

Introduced: 1/23/87  
Referred: Labor & Commerce,  
Judiciary and Finance

1 IN THE HOUSE BY SUND

2 HOUSE BILL NO. 70

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the State Medical Board; and  
7 amending Rule 504(d) of the Alaska Rules of Evi-  
8 dence."

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

10 \* Section 1. AS 08.01.065 is amended by adding a new subsection to  
11 read:

12 (e) An amount equal to the amount of fees collected for applica-  
13 tions, licenses, and permits issued under AS 08.64 during the previous  
14 calendar year shall be allocated each year by the department for  
15 services provided to or on behalf of the State Medical Board by the  
16 division of occupational licensing.

17 \* Sec. 2. AS 08.64.210(b) is amended to read:

18 (b) The application for examination shall be submitted to the  
19 board at least 120 [40] days before the examination date.

20 \* Sec. 3. AS 08.64.220(a) is amended to read:

21 (a) The board shall make the examination written and [ORAL AND]  
22 sufficient to test the applicant's fitness to practice medicine or  
23 osteopathy.

24 \* Sec. 4. AS 08.64.313 is repealed and reenacted to read:

25 Sec. 08.64.313. INACTIVE LICENSE. A licensee who does not  
26 practice in the state may hold an inactive license. A person who  
27 practices in the state, however infrequently, shall hold an active  
28 license.

29 \* Sec. 5. AS 08.64.331(a) is amended to read:

1 (a) If the board finds that a licensee has committed an act set  
2 out in AS 08.64.326(a), the board may

3 (1) permanently revoke a license to practice;

4 (2) suspend a license for a determinate period of time;

5 (3) censure a licensee;

6 (4) issue a letter of reprimand;

7 (5) place a licensee on probationary status and require the  
8 licensee to

9 (A) report regularly to the board on matters involving  
10 the basis of probation;

11 (B) limit practice to those areas prescribed;

12 (C) continue professional education until a satisfac-  
13 tory degree of skill has been attained in those areas determined  
14 by the board to need improvement;

15 (6) impose limitations or conditions on the practice of a  
16 licensee; [OR]

17 (7) impose a civil fine of not more than \$10,000; or

18 (8) impose one or more of the sanctions set out in (1) -  
19 (7) [(1) - (6)] of this subsection.

20 \* Sec. 6. AS 08.64.336(b) is amended to read:

21 (b) A hospital that places a consultation requirement on,  
22 revokes, suspends, conditions, restricts, or refuses to grant hospital  
23 privileges to a person licensed to practice medicine and surgery or  
24 osteopathy in this state [BECAUSE THAT PERSON POSES A DANGER TO THE  
25 PUBLIC] shall report to the board the name and address of the person  
26 and the reasons for placing a consultation requirement on, revoking,  
27 suspending, conditioning, restricting, or refusing to grant hospital  
28 privileges. A report is required under this subsection regardless of  
29 whether the licensee voluntarily agrees to the action taken by the

1 hospital. A report is not required if the sole reason for the action  
2 is the licensee's failure to complete hospital records in a timely  
3 manner or to attend staff or committee meetings.

4 \* Sec. 7. AS 08.64.336(c) is amended to read:

5 (c) Upon receipt of a report under (a) or (b) of this section,  
6 the board shall investigate the matter and, upon a finding that there  
7 is [OF] reasonable cause to believe that a practitioner is a danger to  
8 the health or welfare of the public or the practitioner's patients,  
9 the board [,] may appoint a committee of three qualified physicians to  
10 examine the licensee and report their findings to the board. Notwith-  
11 standing the provisions of this subsection, the board may summarily  
12 suspend a license under AS 08.64.331(c) before appointing an examining  
13 committee or before the committee makes or reports their findings.

14 \* Sec. 8. AS 08.64.336 is amended by adding new subsections to read:

15 (e) A physician, hospital, or hospital committee that in good  
16 faith submits a report under this section or participates in an inves-  
17 tigation or judicial proceeding related to a report submitted under  
18 this section is immune from civil or criminal liability for the sub-  
19 mission or participation.

20 (f) A physician or hospital may not refuse to submit a report  
21 under this section or withhold from the board or its investigators  
22 evidence related to an investigation under this section on the grounds  
23 that the report or evidence concerns a matter that was disclosed in  
24 the course of a confidential physician-patient or psychotherapist-  
25 patient relationship or during a meeting of a hospital medical staff,  
26 governing body, or committee that was exempt from the public meeting  
27 requirements of AS 44.62.310.

28 \* Sec. 9. AS 08.64 is amended by adding new sections to read:

29 Sec. 08.64.337. SUBPOENA POWER. For the purposes of an

1 investigation under this chapter, the board may issue a subpoena to,  
2 administer or cause to be administered an oath to, and examine or  
3 cause to have examined the parts of the books, papers, and records of  
4 a person to whom the board has issued a license or permit or to a  
5 person the board reasonably believes has information relevant to the  
6 investigation. The superior court, on application of the board, shall  
7 enforce the attendance and testimony of witnesses and the production  
8 and examination of books, papers, and records.

9 Sec. 08.64.338. MEDICAL AND PSYCHIATRIC EXAMS. For the purposes  
10 of an investigation under this chapter, the board may order a person  
11 to whom it has issued a license or permit to submit to a medical or  
12 psychiatric examination by a physician or other practitioner of the  
13 healing arts appointed by the board. An examination shall be at the  
14 board's expense. An examination may include the required submission  
15 of biological specimens requested by the examining physician or prac-  
16 titioner.

17 \* Sec. 10. Rule 504(d) of the Alaska Rules of Evidence is amended to  
18 read:

19 (d) EXCEPTIONS. There is no privilege under this rule:

20 (1) Condition and Element of Claim or Defense. As to  
21 communications relevant to the physical, mental or emotional condition  
22 of the patient in any proceeding in which the condition of the patient  
23 is an element of the claim or defense of the patient, of any party  
24 claiming through or under the patient, of any person raising the  
25 patient's condition as an element of his own case, or of any person  
26 claiming as a beneficiary of the patient through a contract to which  
27 the patient is or was a party; or after the patient's death, in any  
28 proceeding in which any party puts the condition in issue.

29 (2) Crime or Fraud. If the services of the physician or

1 psychotherapist were sought, obtained or used to enable or aid anyone  
2 to commit or plan a crime or fraud or to escape detection or apprehen-  
3 sion after the commission of a crime or a fraud.

4 (3) Breach of Duty Arising Out of Physician-Patient Rela-  
5 tionship. As to a communication relevant to an issue of breach, by  
6 the physician, or by the psychotherapist, or by the patient, of a duty  
7 arising out of the physician-patient or psychotherapist-patient rela-  
8 tionship.

9 (4) Proceedings for Hospitalization. For communications  
10 relevant to an issue in proceedings to hospitalize the patient for  
11 physical, mental or emotional illness, if the physician or psycho-  
12 therapist, in the course of diagnosis or treatment, has determined  
13 that the patient is in need of hospitalization.

14 (5) Required Report. As to information that the physician  
15 or psychotherapist or the patient is required to report to a public  
16 employee, or as to information required to be recorded in a public  
17 office, if such report or record is open to public inspection, or as  
18 to information or matters contained in or reasonably raised by a  
19 report submitted under AS 08.64.336.

20 (6) Examination by Order of Judge. As to communications  
21 made in the course of an examination ordered by the court of the  
22 physical, mental or emotional condition of the patient, with respect  
23 to the particular purpose for which the examination is ordered unless  
24 the judge orders otherwise. This exception does not apply where the  
25 examination is by order of the court upon the request of the lawyer  
26 for the defendant in a criminal proceeding in order to provide the  
27 lawyer with information needed so that he may advise the defendant  
28 whether to enter a plea based on insanity or to present a defense  
29 based on his mental or emotional condition.

1                   (7) Criminal Proceeding. For physician-patient communica-  
2           tions in a criminal proceeding. This exception does not apply to the  
3           psychotherapist-patient privilege.

4           \* Sec. 11. AS 08.64.260(b), (c), and (d) are repealed.