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Referred: Health, Education &  
Social Services, Labor &  
Commerce and Finance

BY GRUENBERG, MARTIN AND  
PIGNALBERI BY REQUEST

1 IN THE HOUSE

2 HOUSE BILL NO. 396

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to regulation of the practice of  
7 professional counseling; amending Rule 504 of the  
8 Alaska Rules of Evidence; and providing for an  
9 effective date."

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

11 \* Section 1. LEGISLATIVE FINDINGS, PURPOSE. The legislature finds that  
12 professional counseling is a practice that affects the public health,  
13 safety, and welfare and that the activities of persons who represent them-  
14 selves to the public as professional counselors require regulation and  
15 control by the state in the public interest.

16 \* Sec. 2. AS 08.01.010 is amended by adding a new paragraph to read:

17 (26) Board of Professional Counselors.

18 \* Sec. 3. AS 08.01.050(a) is amended to read:

19 (a) The department shall provide the following administrative  
20 and budgetary services when appropriate:

21 (1) collect fees and issue receipts;

22 (2) maintain records and files;

23 (3) issue and receive application forms;

24 (4) notify applicants of acceptance or rejection of appli-  
25 cants as determined by the board;

26 (5) designate dates examinations are to be held and notify  
27 applicants;

28 (6) publish notice of examination;

29 (7) arrange space for holding examinations;

- 1 (8) notify applicants of results of examinations;  
2 (9) issue licenses and certificates or temporary licenses  
3 or certificates as authorized by the board;  
4 (10) issue duplicate licenses or certificates upon proof by  
5 the licensee of loss of the original and payment by the licensee of a  
6 fee of \$2 except as otherwise provided in this title;  
7 (11) notify licensees of renewal dates at least 30 days  
8 before the expiration date of their licenses;  
9 (12) compile and maintain current a register of licenses;  
10 (13) answer routine inquiries;  
11 (14) maintain files relating to individual licensees;  
12 (15) arrange for printing and advertising;  
13 (16) purchase supplies;  
14 (17) employ secretarial help when needed;  
15 (18) perform other services which may be requested by the  
16 board;  
17 (19) provide investigative services to the boards estab-  
18 lished under AS 08.04, AS 08.20, AS 08.36, AS 08.64, AS 08.68, AS 08.-  
19 70, AS 08.71, AS 08.72, AS 08.80, AS 08.84, AS 08.85 and AS 08.86, for  
20 the purpose of assisting those boards in matters of professional  
21 discipline and in responding to consumer complaints.

22 \* Sec. 4. AS 08.03.010(c) is amended by adding a new paragraph to read:

- 23 (21) Board of Professional Counselors (AS 08.85) -- June 30,  
24 1989.

25 \* Sec. 5. AS 08 is amended by adding a new chapter to read:

26 CHAPTER 85. PROFESSIONAL COUNSELORS.

27 ARTICLE 1. BOARD OF PROFESSIONAL COUNSELORS.

28 Sec. 08.85.010. BOARD ESTABLISHED. (a) There is established  
29 the Board of Professional Counselors.

1 (b) The board consists of five members appointed by the governor  
2 subject to confirmation by the legislature in joint session. Members  
3 serve for staggered terms of three years and until a successor is  
4 appointed and qualified. The board consists of four members who are  
5 licensed professional counselors and one public member. The governor  
6 shall appoint professional members of the board from recommendations  
7 of state affiliates of professional counseling organizations including  
8 the American Association for Counseling and Development.

9 (c) A member may serve on the board for no more than two com-  
10 plete consecutive terms.

11 (d) The governor may remove a member of the board for cause.  
12 The board may by regulation provide that unexcused absences from  
13 meetings is cause for removal.

14 (e) The board shall elect a chairperson, vice-chairperson,  
15 secretary and treasurer from among its members. Officers of the board  
16 serve for terms of one year.

17 (f) A board member may not supervise an applicant for a fee or  
18 participate in a decision concerning a person who the member has  
19 supervised.

20 Sec. 08.85.020. MEETINGS. The board shall meet twice annually  
21 and may hold special meetings at the call of the chairperson or on the  
22 written notice of three board members.

23 Sec. 08.85.030. POWERS AND DUTIES OF THE BOARD. The board shall

24 (1) examine applicants and issue licenses to those appli-  
25 cants it finds qualified;

26 (2) issue certificates to licensed professional counselors  
27 who meet standards determined by the board for specialty designation;

28 (3) establish continuing education requirements for license  
29 renewal;

- 1           (4) adopt a code of ethical practice;
- 2           (5) supply forms for applications, licenses, certificates,  
3 and other papers and records;
- 4           (6) hold hearings, and order the disciplinary sanction of a  
5 person who violates this chapter or a regulation of the board;
- 6           (7) report annually to the governor and the department on  
7 the board's proceedings during the year;
- 8           (8) enforce the provisions of this chapter and adopt or  
9 amend the regulations necessary to make the provisions of this chapter  
10 effective.

11           Sec. 08.85.040. PROCEDURES. The Administrative Procedure Act  
12 (AS 44.62) applies to regulations and proceedings under this chapter.

13           ARTICLE 2. EXAMINATIONS AND LICENSING.

14           Sec. 08.85.050. QUALIFICATIONS FOR LICENSE. The board shall  
15 issue a license to practice professional counseling to a person who

- 16           (1) applies on a form provided by the board;
- 17           (2) pays the fees required under AS 08.85.100;
- 18           (3) furnishes evidence satisfactory to the board that the  
19 person has not engaged in conduct that is a ground for imposing disci-  
20 plinary sanctions under AS 08.85.110;
- 21           (4) holds a master's degree or doctorate that is primarily  
22 counseling in content from a regionally accredited institution  
23 approved by the board;
- 24           (5) has three years of full-time supervised experience in  
25 professional counseling; an applicant may subtract one year of the  
26 required professional experience for every 30 graduate semester hours  
27 from an accredited institution obtained beyond the requirements for a  
28 master's degree if the hours are clearly related to professional  
29 counseling; however, an applicant must have at least one year of

1 required professional experience;

2 (6) has declared areas of professional competence in a  
3 statement of professional intent describing the intended use of the  
4 license, the client populations with whom the applicant will work, and  
5 areas of specialization; and

6 (7) successfully completes the examination administered by  
7 the board.

8 Sec. 08.85.060. EXAMINATIONS. (a) The board shall conduct  
9 examinations for licensure at least twice each year. Examination may  
10 be written, oral, experiential, or a combination of these. The exami-  
11 nation content must include theoretical and applied techniques and  
12 must be comparable to the examination administered by the National  
13 Board for Certified Counselors. The name of the applicant may not be  
14 disclosed to the examiner grading the examination until the grading is  
15 completed.

16 (b) An applicant who fails an examination under this section may  
17 not be admitted to a subsequent examination for a period of six months  
18 from the date of the examination that was failed.

19 Sec. 08.85.070. LICENSURE BY CREDENTIALS. The board may by  
20 regulation provide for the licensing without examination of a person  
21 who meets the requirements of AS 08.85.050(1) - (6) and who

22 (1) is currently licensed in another state with licensing  
23 requirements at least equivalent in scope, quality and difficulty to  
24 those of this state at the time of licensure; or

25 (2) has passed the examination of the National Board for  
26 Certified Counselors and holds a current certification as a national  
27 certified counselor.

28 Sec. 08.85.080. SPECIALTY DESIGNATION. (a) A person licensed  
29 under this chapter may apply to the board for specialty designation in

1 a specialty recognized by the American Association for Counseling  
2 Development. The board shall issue a specialty designation certifi-  
3 cate if the board finds that the applicant meets the recognized mini-  
4 mum standards as established by nationally recognized certification  
5 agencies.

6 (b) A professional counselor may not claim or advertise a coun-  
7 seling specialty or incorporate the specialty designation into a  
8 professional title unless the counselor holds a specialty designation  
9 certificate from the board.

10 (c) A person licensed under this chapter may render services of  
11 an appropriate nature without specialty designation within the limits  
12 of ethical practice and if the services conform to the person's state-  
13 ment of professional intent and statement of professional disclosure  
14 filed with the board.

15 Sec. 08.85.090. RENEWAL. A license issued under AS 08.85.050 or  
16 08.85.070 expires two years from the date of issue and may be renewed  
17 upon payment of the required fee and the submission of evidence satis-  
18 factory to the board that the counselor has met the continuing educa-  
19 tion requirements of the board and has not committed an act that is a  
20 ground for discipline under AS 08.85.110.

21 Sec. 08.85.100. FEES. The board shall by regulation establish  
22 fees for application, examination, reexamination, licensing, specialty  
23 certification, and renewal of licenses.

24 ARTICLE 3. UNLAWFUL ACTS.

25 Sec. 08.85.110. GROUNDS FOR DISCIPLINE, SUSPENSION OR REVOCATION  
26 OF LICENSE. After a hearing the board may impose a disciplinary  
27 sanction on a person licensed under this chapter if the board finds  
28 that the licensee

29 (1) used or knowingly cooperated in deceit, fraud, or

- 1 intentional misrepresentation to obtain a license or certificate;
- 2 (2) engaged in deceit, fraud, or intentional misrepresenta-  
3 tion in the course of providing professional services or engaging in  
4 professional activities;
- 5 (3) advertised professional services in a false or mislead-  
6 ing manner;
- 7 (4) has been convicted of a felony or other crime that  
8 affects the licensee's ability to continue to practice competently and  
9 safely;
- 10 (5) intentionally or negligently engaged in the performance  
11 of client care, or permitted the performance of client care by persons  
12 under the licensee's supervision, that does not conform to minimum  
13 professional standards regardless of whether actual injury to the  
14 client occurred;
- 15 (6) failed to comply with this chapter, with a regulation  
16 adopted under this chapter, or with an order of the board;
- 17 (7) continued to practice after becoming unfit due to  
18 (A) professional incompetence;  
19 (B) failure to keep informed of or use current profes-  
20 sional theories or practices;  
21 (C) addiction or severe dependence on alcohol or other  
22 drugs that impairs the licensee's ability to practice safely;  
23 (D) physical or mental disability;
- 24 (8) engaged in lewd or immoral conduct in connection with  
25 the delivery of professional service to clients.

26 Sec. 08.85.120. DISCIPLINARY SANCTIONS. (a) If it finds that a  
27 licensee is guilty of an offense under AS 08.85.110, the board may  
28 impose the following sanctions singly or in combination:

- 29 (1) permanently revoke a license to practice;

1           (2) suspend a license for a stated period of time;  
2           (3) censure a licensee;  
3           (4) issue a letter of reprimand;  
4           (5) place a licensee on probationary status and require the  
5 licensee to

6                   (A) report regularly to the board upon matters involv-  
7 ing the basis of probation;

8                   (B) limit practice to those areas prescribed;

9                   (C) continue professional education until the licensee  
10 attains a satisfactory level of competence in those areas deter-  
11 mined by the board to need improvement;

12           (6) impose limitations or conditions on the practice of a  
13 licensee.

14           (b) The board may withdraw probation status if it finds that the  
15 deficiencies that required the sanction have been remedied.

16           (c) The board may summarily suspend a license before final  
17 hearing or during the appeals process if the board finds that con-  
18 tinued practice by the licensee poses a clear and immediate danger to  
19 the public health and safety. A person whose license is suspended  
20 under this section is entitled to a hearing by the board no later than  
21 seven days after the effective date of the order. If, after a hear-  
22 ing, the board upholds the suspension, the person may appeal the  
23 suspension to a court of competent jurisdiction.

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

27           (e) The board shall seek consistency in the application of  
28 disciplinary sanctions, and shall explain a significant departure from  
29 prior decisions involving similar situations in findings of fact or

1 orders.

2 Sec. 08.85.130. PENALTIES. A person who violates this chapter  
3 or regulations adopted under this chapter for which no specific penal-  
4 ty is provided is guilty of a class B misdemeanor.

5 ARTICLE 4. GENERAL PROVISIONS.

6 Sec. 08.85.140. USE OF TITLE. A person who is not licensed  
7 under this chapter may not advertise or hold out to the public that  
8 the person is licensed and may not use the title "licensed profes-  
9 sional counselor," claim certification in a specialty under this  
10 chapter, or use any words, letters, titles, or figures indicating or  
11 implying that the person is a professional counselor licensed under  
12 this chapter.

13 Sec. 08.85.150. PRIVILEGED COMMUNICATION. (a) A person li-  
14 censed under this chapter may not reveal to another person a communi-  
15 cation made to the licensee by a client about a matter concerning  
16 which the client has employed the licensee in a professional capacity.  
17 This section does not apply to a case conference with other licensees  
18 or if the client in writing authorized the licensee to reveal a com-  
19 munication.

20 (b) An employee of a licensee may not reveal a communication  
21 without the written consent of the employer or the client.

22 Sec. 08.85.160. PROFESSIONAL DISCLOSURE. A person licensed  
23 under this chapter or an agency employing a person licensed under this  
24 chapter shall furnish each client with a copy of the licensee's state-  
25 ment of professional disclosure before charging the client a fee for  
26 counseling services. The statement shall be consistent with the  
27 licensee's statement of professional intent under AS 08.85.050 and  
28 shall contain other information required by the board. The licensee  
29 shall file a copy of the statement of professional disclosure with the

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27 licensee's statement of professional intent under AS 08.85.050 and  
28 shall contain other information required by the board. The licensee  
29 shall file a copy of the statement of professional disclosure with the

1 board.

2 Sec. 08.85.170. EXEMPTIONS. This chapter does not apply to a  
3 person who, in the performance of professional activities within the  
4 scope of the person's employment, practices counseling

5 (1) in an agency or social service program of the state or  
6 federal government or of a political subdivision of the state;

7 (2) in an accredited public educational institution or a  
8 licensed hospital or long-term care facility;

9 (3) as part of a profession otherwise licensed in this  
10 state;

11 (4) as a clergyperson.

12 Sec. 08.85.190. DEFINITIONS. In this chapter

13 (1) "board" means the Board of Professional Counselors;

14 (2) "counseling procedures" means engaging in methods and  
15 techniques that include

16 (A) "appraisal," which means selecting, administering,  
17 scoring and interpreting instruments designed to assess an indi-  
18 vidual's aptitudes, attitudes, abilities, achievement, interests,  
19 and personal characteristics, and the use of nonstandardized  
20 methods and techniques for understanding human behavior in rela-  
21 tion to coping with, adapting to, or changing life situations;

22 (B) "consulting," which means the application of  
23 scientific principles and procedures in counseling, guidance and  
24 human development to provide assistance in understanding and  
25 solving a current or potential problem that the consultee may  
26 have in relation to another party, whether an individual, group  
27 or organization;

28 (C) "counseling," which means assisting an individual,  
29 group, or organization through the counseling relationship, to

1 develop understanding of intrapersonal and interpersonal prob-  
2 lems, to define goals, to make decisions, plan a course of action  
3 reflecting the counselee's needs, interests and abilities, and to  
4 use informational and community resources as these procedures are  
5 related to personal, social, education, career, and vocational  
6 development and adjustment;

7 (D) "referral," which means evaluating information to  
8 identify needs or problems of the counselee and to determine the  
9 advisability of referral to other specialists, informing the  
10 counselee of the judgment, and communicating as requested or  
11 appropriate to referral sources;

12 (3) "department" means the Department of Commerce and  
13 Economic Development;

14 (4) "practice of counseling" means to render or offer to  
15 render for a fee to individuals, groups, organizations, or the public  
16 a counseling service involving the application of principles, methods,  
17 or procedures of counseling to assist individuals in achieving more  
18 effective personal, social, educational, career, and vocational devel-  
19 opment and adjustment.

20 \* Sec. 6. AS 44.62.330(a) is amended by adding a new paragraph to read:

21 (53) Board of Professional Counselors.

22 \* Sec. 7. AS 47.17.070(6) is amended to read:

23 (6) "practitioner of the healing arts" includes chiropractors,  
24 dentists, health aides, nurses, optometrists, osteopaths, physical  
25 therapists, physicians, professional counselors, psychiatrists, psy-  
26 chologists, religious healing practitioners, and surgeons;

27 \* Sec. 8. INITIAL APPOINTMENTS TO THE BOARD. (a) Notwithstanding  
28 AS 08.85.010, the initial appointments to the Board of Professional Coun-  
29 selors shall be for terms as follows:

- 1           (1) one professional counselor to a term of one year;
- 2           (2) one professional counselor and the public member to terms of
- 3 two years;
- 4           (3) two professional counselors to terms of three years.

5           (b) In making initial appointments of professional members to the  
6 board, the governor shall consider a person licensed for the purpose of  
7 AS 08.85.010 if the person would be entitled to a license under AS 08.85.-  
8 050 or 08.85.070. The Board of Professional Counselors shall issue a  
9 license to practice professional counseling to each professional member  
10 appointed under this section.

11       \* Sec. 9. Until June 30, 1986, a person who holds certification as a  
12 national certified counselor from the National Board of Certified  
13 Counselors may,

14           (1) notwithstanding AS 08.85.140, continue to use appropriate  
15 professional titles without being licensed under AS 08.85.050;

16           (2) notwithstanding AS 08.85.050, apply for and receive a  
17 license to practice by submitting evidence satisfactory to the Board of  
18 Professional Counselors that the person meets the requirements of  
19 AS 08.85.050(1) - (6); and

20           (3) notwithstanding AS 08.85.080, claim or advertise specialty  
21 designation without holding a specialty designation certificate under  
22 AS 08.85.080.

23       \* Sec. 10. AS 08.85.150, enacted by sec. 5 of this Act has the effect  
24 of amending Rule 504 of the Alaska Rules of Evidence by creating a  
25 privilege to refuse to disclose information for licensed professional  
26 counselors and for their employees.

27       \* Sec. 11. This Act takes effect July 1, 1985.