

LEGAL SERVICES

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MEMORANDUM

March 17, 2021

SUBJECT: "May" and "Shall" in Licensing Statutes
(CSHB 44(); Work Order No. 32-LS0302\B)

TO: Representative Jonathan Kreiss-Tomkins
Chair of the House State Affairs Committee

FROM: Sandon M. Fisher
Legislative Counsel 

You asked whether the occupational licensing statutes use the word "may" or "shall" more often when providing instructions to a licensing authority regarding the issuance of an occupational license.

Statutes providing directions regarding the issuance of an occupational license use both "shall" and "may." Using the term "shall" or "may" is largely a policy consideration for the legislature. The word "shall" imposes a duty, and the word "may" grants a privilege or a discretionary power.¹ Generally speaking, licensing statutes more often use the word "shall" to require a licensing authority to issue a license if the applicant otherwise meets the requirements for the license, and licensing statutes use the word "may" when providing directions regarding the issuance of other licenses such as a temporary license or licensure by credentials. This gives the licensing authority the discretion of whether to issue the license or not.

The following are examples of occupational licensing statutes that provide that the licensing authority "shall" issue a license if the applicant meets certain requirements:

- AS 08.06.030(b) provides that the Department of Commerce, Community, and Economic Development (Department) shall issue a license to practice acupuncture to qualified applicants.
- AS 08.07.020(a) provides that the Department shall issue a license to practice athletic training to a person who meets the statutory requirements.
- AS 08.11.010 provides that the Department shall issue a license to practice audiology to a person who meets the statutory requirements.
- AS 08.11.020(a) provides that the Department shall issue a temporary license to

¹ See *Manual of Legislative Drafting* at 65 (citing *Fowler v. City of Anchorage*, 583 P.2d 817 (Alaska 1978) and *Rutter v. State, Alaska Board of Fisheries*, 963 P.2d 1007 (Alaska 1998)).

- practice audiology to a person who is licensed in another state and has applied for licensure in this state.
- AS 08.13.100(a) provides that the Board of Barbers and Hairdressers shall authorize the issuance of a license to practice barbering, hairdressing, esthetics, tattooing, permanent cosmetic coloring, body piercing, manicuring, and hair braiding to qualified applicants.
 - AS 08.13.110(d) provides that the Board of Barbers and Hairdressers shall issue a license to a school of manicuring that meets statutory requirements.
 - AS 08.13.170 provides that the Board of Barbers and Hairdressers shall issue a temporary permit to an applicant for licensing who holds a license to practice barbering, hairdressing, hair braiding, manicuring, esthetics, tattooing, permanent cosmetic coloring, or body piercing in another state.
 - AS 08.15.020(a) provides that the Department shall issue a license to practice behavior analysis to a person who meets statutory requirements.
 - AS 08.15.020(b) provides that the Department shall issue a license to practice as an assistant behavior analyst to a person who meets statutory requirements.
 - AS 08.18.022(a) provides that the Department shall issue a certificate of registration as a home inspector to an individual who meets statutory requirements.
 - AS 08.18.025(b) provides that the Department shall issue a residential contractor endorsement to a person who meets statutory requirements.
 - AS 08.20.120(a) provides that an applicant shall be issued a license to practice chiropractic if the applicant meets statutory requirements.
 - AS 08.29.110(a) provides that the Board of Professional Counselors shall issue a professional counselor license to a person who meets the statutory requirements.
 - AS 08.36.240 provides that the Board of Dental Examiners shall issue a license to practice dentistry to an applicant who meets the statutory requirements.
 - AS 08.64.230 provides that the State Medical Board or its executive secretary shall grant a license to an applicant for a physician or osteopath license if the applicant meets statutory requirements.

The following are examples of occupational licensing statutes that provide that the licensing authority "may" issue a license:

- AS 08.11.020(b) provides that the Department may issue a temporary license for the practice of audiology in certain circumstances.
- AS 08.11.025 provides that the Department may issue temporary licenses for the practice of speech-language pathology as a speech-language pathologist in certain circumstances.
- AS 08.15.030 provides that the Department may issue a temporary license to practice behavior analysis in certain circumstances.
- AS 08.20.141 provides that the Board of Chiropractic Examiners may issue a license by credentials to a person who meets statutory requirements.
- AS 08.29.120 and 08.29.130 provide that the Board of Professional Counselors

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- may issue a license by credentials to qualified applicants from other states or foreign countries.
- AS 08.36.254(a) provides that the Board of Dental Examiners may issue a temporary permit to practice dentistry for the purpose of substituting for an incapacitated dentist in certain circumstances.
 - AS 08.64.270 provides that the State Medical Board, one of its members, its executive secretary, or a person designated by the State Medical Board may issue a temporary permit to applicants who meet statutory requirements.

If you have questions regarding a particular board, or if I may be of further assistance, please advise.

SMF:lme

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