

# Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

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March 4, 2021

The Honorable David Wilson  
Alaska State Senate  
State Capitol Room 121  
Juneau, AK 99801

Submitted via email

RE: Senate Bill 78 "An Act Relating to Telehealth."

Dear Senator Wilson:

The Alaska State Medical Association (ASMA) is the largest physician organization in the state, represents physicians statewide and is primarily concerned with the health of all Alaskans.

ASMA opposes Senate Bill 78.

We are all more than aware of the onset of the pandemic in early 2020 and the need for the State to take proactive measures to prepare for what was then the unknown worst-case scenario.

Senate Bill 241 was introduced by the Governor on March 22 and passed six days later. While concerned at the time over the broad powers to relax patient protections in general and the specific provisions of SB 241 relaxing patient protections waived within telehealth, at the time ASMA recognized the pandemic justified temporarily relaxing such rules to ensure Alaskans, in a worst-case scenario, could access care. At the time, many of us were looking at potential scenarios where multiple physician offices in a single community, or the sole physician office in a community could be closed due to infection. Such a scenario risked not only COVID infected patients but patients that need medical attention for everyday diagnoses such as high blood pressure, diabetes, pre-natal care, or the flu. Balancing the unknown likelihood of these scenarios happening against the potential for great harm if they did, it made sense to accept the increased risk associated with lax regulations.

However, these policies only made sense during an emergency when there was doubt over whether Alaskan's healthcare needs could be met. These were never intended to be good policy for normal operations.

ASMA supports telehealth in Alaska and believes that for physicians the current law makes sense. Under current law a physician in state or out of state can practice telemedicine without first conducting a physical exam if they have three items: an Alaska Medical License, an Alaska Business license and they register with the state as a business offering telehealth in Alaska. The registration was added to state statute in 2016 by SB 74 so the state could monitor trends and growth within Telehealth.

SB 78's proposal to take rules balanced for a global pandemic and declared disaster and make them the norm is bad policy. ASMA is most concerned over the removal of the requirement that physicians practicing medicine in Alaska through telehealth no longer need to be licensed in Alaska. ASMA opposes removing the requirement for non-resident physicians or in some cases even resident physicians licensed in another state practicing medicine in Alaska to also have an Alaska license.

- 1) The requirements for obtaining a physician license are what you would expect:
  - a. Submit a certificate of graduation from a legally chartered accredited medical school.
  - b. Submit a certificate from hospital certifying that the applicant has satisfactorily performed the duties of resident physician or intern.
  - c. Submit a list of negotiated settlements or judgements in claims or civil actions alleging medical malpractice against the applicant.
  - d. Not have a license to practice medicine in another state, country, province, or territory that is currently suspended or revoked for disciplinary reasons.
  - e. There is no exam required if applicant has an active license from a board of medical examiners established under the laws of a state or territory of the United States or a province or territory of Canada.

These requirements help ensure that physicians wishing to treat Alaskans have been vetted. The licensing process provides a check on persons wanting to treat Alaskans' health needs and provides the Board jurisdiction to ensure the provider is following Alaska laws and regulations. Under this bill we question whether the Alaska Medical Board would have any jurisdiction to investigate or discipline a physician that violated Alaska law or regulation. Under AS 08.64.326 the Board can discipline a licensee if it finds the 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 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 (which details procedures for performing abortions);
- (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 .

These are not insignificant matters. Under this bill the telehealth providers would not need to be licensees and the Board would have no jurisdiction. Perhaps, the State could try and enforce through the State Attorney General's Office filing in Alaska Court. But the notion that the State has the resources to take individual cases against non-resident providers to court instead of utilizing an administrative process is not realistic. Medical cases are notoriously expensive and complex and usually require expert testimony.

Alaskans will be left trying to find the state the physician is licensed in and trying to navigate that state's license regulations.

Additionally, this bill would put the entire burden of paying for Board regulation on Alaska licensees and allow licensees from other states to work in Alaska without contributing anything. In fact, this bill seems to promote non-residents over Alaskans. While we have supported treating non-resident providers the same as residents, we find it hard to believe the legislature supports treating non-residents better than Alaskans.

Alaska has authorized responsible telehealth.

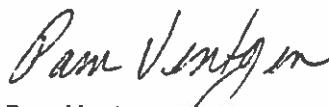
The State defines Telehealth under AS 47.05.270(e): "telehealth" means the practice of health care delivery, evaluation, diagnosis, consultation, or treatment, using the transfer of health care data through audio, visual, or data communications, performed over two or more locations between providers who are physically separated from the recipient or from each other or between a provider and a recipient who are physically separated from each other.

The State also requires the Medical Board to adopt Standards of Practice for Alaska licensees for Telehealth which it has done by regulation in 12 AAC 40.943. In part the regulation adopts:

- The guiding principles for telemedicine practice in the American Medical Association (AMA), Report 7 of the Council on Medical Service (A-14), Coverage of and Payment for Telemedicine, and
- the Federation of State Medical Boards (FSMB), Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine

The one area that we believe is problematic is not just a telehealth issue. The Alaska Medical Board has periodically, due to staff turnover or spikes in license applications, fallen behind in their ability to process license applications in a timely manner. This is an issue for all of us and ASMA is working with other stake holders to look for ways to speed up the license process without sacrificing patient protections. This bill, by eliminating many telehealth providers from paying for licenses and renewals, removes the one thing that we know can help, more resources to hire staff.

Sincerely,



Pam Ventgen  
Executive Director  
Alaska State Medical Association

cc: Senator Jesse Kiehl