

Original sponsors: Sund, Koponen,
Taylor and Zawacki

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 70 (Finance) am

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 to
7 services provided for boards established under AS 08;
8 amending Rule 504(d) of the Alaska Rules of Evidence;
9 and providing for an effective date."

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

11 * Section 1. AS 08.01.050(c) is amended to read:

12 (c) After consulting with the State Medical Board (AS 08.64.-
13 010), the department shall employ two persons [AN INDIVIDUAL] who are
14 not members [IS NOT A MEMBER] of the board; one shall [TO] be assigned
15 as the investigator for the board; the other shall be assigned as the
16 executive secretary for the board. The investigator shall

17 (2) at the request of the State Medical Board, conduct
18 investigations based on complaints filed with the department or with
19 the board; and

20 (1) conduct investigations into alleged violations of AS
21 08.64, and into alleged violations of regulations and orders of the
22 State Medical Board;

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 08.01.065(c) is amended to read:

28 (c) A fee established under this section must reflect, to the
29 extent possible, the actual costs to the department of the activity

1 for which the fee is charged. The actual or anticipated costs to the
2 department of services provided to or on behalf of a board must re-
3 fect, to the extent possible, the amount of fees the department
4 collects from persons in occupations regulated by the board.

5 * Sec. 3. AS 08.03.010(c)(11) is amended to read:

6 (11) State Medical Board (AS 08.64.010) -- June 30, 1991
7 [JUNE 30, 1987].

8 * Sec. 4. AS 08.64.101 is amended to read:

9 Sec. 08.64.101. DUTIES. The board shall

10 (1) examine and issue licenses to applicants;

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

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

16 (4) after a hearing, impose disciplinary sanctions on
17 persons who violate this chapter, or the regulations or orders of the
18 board;

19 (5) adopt regulations insuring that renewal of licenses is
20 contingent upon proof of continued competency on the part of the
21 licensee; and

22 (6) coordinate with private professional organisations to
23 establish an impaired medical professionals program to treat persons
24 licensed under this chapter who abuse addictive substances.

25 * Sec. 5. AS 08.64.200 is amended by adding a new subsection to read:

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

29 * Sec. 6. AS 08.64.210(b) is repealed and reenacted to read:

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

3 * Sec. 7. AS 08.64.220(a) is repealed and reenacted to read:

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

6 * Sec. 8. AS 08.64.255 is amended to read:

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

14 * Sec. 9. AS 08.64.311 is repealed and reenacted to read:

15 Sec. 08.64.311. LICENSE RENEWAL. The department shall establish
16 license renewal dates. Licenses shall be renewed biennially, unless
17 the commissioner, by regulation, provides for more frequent renewals.

18 * Sec. 10. AS 08.64.313 is repealed and reenacted to read:

19 Sec. 08.64.313. INACTIVE LICENSE. A licensee who does not
20 practice in the state may hold an inactive license. A person who
21 practices in the state, however infrequently, shall hold an active
22 license.

23 * Sec. 11. AS 08.64.331(a) is amended to read:

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

- 26 (1) permanently revoke a license to practice;
27 (2) suspend a license for a determinate period of time;
28 (3) censure a licensee;
29 (4) issue a letter of reprimand;

1 (5) place a licensee on probationary status and require the
2 licensee to

3 (A) report regularly to the board on matters involving
4 the basis of probation;

5 (B) limit practice to those areas prescribed;

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

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

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

12 (8) impose one or more of the sanctions set out in (1) -
13 (7) [(1) - (6)] of this subsection.

14 * Sec. 12. AS 08.64.332 is repealed and reenacted to read:

15 Sec. 08.64.332. AUTOMATIC SUSPENSION FOR MENTAL INCOMPETENCY OR
16 INSANITY. Notwithstanding AS 44.62, if a person holding a license to
17 practice medicine or osteopathy under this chapter is adjudged mental-
18 ly incompetent or insane by a final order or adjudication of a court
19 of competent jurisdiction or by voluntary commitment to an institution
20 for the treatment of mental illness, the person's license shall be
21 suspended by the board. The suspension shall continue in effect until
22 the court finds or adjudges that the person has been restored to
23 reason or until a licensed psychiatrist approved by the board deter-
24 mines that the person has been restored to reason.

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

26 Sec. 08.64.335. REPORTS OF DISCIPLINARY ACTION OR LICENSE SUS-
27 PENSION OR SURRENDER. The board shall promptly report to the Federa-
28 tion of State Medical Boards for inclusion in the nationwide disci-
29 plinary data bank license refusals under AS 08.64.240, actions taken

1 by the board under AS 08.64.331, and license suspensions or surrenders
2 under AS 08.64.332 or 08.64.334.

3 * Sec. 14. AS 08.64.336 is repealed and reenacted to read:

4 Sec. 08.64.336. DUTY OF PHYSICIANS AND HOSPITALS TO REPORT. (a)
5 A physician who professionally treats a person licensed to practice
6 medicine or osteopathy in this state for alcoholism or drug addiction,
7 or for mental, emotional, or personality disorders, shall report it to
8 the board if there is probable cause that the person may constitute a
9 danger to the health and welfare of that person's patients or the
10 public if that person continues in practice. The report shall state
11 the name and address of the person and the condition found.

12 (b) A hospital that revokes, suspends, conditions, restricts,
13 or refuses to grant hospital privileges to, or imposes a consultation
14 requirement on, a person licensed to practice medicine or osteopathy
15 in the state shall report to the board the name and address of the
16 person and the reasons for the action. A hospital shall also report
17 to the board the name and address of a person licensed to practice
18 medicine or osteopathy in the state if the person resigns hospital
19 staff privileges while under investigation by the hospital or a com-
20 mittee of the hospital and the investigation could result in the
21 revocation, suspension, conditioning, or restricting of, or the re-
22 fusal to grant, hospital privileges, or in the imposition of a consul-
23 tation requirement. A report is required under this subsection re-
24 gardless of whether the person voluntarily agrees to the action taken
25 by the hospital. A report is not required if the sole reason for the
26 action is the person's failure to complete hospital records in a
27 timely manner or to attend staff or committee meetings. In this
28 subsection "consultation requirement" means a restriction placed on a
29 person's existing hospital privileges requiring consultation with a

1 designated physician or group of physicians in order to continue to
2 exercise the hospital privileges.

3 (c) Upon receipt of a report under (a) or (b) of this section,
4 the board shall investigate the matter and, upon a finding that there
5 is reasonable cause to believe that the person who is the subject of
6 the report is a danger to the health or welfare of the public or to
7 the person's patients, the board may appoint a committee of three
8 qualified physicians to examine the person and report its findings to
9 the board. Notwithstanding the provisions of this subsection, the
10 board may summarily suspend a license under AS 08.64.331(c) before
11 appointing an examining committee or before the committee makes or
12 reports its findings.

13 (d) If the board finds that a person licensed to practice medi-
14 cine or osteopathy is unable to continue in practice with reasonable
15 safety to the person's patients or to the public, the board shall
16 initiate action to suspend, revoke, limit, or condition the person's
17 license to the extent necessary for the protection of the person's
18 patients and the public.

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

24 (f) A physician or hospital may not refuse to submit a report
25 under this section or withhold from the board or its investigators
26 evidence related to an investigation under this section on the grounds
27 that the report or evidence

28 (1) concerns a matter that was disclosed in the course of a
29 confidential physician-patient or psychotherapist-patient relationship

1 or during a meeting of a hospital medical staff, governing body, or
2 committee that was exempt from the public meeting requirements of
3 AS 44.62.310; or

4 (2) is required to be kept confidential under AS 18.23.030.

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

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

14 * Sec. 16. AS 18.23.030 is amended by adding a new subsection to read:

15 (d) Notwithstanding the provisions of (b) and (c) of this
16 section, information contained in a report submitted to the State
17 Medical Board, and information gathered by the board during an inves-
18 tigation, under AS 08.64.336 is not subject to subpoena or discovery
19 unless and until the board takes action to suspend, revoke, limit, or
20 condition a license of the person who is the subject of the report or
21 investigation.

22 * Sec. 17. Rule 504(d) of the Alaska Rules of Evidence is amended to
23 read:

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

25 (1) Condition and Element of Claim or Defense. As to
26 communications relevant to the physical, mental or emotional condition
27 of the patient in any proceeding in which the condition of the patient
28 is an element of the claim or defense of the patient, of any party
29 claiming through or under the patient, of any person raising the

1 patient's condition as an element of his own case, or of any person
2 claiming as a beneficiary of the patient through a contract to which
3 the patient is or was a party; or after the patient's death, in any
4 proceeding in which any party puts the condition in issue.

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

9 (3) Breach of Duty Arising Out of Physician-Patient Rela-
10 tionship. As to a communication relevant to an issue of breach, by
11 the physician, or by the psychotherapist, or by the patient, of a duty
12 arising out of the physician-patient or psychotherapist-patient rela-
13 tionship.

14 (4) Proceedings for Hospitalization. For communications
15 relevant to an issue in proceedings to hospitalize the patient for
16 physical, mental or emotional illness, if the physician or psycho-
17 therapist, in the course of diagnosis or treatment, has determined
18 that the patient is in need of hospitalization.

19 (5) Required Report. As to information that the physician
20 or psychotherapist or the patient is required to report to a public
21 employee, or as to information required to be recorded in a public
22 office, if such report or record is open to public inspection, or as
23 to information or matters contained in or reasonably raised by a
24 report submitted under AS 08.64.336, other than information that would
25 establish the identity of a patient, unless the court finds that it is
26 necessary to admit the identifying information in order to serve the
27 interests of justice.

28 (6) Examination by Order of Judge. As to communications
29 made in the course of an examination ordered by the court of the

1 physical, mental or emotional condition of the patient, with respect
2 to the particular purpose for which the examination is ordered unless
3 the judge orders otherwise. This exception does not apply where the
4 examination is by order of the court upon the request of the lawyer
5 for the defendant in a criminal proceeding in order to provide the
6 lawyer with information needed so that he may advise the defendant
7 whether to enter a plea based on insanity or to present a defense
8 based on his mental or emotional condition.

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

12 * Sec. 18. AS 08.64.260(b), (c), and (d) are repealed.

13 * Sec. 19. The commissioner of commerce and economic development may
14 impose a one-time surcharge on persons licensed under AS 08.64 to cover the
15 costs during fiscal year 1988 of employing an investigator and an executive
16 secretary for the State Medical Board required under AS 08.01.050(c), as
17 amended by sec. 1 of this Act. In subsequent fiscal years, these positions
18 shall be considered services to the State Medical Board for purposes of
19 establishing fees under AS 08.01.065.

20 * Sec. 20. Section 19 of this Act takes effect on the effective date of
21 the section or sections of a version of the bill containing the operating
22 budget for fiscal year 1988 that authorizes fiscal year 1988 funding for
23 the positions of investigator and executive secretary of the State Medical
24 Board, established under AS 08.01.050(c), as amended by sec. 1 of this Act.