

Offered: 3/11/87
Referred: Finance

5-0291L

Original sponsors: Sund, Koponen,
Taylor and Zawacki

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 70 (Judiciary)
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) To the extent that appropriations are available for the pur-
13 pose, and notwithstanding the requirement of AS 37.07.080(e) that
14 approval of the office of management and budget is required, an amount
15 equal to one-half of the amount of fees collected during the previous
16 two calendar years for applications, licenses, and permits issued
17 under AS 08.64 shall be allocated each fiscal year by the department,
18 without the approval of the office of management and budget, for
19 services provided to or on behalf of the State Medical Board by the
20 division of occupational licensing.

21 * Sec. 2. AS 08.64.101 is amended to read:

22 Sec. 08.64.101. DUTIES. The board shall

23 (1) examine and issue licenses to applicants;

24 (2) develop written guidelines to insure that licensing
25 requirements are not unreasonably burdensome and the issuance of
26 licenses is not unreasonably withheld or delayed;

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

29 (4) after a hearing, impose disciplinary sanctions on

1 persons who violate this chapter, or the regulations or orders of the
2 board;

3 (5) adopt regulations insuring that renewal of licenses is
4 contingent upon proof of continued competency on the part of the
5 licensee;

6 (6) hire an executive secretary and necessary staff;

7 (7) contract with private professional organizations to
8 establish an impaired medical professionals program to treat persons
9 licensed under this chapter who abuse addictive substances.

10 * Sec. 3. AS 08.64.200 is amended by adding a new subsection to read:

11 (b) The board shall determine whether each physician applicant
12 has any disciplinary or other actions recorded in the nationwide
13 disciplinary data bank of the Federation of State Medical Boards.

14 * Sec. 4. AS 08.64.210(b) is repealed and reenacted to read:

15 (b) The deadline for submitting an exam application to the board
16 shall be established by regulation.

17 * Sec. 5. AS 08.64.220(a) is repealed and reenacted to read:

18 (a) The board shall offer a written examination sufficient to
19 test the applicant's fitness to practice medicine or osteopathy.

20 * Sec. 6. AS 08.64.255 is amended to read:

21 Sec. 08.64.255. INTERVIEW REQUIRED. All applicants for licen-
22 sure must [A LICENSE UNDER AS 08.64.250 SHALL] be interviewed in
23 person by at least one member of the board before a license will be
24 issued. The interview must [SHALL] be recorded. If [, AND, IF] the
25 application is denied on the basis of the interview, the denial must
26 [SHALL] be stated in writing, with the reasons for it, and the record
27 must [SHALL] be preserved.

28 * Sec. 7. AS 08.64.311 is repealed and reenacted to read:

29 Sec. 08.64.311. LICENSE RENEWAL. The department shall establish

1 license renewal dates. Licenses shall be renewed biennially, unless
2 the commissioner, by regulation, provides for more frequent renewals.

3 * Sec. 8. AS 08.64.313 is repealed and reenacted to read:

4 Sec. 08.64.313. INACTIVE LICENSE. A licensee who does not
5 practice in the state may hold an inactive license. A person who
6 practices in the state, however infrequently, shall hold an active
7 license.

8 * Sec. 9. AS 08.64.331(a) is amended to read:

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

- 11 (1) permanently revoke a license to practice;
- 12 (2) suspend a license for a determinate period of time;
- 13 (3) censure a licensee;
- 14 (4) issue a letter of reprimand;
- 15 (5) place a licensee on probationary status and require the

16 licensee to

17 (A) report regularly to the board on matters involving
18 the basis of probation;

19 (B) limit practice to those areas prescribed;

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

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

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

26 (8) impose one or more of the sanctions set out in (1) -
27 (7) [(1) - (6)] of this subsection.

28 * Sec. 10. AS 08.64.332 is repealed and reenacted to read:

29 Sec. 08.64.332. AUTOMATIC SUSPENSION FOR MENTAL INCOMPETENCY OR

1 **INSANITY.** Notwithstanding AS 44.62, if a person holding a license to
2 practice medicine or osteopathy under this chapter is adjudged mental-
3 ly incompetent or insane by a final order or adjudication of a court
4 of competent jurisdiction or by voluntary commitment to an institution
5 for the treatment of mental illness, the person's license shall be
6 suspended by the board. The suspension shall continue in effect until
7 the court finds or adjudges that the person has been restored to
8 reason or until a licensed psychiatrist approved by the board deter-
9 mines that the person has been restored to reason.

10 * Sec. 11. AS 08.64 is amended by adding a new section to read:

11 Sec. 08.64.335. **REPORTS OF DISCIPLINARY ACTION OR LICENSE SUS-**
12 **PENSION OR SURRENDER.** The board shall promptly report to the Federa-
13 tion of State Medical Boards for inclusion in the nationwide disci-
14 plinary data bank license refusals under AS 08.64.240, actions taken
15 by the board under AS 08.64.331, and license suspensions or surrenders
16 under AS 08.64.332 or 08.64.334.

17 * Sec. 12. AS 08.64.336 is repealed and reenacted to read:

18 Sec. 08.64.336. **DUTY OF PHYSICIANS AND HOSPITALS TO REPORT.** (a)
19 A physician who professionally treats a person licensed to practice
20 medicine or osteopathy in this state for alcoholism or drug addiction,
21 or for mental, emotional, or personality disorders, shall report it to
22 the board if the physician providing treatment feels that the person
23 may constitute a danger to the health and welfare of that person's
24 patients or the public if that person continues in practice. The
25 report shall state the name and address of the person and the condi-
26 tion found.

27 (b) A hospital that revokes, suspends, conditions, restricts,
28 or refuses to grant hospital privileges to, or imposes a consultation
29 requirement on, a person licensed to practice medicine or osteopathy

1 in the state shall report to the board the name and address of the
2 person and the reasons for the action. A hospital shall also report
3 to the board the name and address of a person licensed to practice
4 medicine or osteopathy in the state if the person resigns hospital
5 staff privileges while under investigation by the hospital or a com-
6 mittee of the hospital and the investigation could result in the
7 revocation, suspension, conditioning, or restricting of, or the re-
8 fusal to grant, hospital privileges, or in the imposition of a consul-
9 tation requirement. A report is required under this subsection
10 regardless of whether the person voluntarily agrees to the action
11 taken by the hospital. A report is not required if the sole reason
12 for the action is the person's failure to complete hospital records in
13 a timely manner or to attend staff or committee meetings. In this
14 subsection "consultation requirement" means a restriction placed on a
15 person's existing hospital privileges requiring consultation with a
16 designated physician or group of physicians in order to continue to
17 exercise the hospital privileges.

18 (c) Upon receipt of a report under (a) or (b) of this section,
19 the board shall investigate the matter and, upon a finding that there
20 is reasonable cause to believe that the person who is the subject of
21 the report is a danger to the health or welfare of the public or to
22 the person's patients, the board may appoint a committee of three
23 qualified physicians to examine the person and report its findings to
24 the board. Notwithstanding the provisions of this subsection, the
25 board may summarily suspend a license under AS 08.64.331(c) before
26 appointing an examining committee or before the committee makes or
27 reports its findings.

28 (d) If the board finds that a person licensed to practice medi-
29 cine or osteopathy is unable to continue in practice with reasonable

1 safety to the person's patients or to the public, the board shall
2 initiate action to suspend, revoke, limit, or condition the person's
3 license to the extent necessary for the protection of the person's
4 patients and the public.

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

10 (f) A physician or hospital may not refuse to submit a report
11 under this section or withhold from the board or its investigators
12 evidence related to an investigation under this section on the grounds
13 that the report or evidence concerns a matter that was disclosed in
14 the course of a confidential physician-patient or psychotherapist-
15 patient relationship or during a meeting of a hospital medical staff,
16 governing body, or committee that was exempt from the public meeting
17 requirements of AS 44.62.310.

18 * Sec. 13. AS 08.64 is amended by adding a new section to read:

19 Sec. 08.64.338. MEDICAL AND PSYCHIATRIC EXAMS. For the purposes
20 of an investigation under this chapter, the board may order a person
21 to whom it has issued a license or permit to submit to a medical or
22 psychiatric examination by a physician or other practitioner of the
23 healing arts appointed by the board. An examination shall be at the
24 board's expense. An examination may include the required submission
25 of biological specimens requested by the examining physician or prac-
26 titioner.

27 * Sec. 14. Rule 504(d) of the Alaska Rules of Evidence is amended to
28 read:

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

1 (1) Condition and Element of Claim or Defense. As to
2 communications relevant to the physical, mental or emotional condition
3 of the patient in any proceeding in which the condition of the patient
4 is an element of the claim or defense of the patient, of any party
5 claiming through or under the patient, of any person raising the
6 patient's condition as an element of his own case, or of any person
7 claiming as a beneficiary of the patient through a contract to which
8 the patient is or was a party; or after the patient's death, in any
9 proceeding in which any party puts the condition in issue.

10 (2) Crime or Fraud. If the services of the physician or
11 psychotherapist were sought, obtained or used to enable or aid anyone
12 to commit or plan a crime or fraud or to escape detection or apprehen-
13 sion after the commission of a crime or a fraud.

14 (3) Breach of Duty Arising Out of Physician-Patient Rela-
15 tionship. As to a communication relevant to an issue of breach, by
16 the physician, or by the psychotherapist, or by the patient, of a duty
17 arising out of the physician-patient or psychotherapist-patient rela-
18 tionship.

19 (4) Proceedings for Hospitalization. For communications
20 relevant to an issue in proceedings to hospitalize the patient for
21 physical, mental or emotional illness, if the physician or psycho-
22 therapist, in the course of diagnosis or treatment, has determined
23 that the patient is in need of hospitalization.

24 (5) Required Report. As to information that the physician
25 or psychotherapist or the patient is required to report to a public
26 employee, or as to information required to be recorded in a public
27 office, if such report or record is open to public inspection, or as
28 to information or matters contained in or reasonably raised by a
29 report submitted under AS 08.64.336, other than information that would

1 establish the identity of a patient, unless the court finds that it is
2 necessary to admit the identifying information in order to serve the
3 interests of justice.

4 (6) Examination by Order of Judge. As to communications
5 made in the course of an examination ordered by the court of the
6 physical, mental or emotional condition of the patient, with respect
7 to the particular purpose for which the examination is ordered unless
8 the judge orders otherwise. This exception does not apply where the
9 examination is by order of the court upon the request of the lawyer
10 for the defendant in a criminal proceeding in order to provide the
11 lawyer with information needed so that he may advise the defendant
12 whether to enter a plea based on insanity or to present a defense
13 based on his mental or emotional condition.

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

17 * Sec. 15. AS 08.64.260(b), (c), and (d) are repealed.