

Offered: 2/4/71  
Referred: Health, Welfare  
and Education

1 IN THE SENATE

BY RADER

2 SENATE BILL NO. 92

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to disciplinary procedures of the  
7 State Medical Board; and providing for an effective  
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 08.64 is amended by adding new sections to read:

11 ARTICLE 6. DISCIPLINARY PROCEDURES.

12 Sec. 08.64.390. PURPOSE AND FINDINGS. (a) It is the purpose of  
13 the legislature in the passage of secs. 390 - 590 of this chapter to  
14 provide an adequate procedure for the self-disciplining of members of  
15 the medical profession licensed to practice medicine in this state.

16 (b) The legislature finds that the existing procedures for dis-  
17 ciplinary actions within the medical profession are inadequate to  
18 protect the health and well-being of the people of this state and that  
19 an adequate procedure for disciplinary actions within the medical  
20 profession is needed to protect not just the general public but the  
21 medical profession itself.

22 Sec. 08.64.400. GROUNDS FOR DISCIPLINARY ACTION. (a) A person  
23 licensed to practice medicine under the provisions of this chapter may  
24 be disciplined by the board for unprofessional or dishonorable conduct  
25 as defined in sec. 380(3) of this chapter or for the conducting of  
26 his medical practice in such a way as to constitute professional  
27 incompetence as provided in (b) of this section.

28 (b) The board shall, by the adoption of appropriate regulations,  
29 define what constitutes professional incompetence for the purposes

1 of this chapter.

2 Sec. 08.64.410. INITIAL COMPLAINT PROCEDURES. (a) A person who  
3 desires to make a complaint against a person licensed to practice  
4 medicine under this chapter may do so by a written document signed by  
5 him and filed with the board. If the complaint is made in person a  
6 memorandum of the complaint shall be prepared and signed by the com-  
7 plaining party. The complaint shall set out the details of each alleged  
8 act of unprofessional or dishonorable conduct and the approximate date  
9 and place where the act is alleged to have occurred.

10 (b) Upon request, a person complaining shall furnish to the board  
11 all documentary or other evidence in his possession, and the names and  
12 addresses of witnesses, and assist in securing other evidence in  
13 relation to the facts charged.

14 (c) The board may request any complainant to appear in person  
15 for a further explanation or discussion of the complaint. However,  
16 if the complainant finds that personal appearance will render an undue  
17 financial burden or time loss, he shall upon request, make further  
18 amplification in writing over his signature.

19 (d) If the board finds on the face of the complaint and supporting  
20 data that a case for disciplinary action under this chapter is not  
21 stated the board shall dismiss the complaint without further proceed-  
22 ings.

23 (e) Unless the board finds that on the face of the complaint  
24 and supporting data no case for disciplinary action under this chapter  
25 is stated it shall, no later than 10 days after receipt of the com-  
26 plaint send a copy of the complaint and supporting data to the members  
27 of the board from the judicial district in which the complaint origi-  
28 nated. If there is no member of the board from the judicial district  
29 in which the complaint originated the president of the board shall

1 designate a licensed physician in that district to act as a member of  
2 the board in all matters pertaining to the specific complaint before  
3 the board.

4 Sec. 08.64.420. INVESTIGATION. (a) Except in the case of  
5 sec. 410(d) of this chapter, the president of the board shall upon  
6 receipt of a complaint appoint two persons licensed under this chapter  
7 nearest the locale of the complaint as a local investigating committee,  
8 one of whom shall be appointed chairman, to investigate the complaint  
9 and to make a prompt written report to the president of the board and  
10 to the member, or person designated to act as a member, of the board  
11 of the appropriate judicial district. The report shall contain complete  
12 findings of fact and opinion as to whether or not reasonable cause exists  
13 for further proceedings.

14 (b) Upon receipt of the complaint, the chairman of the investigat-  
15 ing committee shall serve a copy on the party to whom the complaint is  
16 directed in accordance with the provisions of sec. 560 of this  
17 chapter. Unless an extension is granted by the chairman for good  
18 cause shown, it shall be the duty of the party to whom the complaint is  
19 directed to, within 10 days after service, make a full and fair dis-  
20 closure in writing to the investigating committee of all the material  
21 facts and circumstances pertaining to his conduct in relation to matters  
22 set out in the complaint.

23 (c) The chairman of the investigating committee shall within 20  
24 days after receipt of the written disclosure provided for in (b) of  
25 this section convene the investigating committee for consideration  
26 of the complaint, the disclosure, and all other investigation reports.  
27 It is the duty of the person named in the complaint to attend all  
28 meetings of the investigating committee when his presence is required  
29 by the committee and to answer fully and fairly all questions pertaining

1 to the specific complaint before the investigating committee. The  
2 person named in the complaint may be accompanied by counsel if he de-  
3 sires.

4 (d) The investigating committee has the power to settle, dispose  
5 of, and dismiss complaints of a trivial nature. However, a complete  
6 report of the disposition of the complaint shall be made to the board.

7 (e) Settlement of, compromise of, or restitution in a matter does  
8 not excuse the investigating committee from undertaking or completing  
9 its investigation and submitting the full report to the board.

10 (f) If the investigating committee is of the opinion that no  
11 formal complaint should be recommended, and the case does not come under  
12 (d) of this section, it shall submit this recommendation to the  
13 president of the board and to the members or designees of members of  
14 the board in the judicial district where the complaint originated. If  
15 the president and the members of the board or their designees cannot  
16 unanimously agree with the recommendation of the investigating committee  
17 then the matter shall be submitted to the entire board for a determina-  
18 tion of whether or not to issue a formal complaint. An affirmative  
19 vote of a majority of the full board is required to issue a formal  
20 complaint under this subsection.

21 (g) If the investigating committee is of the opinion that a  
22 formal complaint should be issued in the case they shall promptly report  
23 their findings of fact and opinion to the board.

24 (h) The findings of fact and opinion of the investigating commit-  
25 tee shall be promptly reviewed by the president and members or their  
26 designees of the board from the judicial district in which the complaint  
27 originated and, if by majority vote, a determination is made that a formal  
28 complaint should be issued the president shall issue the formal complaint  
29 within 15 days of this finding. The formal complaint shall set out

1 the particular act or omissions of the person charged in enough  
2 detail to enable the person to know the nature of the charge against  
3 him. The formal complaint shall be signed by the president, and  
4 shall be immediately referred to the chairman of the trial committee  
5 created under sec. 430 of this chapter.

6 Sec. 08.64.430. TRIAL COMMITTEE. The president shall appoint,  
7 at the time he signs a formal complaint a three-member trial committee  
8 composed of persons licensed under this chapter to hear the formal  
9 complaint. The committee shall be composed of one member from a  
10 judicial district other than the one in which the complaint originated;  
11 two members from anywhere in the state but preferably from or near the  
12 locale in which the complaint arose. The president shall notify the  
13 person charged in the complaint of the trial committee membership no  
14 later than 15 days before the hearing date. The president shall  
15 designate which of the three members is to serve as chairman of the  
16 committee. The person accused in the complaint has the right to  
17 challenge members of the trial committee for cause, which challenge  
18 shall be ruled on by the president and the person accused shall be  
19 afforded one preemptory challenge. All challenges must be exercised  
20 before the hearing date.

21 Sec. 08.64.440. TIME AND PLACE OF HEARING. The chairman, upon  
22 receipt of the formal complaint, shall fix a time and place for the  
23 hearing. The chairman shall promptly give written notice together with  
24 a copy of the formal complaint to the person accused in accordance with  
25 sec. 560 of this chapter. Hearing on the formal complaint shall be  
26 held within 20 days after the filing or due date of answer unless  
27 further time is allowed by the chairman for good cause shown.

28 Sec. 08.64.450. ANSWER AND HEARING PROCEDURE. A person charged  
29 in a formal complaint shall file an answer in the office of the board

1 and send three copies to the chairman of the trial committee. The  
2 answer shall be in writing, verified by the person charged. Filing and  
3 service shall be made within 15 days after service of the notice of  
4 hearing, unless further time is allowed by the chairman of the commit-  
5 tee for good cause shown. The answer shall conform to the form for  
6 answers prescribed by the board by appropriate regulations. If the  
7 answer is not filed and served within the time limited, and no exten-  
8 sion of time has been granted, the complaint may be taken as confessed.  
9 It is the duty of the person charged to appear in person before the  
10 trial committee at the formal hearing, unless excused by the trial  
11 committee. The person charged may be represented by counsel, and  
12 the counsel may enter the charged person's appearance if he has been  
13 excused from personal appearance. The person charged shall have the  
14 duty at a formal hearing to present himself for cross-examination and  
15 to answer fully and fairly, under oath, all questions pertaining to  
16 his conduct with regard to the formal complaint. An electronic  
17 recording of the hearing shall be made with facilities provided by the  
18 Alaska court system and the hearing shall be conducted, as nearly as  
19 may be, in conformity with the procedure established for the trial of  
20 nonjury civil cases in the superior court.

21 Sec. 08.64.460. VOLUNTARY SURRENDER OF LICENSE. A person licensed  
22 under this chapter may not voluntarily surrender his license to prac-  
23 tice medicine while any matter subject to disciplinary action under  
24 this chapter is pending, unless the request is incorporated in and made  
25 a part of a written answer to a formal complaint admitting the facts  
26 of the alleged transgressions set out in the complaint. A request  
27 to surrender one's license under this section entitles the trial  
28 committee, in its discretion, to find that the charges are true and  
29 uncontested, and they may make and file their certified report with

1 recommendations for discipline without further proceedings.

2 Sec. 08.64.470. HEARING, FINDINGS AND RECOMMENDATIONS. If the  
3 trial committee finds on formal hearing that the charges alleged in  
4 the formal complaint are not established by a preponderance of the  
5 evidence, the committee shall dismiss the complaint. If the trial  
6 committee finds that the charges alleged in the formal complaint are  
7 established by a preponderance of the evidence and are of the nature  
8 to warrant discipline only by way of private reprimand, the committee  
9 shall administer the reprimand. If the trial committee finds that  
10 the charges alleged in the formal complaint are established by a pre-  
11 ponderance of the evidence and are of a nature to warrant discipline by  
12 the board the committee shall make a written report of its findings of  
13 fact and recommendations for discipline and forward them to the board.  
14 Copies of the findings, conclusions and recommendations shall at the  
15 same time be served on the person charged in the formal complaint or  
16 his counsel. In the event of dismissal or private reprimand, the trial  
17 committee shall follow the same procedure with regard to distribution  
18 and service as in the case of discipline by the board.

19 Sec. 08.64.480. STATEMENT IN OPPOSITION TO FINDINGS AND RECOM-  
20 MENDATIONS. A person charged in a formal complaint may file with the  
21 board, within 20 days after service provided for in sec. 470 of this  
22 chapter, a statement in writing setting out any opposition to the  
23 findings, conclusions and recommendations of the trial committee. The  
24 statement may contain opposition to facts found by the trial committee  
25 or alleged errors of law or any other matter the person feels is  
26 pertinent to the case.

27 Sec. 08.64.490. ADDITIONAL HEARING. The person charged in the  
28 formal complaint may within 20 days after service provided for in sec.  
29 470 of this chapter, request an additional hearing before the trial

1 committee based on the grounds of new or additional evidence. A  
2 request for an additional hearing must be in writing and contain a  
3 complete outline of the additional or new evidence and set out the  
4 reason why it was not presented at the original hearing and be  
5 supported by affidavits. The trial committee may grant or deny the  
6 additional hearing in the exercise of its discretion.

7 Sec. 08.64.500. BOARD REVIEW AND DECISION. (a) Each proceeding  
8 in which a hearing has occurred shall be reviewed by the board upon  
9 the record made and filed with the board, together with the statements  
10 in support of or in opposition to trial committee findings, conclusions  
11 and recommendations. The board may, upon request, hear oral arguments  
12 from parties the board determines to be appropriate. Upon request,  
13 the board shall hear oral arguments from the person charged in the  
14 formal complaint or his counsel.

15 (b) A complete transcript of all proceedings, once a formal  
16 complaint has been issued, shall be made by the board and served on the  
17 person charged in the formal complaint or his counsel, within 20 days  
18 after receipt of the complete record by the board including oral argu-  
19 ment, if oral argument is made, otherwise within 20 days after the  
20 board receives the complete record without oral argument.

21 (c) In reviewing the complete record the board shall make findings  
22 and conclusions. If the board by majority vote is in agreement that  
23 the complaint should be dismissed, they shall dismiss the complaint.  
24 If the board by majority vote, feels that the person charged in the  
25 formal complaint should be censured, reprimanded, suspended or have  
26 his license revoked they shall serve notice on the person charged in  
27 the formal complaint of this decision and within 10 days of this de-  
28 cision the board shall execute this decision. A board member who does  
29 not agree with the majority of the board in censuring, reprimanding,

1 suspending or revoking the license of the person charged in the formal  
2 complaint shall set out his reasons for dissent from the majority in  
3 writing in as brief and concise a form as circumstances will permit.  
4 All dissents shall be made a part of the permanent record of the pro-  
5 ceedings.

6 (d) The board in reaching its decision may remand the case to the  
7 trial committee for further proceedings at any time before making final  
8 disposition of the matter.

9 (e) The board shall render its final decision within 90 days of  
10 receipt of the record from the trial committee unless the case is  
11 remanded to the trial committee. In the case of remand to the trial  
12 committee the trial committee shall have 30 days in which to return  
13 the complete record to the board and the board shall have 60 days from  
14 receipt of the complete record from the trial committee to render its  
15 final decision. The time of continuance granted at the request of the  
16 person charged in the formal complaint shall not be used in calculating  
17 the time periods allotted in this subsection for board action.

18 (f) A person who is censured, reprimanded, suspended or who has  
19 his license to practice medicine revoked by a decision of the board  
20 is entitled to judicial review as provided in the Administrative Pro-  
21 cedure Act (AS 44.62).

22 Sec. 08.64.510. PROCEDURE FOR REINSTATEMENT. (a) The board  
23 shall adopt regulations governing the reinstatement of persons who  
24 have had their licenses to practice medicine suspended under this  
25 chapter.

26 (b) The board shall adopt regulations setting out guidelines for  
27 persons to follow who wish to petition the board for reinstatement of  
28 their license to practice medicine when the license has been revoked.  
29 The regulations shall include but are not limited to a delineation of

1 the reasons the board will hear a petition for reinstatement of a  
2 license which has been revoked, the form of the petition, and the  
3 procedure for hearing of the petition.

4 Sec. 08.64.520. SUBPOENA POWER. The board or a trial committee  
5 appointed by the board has the power to issue subpoenas, including  
6 subpoenas duces tecum.

7 Sec. 08.64.530. ADMINISTERING OF OATHS AND EVIDENCE. The board  
8 or a trial committee may in any proceeding on a complaint or a formal  
9 complaint require evidence, including testimony to be taken under oath  
10 and to rule on the admissibility of the evidence according to the rules  
11 of evidence in civil cases. Any member of the board or a trial com-  
12 mittee is authorized to administer the oath set out in this section.  
13 Witnesses commanded by subpoena to appear and give evidence before the  
14 board or a trial committee shall be paid the same fees and mileage as  
15 witnesses subpoenaed to testify in the superior court. All subpoenas  
16 shall be issued in the name of the Alaska State Medical Board and signed  
17 by the president of the board or the chairman of the trial committee.  
18 Witnesses may be permitted to testify by affirmation, rather than  
19 under oath, in proper cases.

20 Sec. 08.64.540. DEPOSITIONS. The testimony of any witness may be  
21 taken by deposition in any matter pending before the board or a trial  
22 committee.

23 Sec. 08.64.550. CONTEMPT. A person who neglects or refuses to  
24 appear and give evidence as demanded by proper subpoena without just  
25 cause, or to be sworn or to affirm, or to answer a proper question is  
26 in contempt as in a civil case before the superior court and is  
27 punishable upon petition to a superior court in the same manner.

28 Sec. 08.64.560. SERVICE. When the service of a notice or other  
29 paper is required by this chapter, the service is valid if made

1 personally wherever the recipient is found, or by certified mail, or  
2 upon counsel of record in accordance with the rules of civil procedure  
3 pertaining to service of papers on counsel.

4 Sec. 08.64.570. COUNSEL AND STAFF. The board may retain full- or  
5 part-time counsel and clerical and administrative help as it considers  
6 necessary and appropriate to carry out its duties under this chapter.  
7 A trial committee may retain part-time counsel and clerical help as it  
8 considers necessary and appropriate to carry out its duties under this  
9 chapter.

10 Sec. 08.64.580. IMMUNITY FROM CIVIL LIABILITY. (a) A person  
11 who brings a complaint against another who is licensed to practice  
12 medicine under this chapter is immune from civil liability to the  
13 person against whom the complaint is brought in the absence of a showing  
14 that the complaint was maliciously made.

15 (b) Members of the State Medical Board and persons appointed by  
16 the board to carry out the provisions of this chapter are immune from  
17 civil liability to the person against whom the board is proceeding so  
18 long as they pursue their duties under this chapter in good faith.

19 Sec. 08.64.590. STATE DEBT. Nothing in this chapter may be con-  
20 strued to give authority to the State Medical Board or its appointees  
21 to create a debt of the state.

22 \* Sec. 2. AS 08.64.315(6) is amended to read:

23 (6) license renewal, biennial, active. . . . \$300 [\$100]

24 \* Sec. 3. This Act takes effect on July 1, 1971.  
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