

Original sponsor(s): RULES/GOVERNOR

1 IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 146 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act granting immunity and indemnity relating to
7 certain occupational licensing functions; authorizing
8 temporary courtesy licenses for certain occupations;
9 relating to powers and duties of the State Medical
10 Board; requiring persons licensed by the State Med-
11 ical Board to report medical malpractice actions;
12 requiring the State Medical Board to make a report
13 relating to the use of malpractice claims histories
14 to determine medical competency and to impose sanc-
15 tions on its licensees; and providing for an effec-
16 tive date."

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

18 * Section 1. AS 08.02.020 is repealed and reenacted to read:

19 Sec. 08.02.020. IMMUNITY AND INDEMNITY RELATED TO LICENSING
20 FUNCTIONS. (a) An action for damages may not be brought against a
21 person who is or was a witness or investigator for, or a member,
22 employee, agent, or consultant of a board established under this
23 title, the Department of Commerce and Economic Development, or a peer
24 review committee established to review a licensing matter as a result
25 of an act or omission that occurred during the good faith performance
26 of actions related to and within the scope of functions of the board,
27 department, or committee under this title.

28 (b) A person who is or was a witness or investigator for, or a
29 member, employee, agent, or consultant of a board established under

1 this title, the department, or a peer review committee established to
2 review a licensing matter is not liable for civil damages as a result
3 of an act or omission that occurred during good faith performance of
4 actions related to and within the scope of functions of the board,
5 department, or committee under this title.

6 (c) The state shall insure or indemnify and protect a person
7 described in (b) of this section against financial loss and expense,
8 including reasonable legal fees and costs, arising out of a claim,
9 demand, suit, or judgment by reason of alleged negligence, alleged
10 violation of civil rights, or alleged wrongful act resulting in death
11 or bodily injury or accidental damage to or destruction of property if
12 the person at the time of the act or omission on which the claim,
13 demand, suit, or judgment is based was in good faith performing
14 actions related to and within the scope of functions of the board,
15 department, or peer review committee under this title.

16 * Sec. 2. AS 08.02 is amended by adding a new section to read:

17 Sec. 08.02.030. COURTESY LICENSES. (a) A board established
18 under this title and the Department of Commerce and Economic Develop-
19 ment, with respect to an occupation that it regulates under this
20 title, may by regulation establish criteria for issuing a temporary
21 courtesy license to nonresidents who enter the state so that, on a
22 temporary basis, they may practice the occupation regulated by the
23 board or the department.

24 (b) The regulations adopted under (a) of this section may in-
25 clude limitations relating to the

- 26 (1) duration of the license's validity;
- 27 (2) scope of practice allowed under the license; and
- 28 (3) other matters considered important by the board or the
- 29 department.

1 * Sec. 3. AS 08.64.101 is amended to read:

2 Sec. 08.64.101. DUTIES. The board shall

3 (1) examine and issue licenses to applicants;

4 (2) develop written guidelines to ensure [INSURE] that
5 licensing requirements are not unreasonably burdensome and the issu-
6 ance of licenses is not unreasonably withheld or delayed;

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

9 (4) after a hearing, impose disciplinary sanc' ions on
10 persons who violate this chapter [,] or the regulations or orders of
11 the board;

12 (5) adopt regulations ensuring [INSURING] that renewal of
13 licenses is contingent upon proof of continued competency on the part
14 of the licensee; and

15 (6) contract [COORDINATE] with private professional organi-
16 zations to establish an impaired medical professionals program to
17 identify, confront, and treat persons licensed under this chapter who
18 abuse addictive substances; a contractor and agents of the contractor
19 are considered agents of the board when performing duties related to a
20 contract formed under this paragraph; the contractor and its agents
21 are entitled to immunity and indemnity under AS 08.02.020.

22 * Sec. 4. AS 08.64.130 is amended by adding new subsections to read:

23 (b) The board shall maintain records for each person licensed
24 under this chapter concerning malpractice actions and their outcomes
25 as reported under AS 08.64.200(a) and 08.64.345. The board shall
26 periodically review these records to determine if the licensee should
27 be found to be professionally incompetent under AS 08.64.326(a)(8)(A).

28 (c) The board shall make available to the public the information
29 maintained under (a) and (b) of this section for each person licensed

1 under this chapter.

2 * Sec. 5. AS 08.64.190 is amended to read:

3 Sec. 08.64.190. CONTENTS OF APPLICATION. The application must
4 [SHALL] state the name, age, residence, the duration of residence, the
5 time spent in medical or osteopathy study, the place, year, and school
6 in which degrees were granted, the applicant's medical work history,
7 and other information the board considers necessary. The application
8 shall be made under oath. The board may verify information in the
9 application through direct contact with the appropriate schools,
10 medical boards, or other agencies that can substantiate the informa-
11 tion.

12 * Sec. 6. AS 08.64.200 is amended to read:

13 Sec. 08.64.200. QUALIFICATIONS OF PHYSICIAN APPLICANTS. (a)
14 Except for foreign medical graduates as specified in AS 08.64.225,
15 each physician applicant shall

16 (1) [REPEALED

17 (2)] submit a certificate of graduation from a legally
18 chartered medical school accredited by the Association of American
19 Medical Colleges and the Council on Medical Education of the American
20 Medical Association;

21 (2) [(3)] submit a certificate from a recognized hospital
22 certifying that the applicant has satisfactorily performed the duties
23 of resident physician or intern for a period of one year;

24 (3) submit a list of medical malpractice civil actions
25 filed against the applicant, including an explanation of the outcome
26 of each action;

27 (4) not have a license to practice medicine in another
28 state, province, or territory which is currently suspended or revoked
29 for disciplinary reasons; and

1 (5) be a citizen of the United States or be lawfully admit-
2 ted for permanent residence.

3 (b) The board shall determine whether each physician applicant
4 has any disciplinary or other actions recorded in the nationwide
5 disciplinary data bank of the Federation of State Medical Boards. If
6 the physician applicant was licensed or practiced in a jurisdiction
7 that does not record information with the data bank of the Federation
8 of State Medical Boards, the board shall contact the medical regula-
9 tory body of that jurisdiction to obtain comparable information about
10 the applicant.

11 * Sec. 7. AS 08.64.205 is amended to read:

12 Sec. 08.64.205. QUALIFICATIONS FOR OSTEOPATH APPLICANTS. Each
13 osteopath applicant shall meet the qualifications prescribed in
14 AS 08.64.200(a)(3) - (5) [AS 08.64.200(a)(4) AND (5)] and shall

15 (1) submit a certificate of graduation from the legally
16 chartered school of osteopathy approved by the board;

17 (2) submit a certificate from a hospital approved by the
18 American Medical Association or the American Osteopathic Association
19 which certifies that the osteopath has satisfactorily completed and
20 performed the duties of intern or resident physician for one year;

21 (3) take the examination required by AS 08.64.210 or be
22 certified to practice by the National Board of Examiners for Osteo-
23 pathic Physicians and Surgeons.

24 * Sec. 8. AS 08.64.209(a) is amended to read:

25 (a) Each applicant who desires to practice podiatry shall meet
26 the qualifications [QUALIFICATION] prescribed in AS 08.64.200(a)(3)
27 and (4) [AS 08.64.200(a)(4)] and shall

28 (1) submit a certificate of graduation from a legally
29 chartered school of podiatry approved by the board;

1 (2) take the examination required by AS 08.64.210; the
2 State Medical Board shall call to its aid a podiatrist of known abil-
3 ity who is licensed to practice podiatry to assist in the examination
4 and licensure of applicants for a license to practice podiatry;

5 (3) meet other qualifications of experience or education
6 which the board may require.

7 * Sec. 9. AS 08.64.225 is amended to read:

8 Sec. 08.64.225. FOREIGN MEDICAL GRADUATES. Applicants who are
9 graduates of medical colleges not accredited by the Association of
10 American Medical Colleges and the Council on Medical Education of the
11 American Medical Association must [OR ONE OF ITS AGENCIES SHALL] meet
12 the requirements of AS 08.64.200(a)(2) - (5) and 08.64.255, [AS 08.-
13 64.200(a)(3), (4) AND (5)] and must have passed examinations as spec-
14 ified by the board in regulations [AN EXAMINATION AND BE CERTIFIED BY
15 THE EDUCATION COUNCIL ON FOREIGN MEDICAL GRADUATES,] or be licensed by
16 examination in another state or territory of the United States or
17 province or territory of Canada.

18 * Sec. 10. AS 08.64.230(a) is amended to read:

19 (a) If the physician applicant passes the examination and meets
20 the requirements of AS 08.64.200 and 08.64.255, the board shall grant
21 a license to the applicant to practice medicine in the state.

22 * Sec. 11. AS 08.64.230(b) is amended to read:

23 (b) If the osteopath applicant passes the examination and meets
24 the requirements of AS 08.64.205 and 08.64.255, the board shall grant
25 a license to the applicant to practice osteopathy in the state.

26 * Sec. 12. AS 08.64.240(a) is amended to read:

27 (a) The board may not grant a license if

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

29 (2) the applicant has surrendered a license in another

1 jurisdiction while under investigation and the license has not been
2 reinstated in that jurisdiction;

3 (3) the board determines that the applicant is profession-
4 ally unfit to practice medicine or osteopathy in the state; or

5 (4) [(3)] the applicant fails to comply with a requirement
6 of this chapter.

7 * Sec. 13. AS 08.64.250 is amended to read:

8 Sec. 08.64.250. LICENSE BY CREDENTIALS. The board may waive the
9 examination requirement and license by credentials if the physician or
10 podiatry applicant meets the requirements of AS 08.64.200 or 08.64.-
11 209, submits proof of continued competence as required by regulation,
12 pays the required fee and has

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

17 (2) passed an examination as specified [GIVEN] by the board
18 in regulations [NATIONAL BOARD OF MEDICAL EXAMINERS OR THE FEDERATION
19 OF STATE MEDICAL BOARDS OF THE UNITED STATES IF THE APPLICANT IS A
20 PHYSICIAN, OR PASSED AN EXAMINATION GIVEN BY THE NATIONAL BOARD OF
21 PODIATRY EXAMINERS IF THE APPLICANT IS A PODIATRIST].

22 * Sec. 14. AS 08.64.270 is amended to read:

23 Sec. 08.64.270. TEMPORARY PERMITS. (a) The board may issue a
24 temporary permit to a physician applicant, osteopath applicant, or
25 podiatry applicant who meets the requirements of AS 08.64.200, 08.64.-
26 205, [OR] 08.64.209, or 08.64.225 and pays the required fee.

27 (b) A temporary permit issued under this section is valid for
28 six [EIGHT] months and shall be reviewed by the board at the next
29 regularly scheduled board meeting that occurs after its issuance [OR

1 UNTIL THE BOARD MEETS TO CONSIDER THE APPLICATION, WHICHEVER OCCURS
2 FIRST].

3 (c) A temporary permit issued under this section may not be
4 renewed [AT THE BOARD'S DISCRETION ONE TIME ONLY].

5 * Sec. 15. AS 08.64.270 is amended by adding new subsections to read:

6 (d) The fee for a permit issued under this section is one-fourth
7 of the fee for a biennial license, plus the appropriate application
8 fee.

9 (e) Upon application by the permittee and approval of the board,
10 a permit issued under this section may be converted to a biennial
11 license upon payment of the biennial fee minus the six-month permit
12 fee paid under (d) of this section, plus the appropriate application
13 fee.

14 * Sec. 16. AS 08.64.272(b) is amended to read:

15 (b) For the limited purpose of residency or internship, the
16 board may issue a permit to an applicant without examination if the
17 applicant meets the requirements of AS 08.64.200(a)(1) [AS 08.64.-
18 200(a)(2)] and applicable regulations of the board, meets the require-
19 ments of AS 08.64.279, pays the required fee, and has been accepted by
20 an eligible institution in the state for the purpose of residency or
21 internship.

22 * Sec. 17. AS 08.64.275(a) is amended to read:

23 (a) A member of the board or its executive secretary may grant a
24 temporary permit to a physician or osteopath for the purpose of sub-
25 stituting for another physician or osteopath licensed in this state.
26 The permit is valid for 60 [120] consecutive days. If circumstances
27 warrant, an extension of the permit may be granted by the board.

28 * Sec. 18. AS 08.64.275(b) is amended to read:

29 (b) A physician applying under (a) of this section shall pay the

1 required fee and shall meet the requirements of AS 08.64.200 and
2 08.64.279. In addition, the physician shall submit evidence of hold-
3 ing a license to practice medicine in a state or territory of the
4 United States or in a territory or province of Canada.

5 * Sec. 19. AS 08.64.275(c) is amended to read:

6 (c) An osteopath applying under (a) of this section shall pay
7 the required fee and shall meet the requirements of AS 08.64.205 and
8 08.64.279. In addition, the osteopath shall submit evidence of hold-
9 ing a license to practice in a state or territory of the United States
10 or in a territory or province of Canada.

11 * Sec. 20. AS 08.64.275 is amended by adding a new subsection to read:

12 (e) Permits and extensions of permits issued under this section
13 to an individual are not valid for more than 240 days during any
14 consecutive 24 months.

15 * Sec. 21. AS 08.64 is amended by adding new sections to read:

16 Sec. 08.64.276. RETIRED STATUS LICENSE. (a) On retiring from
17 practice and payment of an appropriate one-time fee, a licensee in
18 good standing with the board may apply for the conversion of an active
19 or inactive license to a retired status license. A person holding a
20 retired status license may not practice medicine, osteopathy, or
21 podiatry in the state. A retired status license is valid for the life
22 of the license holder and does not require renewal. A person holding
23 a retired status license is exempt from AS 08.64.312.

24 (b) A person with a retired status license may apply for active
25 licensure. Before issuing an active license under this subsection,
26 the board may require the applicant to meet reasonable criteria as
27 determined under regulations of the board, that may include submission
28 of continuing medical education credits, reexamination requirements,
29 physical and psychiatric examination requirements, an interview with

1 the entire board, and review of information in the national data bank
2 of the National Federation of State Medical Boards.

3 Sec. 08.64.279. INTERVIEW REQUIRED FOR PERMITS. An applicant
4 for an intern permit, a resident permit, or a temporary permit for
5 locum tenens practice must be interviewed in person by at least one
6 member of the board or by the executive secretary of the board.

7 * Sec. 22. AS 08.64.326(a) is amended to read:

8 (a) The board may impose a sanction if the board finds after a
9 hearing that a licensee

10 (1) secured a license through deceit, fraud, or intentional
11 misrepresentation;

12 (2) engaged in deceit, fraud, or intentional misrepresenta-
13 tion while providing professional services or engaging in professional
14 activities;

15 (3) advertised professional services in a false or mislead-
16 ing manner;

17 (4) has been convicted, including conviction based on a
18 guilty plea or plea of nolo contendere, of

19 (A) a felony or other crime if the felony or other
20 crime is substantially related to the qualifications, functions,
21 or duties of the licensee; or

22 (B) a crime involving the unlawful procurement, sale,
23 prescription, or dispensing of drugs;

24 (5) has procured, sold, prescribed, or dispensed drugs in
25 violation of a law, regardless of whether there has been a criminal
26 action;

27 (6) intentionally or negligently permitted the performance
28 of patient care by persons under the licensee's supervision that does
29 not conform to minimum professional standards even if the patient was

1 not injured;

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

4 (8) has demonstrated

5 (A) professional incompetence, gross negligence, or
6 repeated negligent conduct; the board may not base a finding of
7 professional incompetence solely on the basis that a licensee's
8 practice is unconventional;

9 (B) addiction to, severe dependency on, or habitual
10 overuse of alcohol or other drugs that [WHICH] impairs the li-
11 censee's ability to practice safely;

12 (C) unfitness because of physical or mental disabil-
13 ity;

14 (9) engaged in unprofessional conduct or in lewd or immoral
15 conduct in connection with the delivery of professional services to
16 patients;

17 (10) has violated AS 18.16.010;

18 (11) has violated any code of ethics adopted by regulation
19 by the board;

20 (12) has denied care or treatment to a patient or person
21 seeking assistance from the physician if the only reason for the
22 denial is the failure or refusal of the patient to agree to arbitrate
23 as provided in AS 09.55.535(a); [OR]

24 (13) has had a license or certificate to practice medicine
25 in another state or [,] territory of the United States, or a province
26 or territory of Canada suspended or revoked unless the suspension or
27 revocation was caused by the failure of the licensee to pay fees to
28 that state, territory, or province; or

29 (14) has prescribed, ordered, dispensed, administered,

1 supplied, sold, or given an amphetamine, sympathomimetic amine drug,
2 or compound identified as a schedule IIA controlled substance under
3 AS 11.71.150 to or for a person except for the

4 (A) treatment of attention deficit disorder (hyper-
5 kinesis), narcolepsy, drug-induced brain dysfunction, or epilep-
6 sy;

7 (B) differential diagnostic evaluation of depression;

8 (C) treatment, of up to three weeks' duration, of
9 depression shown to be refractory to other therapeutic modalities
10 but only if the patient is hospitalized, is over the age of 60,
11 suffers from involuntional depression, and, in the licensee's
12 clinical judgment, would probably die during the period that
13 would be necessary to achieve full therapeutic effects of other
14 antidepressant medications; treatment with these other anti-
15 depressant medications shall be simultaneously commenced with the
16 other treatment authorized under this paragraph, unless medically
17 contraindicated;

18 (D) clinical investigation of the effects of the drugs
19 or compounds; the investigative protocol for an investigation
20 authorized under this paragraph shall be submitted to the board
21 and approved by it before the investigation begins.

22 * Sec. 23. AS 08.64.335 is amended to read:

23 Sec. 08.64.335. REPORTS OF DISCIPLINARY ACTION OR LICENSE SUS-
24 PENSION OR SURRENDER. The board shall promptly report to the Fed-
25 eration of State Medical Boards for inclusion in the nationwide disci-
26 plinary data bank license and permit refusals under AS 08.64.240,
27 actions taken by the board under AS 08.64.331, and license and permit
28 suspensions or surrenders under AS 08.64.332 or 08.64.334.

29 * Sec. 24. AS 08.64.336(c) is amended to read:

1 (c) Upon receipt of a report under (a) or (b) of this section,
2 the board shall investigate the matter and, upon a finding that there
3 is reasonable cause to believe that the person who is the subject of
4 the report is a danger to the health or welfare of the public or to
5 the person's patients, the board may appoint a committee of three
6 qualified physicians to examine the person and report its findings to
7 the board. A physician appointed under this subsection is considered
8 an agent of the board for the limited purpose of this section and is
9 entitled to immunity and indemnity under AS 08.02.020.
10 Notwithstanding the provisions of this subsection, the board may
11 summarily suspend a license under AS 08.64.331(c) before appointing an
12 examining committee or before the committee makes or reports its
13 findings.

14 * Sec. 25. AS 08.64.336(e) is amended to read:

15 (e) A physician, hospital, [OR] hospital committee, or private
16 professional organization contracted with under AS 08.64.101(6) to
17 identify, confront, and treat individuals licensed under this chapter
18 who abuse addictive substances that in good faith submits a report
19 under this section or participates in an investigation or judicial
20 proceeding related to a report submitted under this section is immune
21 from civil or criminal liability for the submission or participation.

22 * Sec. 26. AS 08.64 is amended by adding a new section to Article 2 to
23 read:

24 Sec. 08.64.345. REPORTS OF MALPRACTICE CLAIMS. A person li-
25 censed under this chapter shall report in writing to the board any
26 medical malpractice civil action filed against the person within 30
27 days after having actual knowledge that the civil action has been
28 filed. The licensee shall also report in writing to the board con-
29 cerning the outcome of each medical malpractice civil action filed.

1 This report shall be made within 30 days of termination of the civil
2 action and shall indicate whether damages have been or are to be paid
3 by the licensee to the plaintiff, whether by judgment or under a
4 settlement.

5 * Sec. 27. AS 08.64.380(7) is amended to read:

6 (7) "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, dis-
11 order, injury, or other mental or physical condition; or to
12 attempt to perform or represent that a person is authorized to
13 perform 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 spe-
17 cialist designation including "surgeon," "dermatologist," or a
18 similar title in such a manner as [, OR ANY TITLE WHICH TENDS] to
19 show that the person is willing or qualified to diagnose or treat
20 the sick or injured;

21 * Sec. 28. The State Medical Board shall submit to the legislature by
22 January 30, 1992, a report containing its recommendations for statutory
23 changes necessary to implement the following policies:

24 (1) there should be an annual board review of the medical mal-
25 practice claim history of physicians licensed in the state;

26 (2) there should be a board review of the medical malpractice
27 claim history of license applicants;

28 (3) during review under (1) and (2) of this section, the board
29 should determine whether the physician or applicant acted with gross negli-

1 gence and whether practice by the physician or applicant might pose a
2 danger to the public health or safety;

3 (4) the board should be able to deny or revoke a license if
4 practice by a person might pose a danger to the public health or safety,
5 based on its review of the person's medical malpractice claim history,
6 unless the board determines that suspension or license restrictions would
7 be sufficient to protect the public health and safety;

8 (5) reviews of medical malpractice claim history should include
9 claims filed and cases concluded by judgment or settlement.

10 * Sec. 29. This Act takes effect immediately under AS 01.10.070(c).