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Referred: Finance

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

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SENATE CS FOR CS FOR HOUSE BILL NO. 332 (HESS)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to professional licensing and to the
7 regulation of the practice of medicine, and extending
8 the termination date of the State Medical Board; and
9 providing for an effective date."

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

11 * Section 1. AS 08.01.050 is amended by adding a new subsection to
12 read:

13 (c) After consulting with the State Medical Board (AS 08.64.-
14 010), the department shall employ an individual who is not a member of
15 the board to be assigned as the investigator for the board. The
16 investigator shall

17 (1) conduct investigations into alleged violations of
18 AS 08.64, and into alleged violations of regulations and orders of the
19 State Medical Board;

20 (2) at the request of the State Medical Board, conduct
21 investigations based on complaints filed with the department or with
22 the board; and

23 (3) be directly responsible and accountable to the State
24 Medical Board, except that only the department has authority to termi-
25 nate the investigator's employment and the department shall provide
26 day to day and administrative supervision of the investigator.

27 * Sec. 2. AS 08.03.010(c)(11) is amended to read:

28 (11) State Medical Board (AS 08.64.010) -- June 30, 1987
29 [1983].

1 * Sec. 3. AS 08.64.010 is amended to read:

2 Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD.
3 The governor shall appoint a board of medical examiners, to be known
4 as the State Medical Board, consisting of five [LICENSED] physicians
5 licensed in the state and [,] residing in as many separate geograph-
6 ical areas of the state [ALASKA JUDICIAL DISTRICTS] as possible, and
7 two persons with no direct financial interest in the health care
8 industry.

9 * Sec. 4. AS 08.64.020 is amended to read:

10 Sec. 08.64.020. [STATE MEDICAL BOARD] TERM OF OFFICE. Members
11 shall be appointed for staggered terms [A TERM] of four years, subject
12 to confirmation by a majority of the members of the legislature in
13 joint session, and shall hold office until their successors are ap-
14 pointed and qualified. A person who has served two successive com-
15 plete terms may not be reappointed until four years after the expira-
16 tion of the second term [THE TERMS OF THE PUBLIC MEMBERS OF THE BOARD
17 SHALL BE STAGGERED SO THAT THEY DO NOT EXPIRE AT THE SAME TIME].

18 * Sec. 5. AS 08.64.040 is amended to read:

19 Sec. 08.64.040. REMOVAL OF MEMBERS. The governor may remove a
20 member of the board for cause. The board may by regulation provide
21 that unexcused absences from meetings is cause for removal.

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

23 Sec. 08.64.085. MEETINGS OF THE BOARD. The board shall meet at
24 least four times a year.

25 * Sec. 7. AS 08.64 is amended by adding a new section to read:

26 Sec. 08.64.101. DUTIES. The board shall
27 (1) examine and issue licenses to applicants;
28 (2) develop written guidelines to insure that licensing
29 requirements are not unreasonably burdensome and the issuance of

1 licenses is not unreasonably withheld or delayed;

2 (3) submit an annual report of its proceedings to the
3 governor, including a statement of money received and disbursed;

4 (4) after a hearing, impose disciplinary sanctions on per-
5 sons who violate this chapter, or the regulations or orders of the
6 board;

7 (5) adopt regulations insuring that renewal of licenses is
8 contingent upon proof of continued competency on the part of the
9 licensee.

10 * Sec. 8. AS 08.64.170(a) is amended to read:

11 (a) A person may not practice medicine, podiatry, osteopathy, or
12 acupuncture in the state unless the person is licensed under this
13 chapter, except that

14 (1) a physician assistant may examine, diagnose or treat
15 persons under the supervision, control, and responsibility of either a
16 physician licensed under this chapter or a physician exempted from li-
17 censing [LICENSURE] under AS 08.64.370;

18 (2) a physician-trained mobile intensive care paramedic may
19 render emergency lifesaving service; [AND]

20 (3) a person licensed under AS 08.36 may perform acupunc-
21 ture in the regular practice of dentistry, subject to the regulations
22 of the Board of Dental Examiners; and

23 (4) a person who is licensed or authorized under another
24 chapter of this title may engage in a practice that is authorized un-
25 der that chapter.

26 * Sec. 9. AS 08.64.240 is repealed and reenacted to read:

27 Sec. 08.64.240. LICENSE REFUSED. (a) The board may not grant a
28 license if

29 (1) the applicant fails or cheats during the examination;

1 (2) the board determines that the applicant is profes-
2 sionally unfit to practice medicine or osteopathy in the state; or

3 (3) the applicant fails to comply with a requirement of
4 this chapter.

5 (b) The board may refuse to grant a license to any applicant for
6 the same reasons that it may impose disciplinary sanctions under
7 AS 08.64.326.

8 * Sec. 10. AS 08.64.250 is amended to read:

9 Sec. 08.64.250. LICENSE [LICENSURE] BY CREDENTIALS [ENDORSE-
10 MENT]. The board may waive the examination requirement and license by
11 credentials [ENDORSEMENT] if the physician or podiatry applicant meets
12 the requirements of AS 08.64.200 or 08.64.209, submits proof of con-
13 tinued competence as required by regulation, pays the required fee and
14 has

15 (1) an active license from a board of medical examiners
16 established under the laws of a state or territory of the United
17 States or a province of Canada issued after thorough examination; or

18 (2) passed an examination given by the National Board of
19 Medical Examiners or the Federation of State Medical Boards of the
20 United States if the applicant is a physician, or passed an examina-
21 tion given by the National Board of Podiatry Examiners if the appli-
22 cant is a podiatrist.

23 * Sec. 11. AS 08.64.270(a) is amended to read:

24 (a) The board may issue a temporary permit to an applicant who
25 meets the requirements of AS 08.64.200, [OR] 08.64.205, or 08.64.209
26 and pays the required fee.

27 * Sec. 12. AS 08.64.311 is amended to read:

28 Sec. 08.64.311. [BIENNIAL] LICENSE RENEWAL. Licenses shall be
29 renewed four years after the date of issue [BIENNIALY].

1 prescription or dispensing of drugs;

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

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

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

11 (8) has demonstrated

12 (A) professional incompetence, gross negligence or re-
13 peated negligent conduct;

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

17 (C) unfitness because of physical or mental disabil-
18 ity;

19 (9) engaged in unprofessional conduct or in lewd or immoral
20 conduct in connection with the delivery of professional services to
21 patients;

22 (10) has violated AS 18.16.010;

23 (11) has violated any code of ethics adopted by regulation
24 by the board;

25 (12) has denied care or treatment to a patient or person
26 seeking assistance from the physician if the only reason for the
27 denial is the failure or refusal of the patient to agree to arbitrate
28 as provided in AS 09.55.535(a); or

29 (13) has had a license or certificate to practice medicine

1 in another state, territory of the United States or a province or Can-
2 ada suspended or revoked unless the suspension or revocation was
3 caused by the failure of the licensee to pay fees to that state,
4 territory or province.

5 (b) In a case involving (a)(13) of this section, the final
6 findings of fact, conclusions of law and order of the authority that
7 suspended or revoked a license or certificate constitutes a prima
8 facie case that the license or certificate was suspended or revoked
9 and the grounds under which the suspension or revocation was granted.

10 * Sec. 15. AS 08.64 is amended by adding a new section to read:

11 Sec. 08.64.331. DISCIPLINARY SANCTIONS. (a) If the board finds
12 that a licensee has committed an act set out in AS 08.64.326(a), the
13 board may

- 14 (1) permanently revoke a license to practice;
15 (2) suspend a license for a determinate period of time;
16 (3) censure a licensee;
17 (4) issue a letter of reprimand;
18 (5) place a licensee on probationary status and require the
19 licensee to
20 (A) report regularly to the board on matters involving
21 the basis of probation;
22 (B) limit practice to those areas prescribed;
23 (C) continue professional education until a satisfac-
24 tory degree of skill has been attained in those areas determined
25 by the board to need improvement;
26 (6) impose limitations or conditions on the practice of a
27 licensee; or
28 (7) impose one or more of the sanctions set out in (1) -
29 (6) of this subsection.

1 (b) The board may end the probation of a licensee if it finds
2 that the deficiencies which required this sanction have been remedied.

3 (c) The board may summarily suspend a license before final hear-
4 ing or during the appeals process if the board finds that the licensee
5 poses a clear and immediate danger to the public health and safety if
6 the licensee continues to practice. A person whose license is sus-
7 pended under this section is entitled to a hearing by the board no
8 later than seven days after the effective date of the order and the
9 person may appeal the suspension after a hearing to a court of compe-
10 tent jurisdiction.

11 (d) The board may reinstate a license that has been suspended or
12 revoked if the board finds after a hearing that the applicant is able
13 to practice with reasonable skill and safety.

14 (e) The board may suspend a license upon receipt of a certified
15 copy of evidence that a license to practice medicine in another state
16 or territory of the United States or province of Canada has been
17 suspended or revoked. The suspension remains in effect until a hear-
18 ing can be held by the board.

19 (f) The board shall be consistent in the application of disci-
20 plinary sanctions. A significant departure from earlier decisions of
21 the board involving similar situations must be explained in findings
22 of fact or orders made by the board.

23 * Sec. 16. AS 08.64.336 is repealed and reenacted to read:

24 Sec. 08.64.336. DUTY OF PHYSICIANS AND HOSPITALS TO REPORT. (a)
25 A physician who professionally treats a person licensed to practice
26 medicine and surgery or osteopathy in this state for alcoholism or
27 drug addiction, or for mental, emotional or personality disorders,
28 shall report it to the board if the physician providing treatment
29 feels that the person may constitute a danger to the health and

1 welfare of that person's patients or the public if that person
2 continues in practice. The report shall state the name and address of
3 the person and the condition found.

4 (b) A hospital that restricts or refuses to grant hospital
5 privileges to a person licensed to practice medicine and surgery or
6 osteopathy in this state because that person poses a danger to the
7 public shall report to the board the name and address of the person
8 and the reasons for restricting or refusing to grant hospital privi-
9 leges.

10 (c) Upon receipt of a report under (a) or (b) of this section,
11 the board shall investigate the matter and, upon a finding of reason-
12 able cause, may appoint a committee of three qualified physicians to
13 examine the licensee and report their findings to the board.

14 (d) If the board finds that the licensee is unable to continue
15 to practice medicine and surgery or osteopathy with reasonable safety
16 to the licensee's patients or the public, it shall initiate action to
17 suspend, revoke, limit or condition the licensee's license to the
18 extent determined necessary for the protection of the public.

19 * Sec. 17. AS 08.64.360 is amended to read:

20 Sec. 08.64.360. PENALTY FOR PRACTICING WITHOUT A LICENSE OR IN
21 VIOLATION OF CHAPTER. Except for a physician assistant, [AND] a
22 physician-trained mobile intensive care paramedic under AS 08.64.170,
23 or a person licensed or authorized under another chapter of this title
24 who engages in practices for which that person is licensed or autho-
25 rized under that chapter, a person practicing medicine or osteopathy
26 in the state without a valid [OBTAINING AND FILING AN APPROPRIATE]
27 license or permit is guilty of a class A misdemeanor [AND UPON CON-
28 VICTION IS PUNISHABLE BY A FINE OF NOT LESS THAN \$50 NOR MORE THAN
29 \$100, OR BY IMPRISONMENT FOR NOT LESS THAN 10 DAYS NOR MORE THAN 90

1 DAYS, OR BY BOTH. EVIDENCE THAT THE DEFENDANT HAS FAILED TO FILE A
2 LICENSE WITH THE CLERK OF THE COURT IS PRIMA FACIE EVIDENCE THAT THE
3 DEFENDANT IS NOT LICENSED]. Each day of illegal practice is a sepa-
4 rate offense.

5 * Sec. 18. AS 08.64.380(2) is repealed and reenacted to read:

6 (2) "practice of medicine" or "practice of osteopathy"
7 means:

8 (A) for a fee, donation or other consideration, to
9 diagnose, treat, operate on, prescribe for, or administer to, any
10 human ailment, blemish, deformity, disease, disfigurement, disor-
11 der, injury, or other mental or physical condition; or to attempt
12 to perform or represent that a person is authorized to perform
13 any of the acts set out in this subparagraph;

14 (B) to use or publicly display a title in connection
15 with a person's name including "doctor of medicine," "physician,"
16 "M.D.," or "doctor of osteopathic medicine" or "D.O." or a
17 specialist designation including "surgeon," "dermatologist," or a
18 similar title, or any title which tends to show that the person
19 is willing or qualified to diagnose or treat the sick or injured;

20 * Sec. 19. AS 08.64.030, 08.64.140, 08.64.200(1), 08.64.325, 08.64.330,
21 and 08.64.380(3) are repealed.

22 * Sec. 20. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).

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