

HOUSE BILL NO. 377

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 3/14/14

Referred: Health and Social Services, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act restricting the dispensing, administering, and repackaging of certain controlled**
2 **substances for employees receiving workers' compensation benefits."**

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

4 *** Section 1.** AS 08.36.070(a) is amended to read:

5 (a) The board shall

6 (1) provide for the examination of applicants and the credentialing,
7 registration, and licensure of those applicants it finds qualified;

8 (2) maintain a registry of licensed dentists, licensed dental hygienists,
9 and registered dental assistants who are in good standing;

10 (3) affiliate with the American Association of Dental Boards and pay
11 annual dues to the association;

12 (4) hold hearings and order the disciplinary sanction of a person who
13 violates this chapter, AS 08.32, or a regulation of the board;

14 (5) supply forms for applications, licenses, permits, certificates,

1 registration documents, and other papers and records;

2 (6) enforce the provisions of this chapter and AS 08.32 and adopt or
3 amend the regulations necessary to make the provisions of this chapter and AS 08.32
4 effective;

5 (7) adopt regulations ensuring that renewal of a license, registration, or
6 certificate under this chapter or a license, certificate, or endorsement under AS 08.32
7 is contingent upon proof of continued professional competence;

8 (8) at least annually, cause to be published on the Internet and in a
9 newspaper of general circulation in each major city in the state a summary of
10 disciplinary actions the board has taken during the preceding calendar year;

11 (9) issue permits or certificates to licensed dentists, licensed dental
12 hygienists, and dental assistants who meet standards determined by the board for
13 specific procedures that require specific education and training;

14 **(10) adopt regulations necessary to implement the requirements of**
15 **AS 23.30.095(p).**

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

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

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

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

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

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

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

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

31 (6) engaged in the performance of patient care, or permitted the

1 performance of patient care by persons under the dentist's supervision, regardless of
2 whether actual injury to the patient occurred,

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

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

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

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

11 (A) professional incompetence;

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

14 (C) physical or mental disability;

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

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

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

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

25 **(13) dispensed or repackaged a controlled substance in a manner**
26 **inconsistent with AS 23.30.095(p) or the regulations adopted under AS 08.36.070**
27 **to implement that section.**

28 * **Sec. 3.** AS 08.64.101 is amended to read:

29 **Sec. 08.64.101. Duties.** The board shall

30 (1) examine and issue licenses to applicants;

31 (2) develop written guidelines to ensure that licensing requirements are

1 not unreasonably burdensome and the issuance of licenses is not unreasonably
2 withheld or delayed;

3 (3) after a hearing, impose disciplinary sanctions on persons who
4 violate this chapter or the regulations or orders of the board;

5 (4) adopt regulations ensuring that renewal of licenses is contingent
6 upon proof of continued competency on the part of the licensee; [AND]

7 (5) under regulations adopted by the board, contract with private
8 professional organizations to establish an impaired medical professionals program to
9 identify, confront, evaluate, and treat persons licensed under this chapter who abuse
10 alcohol, other drugs, or other substances or are mentally ill or cognitively impaired;

11 **and**

12 **(6) adopt regulations necessary to implement the requirements of**
13 **AS 23.30.095(p).**

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

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

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

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

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

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

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

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

31 (C) a crime involving the unlawful procurement, sale,

1 prescription, or dispensing of drugs;

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

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

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

9 (8) has demonstrated

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

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

16 (C) unfitness because of physical or mental disability;

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

27 (10) has violated AS 18.16.010;

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

30 (12) has denied care or treatment to a patient or person seeking
31 assistance from the physician if the only reason for the denial is the failure or refusal

1 of the patient to agree to arbitrate as provided in AS 09.55.535(a); [OR]

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

8 **(14) has dispensed or repackaged a controlled substance in a**
9 **manner inconsistent with AS 23.30.095(p) or the regulations adopted under**
10 **AS 08.64.101 to implement that section.**

11 * **Sec. 5.** AS 08.68.100(a) is amended to read:

12 (a) The board shall

13 (1) adopt regulations necessary to implement this chapter, including
14 regulations

15 **(A)** pertaining to practice as an advanced nurse practitioner and
16 a nurse anesthetist, **including regulations necessary to implement the**
17 **requirements of AS 23.30.095(p);** and

18 **(B)** [REGULATIONS] necessary to implement AS 08.68.331 -
19 08.68.336 relating to certified nurse aides in order to protect the health, safety,
20 and welfare of clients served by nurse aides;

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

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

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

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

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

31 (7) define by regulation the qualifications and duties of the executive

1 secretary and delegate authority to the executive secretary that is necessary to conduct
2 board business;

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

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

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

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

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

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

18 (2) has been convicted of a felony or other crime if the felony or other
19 crime is substantially related to the qualifications, functions, or duties of the licensee;

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

22 (4) has impersonated a registered or practical nurse;

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

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

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

30 (8) has wilfully or repeatedly violated a provision of this chapter or
31 regulations adopted under it;

1 (9) is professionally incompetent;

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

5 **(11) has dispensed or repackaged a controlled substance in a**
6 **manner inconsistent with AS 23.30.095(p) or the regulations adopted under**
7 **AS 08.68.100 to implement that section.**

8 * **Sec. 7.** AS 23.30.095 is amended by adding new subsections to read:

9 (p) A physician or other provider who dispenses or administers a controlled
10 substance that is a schedule II or schedule III controlled substance under federal law to
11 an employee under this chapter

12 (1) may not dispense or repackage a controlled substance unless the
13 physician or other provider

14 (A) dispenses or repackages the substance in the same manner
15 and to the same extent that a retail pharmacy is required to dispense or
16 repackage a substance recognized as a drug in the official United States
17 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or
18 official National Formulary;

19 (B) identifies the national drug code assigned to the controlled
20 substance by the United States Food and Drug Administration and, if the
21 repackaged controlled substance has a different national drug code, identifies
22 the national drug code for the repackaged controlled substance; a physician or
23 other provider who fails to comply with this subparagraph may not charge a
24 price for the controlled substance that exceeds the drug reimbursement rate for
25 the medical assistance program set under AS 47.07.065 for the lowest priced
26 therapeutically equivalent drug if that rate is lower than the amount authorized
27 under AS 23.30.097;

28 (2) may not charge a price for a drug that the physician or other
29 provider dispenses or repackages that exceeds the amount authorized under
30 AS 23.30.097;

31 (3) may be disciplined as provided under the conditions of the license

1 of the physician or other provider if the physician or other provider does not comply
2 with this subsection.

3 (q) Subsection (p) of this section does not apply to the dispensing of a
4 controlled substance that is a schedule II or schedule III controlled substance under
5 federal law

6 (1) that is a drug sample dispensed without charge to the patient of a
7 practitioner in the regular course of the practitioner's practice;

8 (2) in connection with

9 (A) the performance of a surgical procedure for not more than
10 14 days following the surgical procedure;

11 (B) an approved clinical trial; in this subparagraph, "approved
12 clinical trial" has the meaning given in AS 21.42.415.

13 (r) If a provision of (p) or (q) of this section conflicts with federal law
14 concerning the authorization of physicians or other providers to dispense or administer
15 controlled substances, the provision does not apply to the extent of the conflict.