or gross immorality;

(9) made a controlled substance available to a person except upon prescription issued by a person licensed to prescribe controlled substances;

(10) was convicted of selling federal legend drugs without the prescription of a person licensed to prescribe federal legend drugs;

(11) violated state or federal laws or regulations pertaining to drugs or pharmacies;

(12) failed to report relevant information to the board about a pharmacist or pharmacy intern that the applicant or licensee knew or suspected was incapable of engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public;

(13) aided another person to engage in the practice of pharmacy or to use the title of "pharmacist" or "pharmacy intern" without a license; [OR]

(14) engaged in unprofessional conduct, as defined in regulations of the board; or

(15) failed to check the controlled substance prescription database created under AS 17.30.200 before dispensing an opiate.

* Sec. 13. AS 17.30.200(e) is amended to read:

(e) The failure of a pharmacist-in-charge, pharmacist, or practitioner to submit information to the database, **or check the database before dispensing, prescribing, or administering an opiate,** as required under this section is grounds for the board to take disciplinary action against the license or registration of the pharmacy or pharmacist or for another licensing board to take disciplinary action against a practitioner.

* Sec. 14. AS 17.30.200(h) is amended to read:

(h) An individual who has submitted information to the database in accordance with this section may not be held civilly liable for having submitted the information. [NOTHING IN THIS SECTION REQUIRES OR OBLIGATES A DISPENSER OR PRACTITIONER TO ACCESS OR CHECK THE DATABASE BEFORE DISPENSING, PRESCRIBING, OR ADMINISTERING A MEDICATION, OR PROVIDING MEDICAL CARE TO A PERSON.] Dispensers or practitioners may not be held civilly liable for damages for accessing or failing to access the information in the database.

* Sec. 15. AS 17.30.200 is amended by adding new subsections to read:

(o) A dispenser or practitioner shall access or check the database before dispensing, prescribing, or administering an opiate.

(p) In this section, "opiate" has the meaning given in AS 11.71.900.

* Sec. 16. AS 47.37 is amended by adding a new section to read:

Sec. 47.37.175. Administration of opiates; consultation requirement. (a) A health care professional who oversees the administration of an opiate for treatment of drug abuse shall hold a telephonic or electronic consultation with the patient's primary care provider to establish a baseline dosage of the opiate before treatment begins.

(b) The patient's primary care physician shall screen the patient and clear the patient for treatment before the administration of an opiate for treatment of drug abuse.

(c) The patient's primary care provider or health care professional who oversees the administration of an opiate for treatment of drug abuse shall monitor the patient's cardiac stability when the opiate dosage is increased by 30 milligram morphine equivalent or more from the patient's baseline dosage.

(d) If the health care professional who oversees the administration of an opiate for treatment of drug abuse prescribes more than 120 milligrams morphine equivalent a day of an opiate, the health care professional shall monitor the patient's cardiac and pulmonary stability and consult with the patient's primary care provider.

(e) A health care professional who oversees the treatment of drug abuse shall refer a patient who demonstrates intolerance to an escalating dose of an opiate to the patient's primary care provider for screening.

(f) A health care professional who oversees the administration of an opiate to a patient for treatment of drug abuse shall conduct an in-person consultation with the patient's primary care provider six months after the start of treatment with the opiate and every six months thereafter until the patient's treatment with an opiate is discontinued.

(g) A health care professional who oversees the administration of an opiate to a patient for treatment of drug abuse and the patient's primary care provider shall determine a reasonable tapering schedule for the patient.

(h) In this section,

1 (1) "health care professional" means a physician, nurse, and physician
2 assistant, but does not include a practitioner of religious healing;

3 (2) "opiate" has the meaning given in AS 11.71.900;

4 (3) "primary care provider" has the meaning given in AS 21.07.250.

5 * Sec. 17. Sections 4 and 8 of this Act take effect immediately under AS 01.10.070(c).

6 * Sec. 18. Except as provided in sec. 17 of this Act, this Act takes effect 180 days after the
7 effective date in sec. 17 of this Act.