Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 146 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act limiting civil liability for damages relating
7 to certain occupational licensing functions; au-
8 thorizing temporary courtesy licenses for certain
9 occupations; relating to powers and duties of the
10 State Medical Board; requiring persons licensed by
11 the State Medical Board to report medical malpractice
12 civil actions; requiring the State Medical Board to
13 make a report relating to the use of malpractice
14 claims histories to determine medical competency and
15 to impose sanctions on its licensees; and providing
16 for an effective date."

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

18 * Section 1. AS 08.02.020 is amended to read:

19 Sec. 08.02.020. LIMITATION OF LIABILITY [FOR MEMBERS OF LICENS-
20 ING BOARDS AND PEER REVIEW COMMITTEES]. <u>An action may not be brought</u>
21 <u>against a</u> [A] person [IS NOT LIABLE] for damages <u>resulting from</u>
22 <u>(1)</u> [OR OTHER RELIEF IN AN ACTION BY REASON OF] the per-
23 son's <u>good faith</u> performance of a duty, function, or activity <u>required</u>
24 as
25 <u>(A)</u> a member of<u>, or witness before,</u> a licensing board
26 or peer review committee established to review a licensing mat-
27 ter<u>;</u> [,]
28 <u>(B) a member of a committee appointed under AS 08.-</u>
29 <u>64.336(c):</u>

1 (C) a contractor or agent of a contractor under
2 AS 08.64.101(6); or
3 (2) [BY REASON OF] a recommendation or action in accordance
4 with the prescribed duties of a licensing [THE] board, [OR] peer
5 review committee established to review a licensing matter, committee
6 appointed under AS 08.64.336(c), or contractor or agent of a contrac-
7 tor under AS 08.64.101(6) when the person acts in the reasonable
8 belief that the action or recommendation is warranted by facts known
9 to the person, [OR TO THE] board, [OR] peer review committee, commit-
10 tee appointed under AS 08.64.336(c), or contractor or agent of the
11 contractor under AS 08.64.101(6) after reasonable efforts to ascertain
12 the facts upon which the action or recommendation is made.
13 * Sec. 2. AS 08.02 is amended by adding a new section to read:
14 Sec. 08.02.030. COURTESY LICENSES. (a) A board established
15 under this title and the Department of Commerce and Economic Develop-
16 ment, with respect to an occupation that it regulates under this
17 title, may by regulation establish criteria for issuing a temporary
18 courtesy license to nonresidents who enter the state so that, on a
19 temporary basis, they may practice the occupation regulated by the
20 board or the department.
21 (b) The regulations adopted under (a) of this section may in-
22 clude limitations relating to the
23 (1) duration of the license's validity;
24 (2) scope of practice allowed under the license; and
25 (3) other matters considered important by the board or the
26 department.
27 * Sec. 3. AS 08.64.101 is amended to read:
28 Sec. 08.64.101. DUTIES. The board shall
29 (1) examine and issue licenses to applicants;

1 (2) develop written guidelines to ensure [INSURE] that
2 licensing requirements are not unreasonably burdensome and the issu-
3 ance of licenses is not unreasonably withheld or delayed;
4 (3) submit an annual report of its proceedings to the
5 governor, including a statement of money received and disbursed;
6 (4) after a hearing, impose disciplinary sanctions on
7 persons who violate this chapter [,] or the regulations or orders of
8 the board;
9 (5) adopt regulations ensuring [INSURING] that renewal of
10 licenses is contingent upon proof of continued competency on the part
11 of the licensee; and
12 (6) under regulations adopted by the board, contract [COOR-
13 DINATE] with private professional organizations to establish an im-
14 paired medical professionals program to identify, confront, evaluate,
15 and treat persons licensed under this chapter who abuse addictive
16 substances.
17 * Sec. 4. AS 08.64.130 is amended by adding new subsections to read:
18 (b) The board shall maintain records for each person licensed
19 under this chapter concerning malpractice actions and their outcomes
20 as reported under AS 08.64.200(a) and 08.64.345. The board shall
21 periodically review these records to determine if the licensee should
22 be found to be professionally incompetent under AS 08.64.326(a)(8)(A).
23 (c) The board shall make available to the public the information
24 maintained under (a) and (b) of this section for each person licensed
25 under this chapter.
26 * Sec. 5. AS 08.64.190 is amended to read:
27 Sec. 08.64.190. CONTENTS OF APPLICATION. The application must
28 [SHALL] state the name, age, residence, the duration of residence, the
29 time spent in medical or osteopathy study, the place, year, and school

1 in which degrees were granted, the applicant's medical work history,
2 and other information the board considers necessary. The application
3 shall be made under oath. The board may verify information in the
4 application through direct contact with the appropriate schools,
5 medical boards, or other agencies that can substantiate the informa-
6 tion.
7 * Sec. 6. AS 08.64.200 is amended to read:
8 Sec. 08.64.200. QUALIFICATIONS OF PHYSICIAN APPLICANTS. (a)
9 Except for foreign medical graduates as specified in AS 08.64.225,
10 each physician applicant shall
11 (1) [REPEALED
12 (2)] submit a certificate of graduation from a legally
13 chartered medical school accredited by the Association of American
14 Medical Colleges and the Council on Medical Education of the American
15 Medical Association;
16 (2) [(3)] submit a certificate from a recognized hospital
17 certifying that the applicant has satisfactorily performed the duties
18 of resident physician or intern for a period of one year;
19 (3) submit a list of negotiated settlements or judgments in
20 claims or civil actions alleging medical malpractice against the
21 applicant, including an explanation of the basis for each claim or
22 action;
23 (4) not have a license to practice medicine in another
24 state, province, or territory which is currently suspended or revoked
25 for disciplinary reasons; and
26 (5) be a citizen of the United States or be lawfully admit-
27 ted for permanent residence.
28 (b) The board shall determine whether each physician applicant
29 has any disciplinary or other actions recorded in the nationwide

1 disciplinary data bank of the Federation of State Medical Boards. If
2 the physician applicant was licensed or practiced in a jurisdiction
3 that does not record information with the data bank of the Federation
4 of State Medical Boards, the board shall contact the medical regula-
5 tory body of that jurisdiction to obtain comparable information about
6 the applicant.
7 * Sec. 7. AS 08.64.205 is amended to read:
8 Sec. 08.64.205. QUALIFICATIONS FOR OSTEOPATH APPLICANTS. Each
9 osteopath applicant shall meet the qualifications prescribed in
10 AS 08.64.200(a)(3) - (5) [AS 08.64.200(a)(4) AND (5)] and shall
11 (1) submit a certificate of graduation from the legally
12 chartered school of osteopathy approved by the board;
13 (2) submit a certificate from a hospital approved by the
14 American Medical Association or the American Osteopathic Association
15 which certifies that the osteopath has satisfactorily completed and
16 performed the duties of intern or resident physician for one year;
17 (3) take the examination required by AS 08.64.210 or be
18 certified to practice by the National Board of Examiners for Osteo-
19 pathic Physicians and Surgeons.
20 * Sec. 8. AS 08.64.209(a) is amended to read:
21 (a) Each applicant who desires to practice podiatry shall meet
22 the qualifications [QUALIFICATION] prescribed in AS 08.64.200(a)(3)
23 and (4) [AS 08.64.200(a)(4)] and shall
24 (1) submit a certificate of graduation from a legally
25 chartered school of podiatry approved by the board;
26 (2) take the examination required by AS 08.64.210; the
27 State Medical Board shall call to its aid a podiatrist of known abil-
28 ity who is licensed to practice podiatry to assist in the examination
29 and licensure of applicants for a license to practice podiatry;

1 (3) meet other qualifications of experience or education
2 which the board may require.
3 * Sec. 9. AS 08.64.225 is amended to read:
4 Sec. 08.64.225. FOREIGN MEDICAL GRADUATES. Applicants who are
5 graduates of medical colleges not accredited by the Association of
6 American Medical Colleges and the Council on Medical Education of the
7 American Medical Association must [OR ONE OF ITS AGENCIES SHALL] meet
8 the requirements of AS 08.64.200(a)(2) - (5) and 08.64.255, [AS 08.-
9 64.200(a)(3), (4) AND (5)] and must have passed examinations as spec-
10 ified by the board in regulations [AN EXAMINATION AND BE CERTIFIED BY
11 THE EDUCATION COUNCIL ON FOREIGN MEDICAL GRADUATES,] or be licensed by
12 examination in another state or territory of the United States or
13 province or territory of Canada.
14 * Sec. 10. AS 08.64.230(a) is amended to read:
15 (a) If the physician applicant passes the examination and meets
16 the requirements of AS 08.64.200 and 08.64.255, the board shall grant
17 a license to the applicant to practice medicine in the state.
18 * Sec. 11. AS 08.64.230(b) is amended to read:
19 (b) If the osteopath applicant passes the examination and meets
20 the requirements of AS 08.64.205 and 08.64.255, the board shall grant
21 a license to the applicant to practice osteopathy in the state.
22 * Sec. 12. AS 08.64.240(a) is amended to read:
23 (a) The board may not grant a license if
24 (1) the applicant fails or cheats during the examination;
25 (2) the applicant has surrendered a license in another
26 jurisdiction while under investigation and the license has not been
27 reinstated in that jurisdiction;
28 (3) the board determines that the applicant is profession-
29 ally unfit to practice medicine or osteopathy in the state; or

1 (4) [(3)] the applicant fails to comply with a requirement
2 of this chapter.
3 * Sec. 13. AS 08.64.250 is amended to read:
4 Sec. 08.64.250. LICENSE BY CREDENTIALS. The board may waive the
5 examination requirement and license by credentials if the physician or
6 podiatry applicant meets the requirements of AS 08.64.200 or 08.64.-
7 209, submits proof of continued competence as required by regulation,
8 pays the required fee and has
9 (1) an active license from a board of medical examiners
10 established under the laws of a state or territory of the United
11 States or a province or territory of Canada issued after thorough
12 examination; or
13 (2) passed an examination as specified [GIVEN] by the board
14 in regulations [NATIONAL BOARD OF MEDICAL EXAMINERS OR THE FEDERATION
15 OF STATE MEDICAL BOARDS OF THE UNITED STATES IF THE APPLICANT IS A
16 PHYSICIAN, OR PASSED AN EXAMINATION GIVEN BY THE NATIONAL BOARD OF
17 PODIATRY EXAMINERS IF THE APPLICANT IS A PODIATRIST].
18 * Sec. 14. AS 08.64.270 is amended to read:
19 Sec. 08.64.270. TEMPORARY PERMITS. (a) The board may issue a
20 temporary permit to a physician applicant, osteopath applicant, or
21 podiatry applicant who meets the requirements of AS 08.64.200, 08.64.-
22 205, [OR] 08.64.209, or 08.64.225 and pays the required fee.
23 (b) A temporary permit issued under this section is valid for
24 six [EIGHT] months and shall be reviewed by the board at the next
25 regularly scheduled board meeting that occurs after its issuance [OR
26 UNTIL THE BOARD MEETS TO CONSIDER THE APPLICATION, WHICHEVER OCCURS
27 FIRST].
28 (c) A temporary permit issued under this section may not be
29 renewed [AT THE BOARD'S DISCRETION ONE TIME ONLY].

1 * Sec. 15. AS 08.64.270 is amended by adding new subsections to read:
2 (d) The fee for a permit issued under this section is one-fourth
3 of the fee for a biennial license, plus the appropriate application
4 fee.
5 (e) Upon application by the permittee and approval of the board,
6 a permit issued under this section may be converted to a biennial
7 license upon payment of the biennial fee minus the six-month permit
8 fee paid under (d) of this section, plus the appropriate application
9 fee.
10 * Sec. 16. AS 08.64.272(b) is amended to read:
11 (b) For the limited purpose of residency or internship, the
12 board may issue a permit to an applicant without examination if the
13 applicant meets the requirements of AS 08.64.200(a)(1) [AS 08.64.-
14 200(a)(2)] and applicable regulations of the board, meets the require-
15 ments of AS 08.64.279, pays the required fee, and has been accepted by
16 an eligible institution in the state for the purpose of residency or
17 internship.
18 * Sec. 17. AS 08.64.275(a) is amended to read:
19 (a) A member of the board or its executive secretary may grant a
20 temporary permit to a physician or osteopath for the purpose of sub-
21 stituting for another physician or osteopath licensed in this state.
22 The permit is valid for 60 [120] consecutive days. If circumstances
23 warrant, an extension of the permit may be granted by the board.
24 * Sec. 18. AS 08.64.275(b) is amended to read:
25 (b) A physician applying under (a) of this section shall pay the
26 required fee and shall meet the requirements of AS 08.64.200 and
27 08.64.279. In addition, the physician shall submit evidence of hold-
28 ing a license to practice medicine in a state or territory of the
29 United States or in a territory or province of Canada.

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

2 (c) An osteopath applying under (a) of this section shall pay
3 the required fee and shall meet the requirements of AS 08.64.205 and
4 08.64.279. In addition, the osteopath shall submit evidence of hold-
5 ing a license to practice in a state or territory of the United States
6 or in a territory or province of Canada.

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

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

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

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

20 (b) A person with a retired status license may apply for active
21 licensure. Before issuing an active license under this subsection,
22 the board may require the applicant to meet reasonable criteria as
23 determined under regulations of the board, that may include submission
24 of continuing medical education credits, reexamination requirements,
25 physical and psychiatric examination requirements, an interview with
26 the entire board, and review of information in the national data bank
27 of the National Federation of State Medical Boards.

28 Sec. 08.64.279. INTERVIEW REQUIRED FOR PERMITS. An applicant
29 for an intern permit, a resident permit, or a temporary permit for

1 locum tenens practice must be interviewed in person by at least one
2 member of the board, the executive secretary of the board, or a person
3 designated for that purpose by the board.
4 * Sec. 22. AS 08.64.326(a) is amended to read:
5 (a) The board may impose a sanction if the board finds after a
6 hearing that a licensee
7 (1) secured a license through deceit, fraud, or intentional
8 misrepresentation;
9 (2) engaged in deceit, fraud, or intentional misrepresenta-
10 tion while providing professional services or engaging in professional
11 activities;
12 (3) advertised professional services in a false or mislead-
13 ing manner;
14 (4) has been convicted, including conviction based on a
15 guilty plea or plea of nolo contendere, of
16 (A) a felony or other crime if the felony or other
17 crime is substantially related to the qualifications, functions,
18 or duties of the licensee; or
19 (B) a crime involving the unlawful procurement, sale,
20 prescription, or dispensing of drugs;
21 (5) has procured, sold, prescribed, or dispensed drugs in
22 violation of a law, regardless of whether there has been a criminal
23 action;
24 (6) intentionally or negligently permitted the performance
25 of patient care by persons under the licensee's supervision that does
26 not conform to minimum professional standards even if the patient was
27 not injured;
28 (7) failed to comply with this chapter, a regulation adopt-
29 ed under this chapter, or an order of the board;

1 (8) has demonstrated
2 (A) professional incompetence, gross negligence, or
3 repeated negligent conduct; the board may not base a finding of
4 professional incompetence solely on the basis that a licensee's
5 practice is unconventional or experimental;
6 (B) addiction to, severe dependency on, or habitual
7 overuse of alcohol or other drugs that [WHICH] impairs the li-
8 censee's ability to practice safely;
9 (C) unfitness because of physical or mental disabil-
10 ity;
11 (9) engaged in unprofessional conduct or in lewd or immoral
12 conduct in connection with the delivery of professional services to
13 patients;
14 (10) has violated AS 18.16.010;
15 (11) has violated any code of ethics adopted by regulation
16 by the board;
17 (12) has denied care or treatment to a patient or person
18 seeking assistance from the physician if the only reason for the
19 denial is the failure or refusal of the patient to agree to arbitrate
20 as provided in AS 09.55.535(a); or
21 (13) has had a license or certificate to practice medicine
22 in another state or [,] territory of the United States, or a province
23 or territory of Canada suspended or revoked unless the suspension or
24 revocation was caused by the failure of the licensee to pay fees to
25 that state, territory, or province.
26 * Sec. 23. AS 08.64.335 is amended to read:
27 Sec. 08.64.335. REPORTS OF DISCIPLINARY ACTION OR LICENSE SUS-
28 PENSION OR SURRENDER. The board shall promptly report to the Fed-
29 eration of State Medical Boards for inclusion in the nationwide

1 disciplinary data bank license and permit refusals under AS 08.64.240,
2 actions taken by the board under AS 08.64.331, and license and permit
3 suspensions or surrenders under AS 08.64.332 or 08.64.334.
4 * Sec. 24. AS 08.64.336(e) is amended to read:
5 (e) A physician, hospital, [OR] hospital committee, or private
6 professional organization contracted with under AS 08.64.101(6) to
7 identify, confront, evaluate, and treat individuals licensed under
8 this chapter who abuse addictive substances that in good faith submits
9 a report under this section or participates in an investigation or
10 judicial proceeding related to a report submitted under this section
11 is immune from civil liability for the submission or participation.
12 * Sec. 25. AS 08.64 is amended by adding a new section to article 2 to
13 read:
14 Sec. 08.64.345. REPORTS OF MALPRACTICE CLAIMS. A person li-
15 censed under this chapter shall report in writing to the board any
16 medical malpractice civil action filed against the person within 30
17 days after having actual knowledge that the civil action has been
18 filed. The licensee shall also report in writing to the board con-
19 cerning the outcome of each medical malpractice civil action filed.
20 This report shall be made within 30 days of termination of the civil
21 action and shall indicate whether damages have been or are to be paid
22 by the licensee to the plaintiff, whether by judgment or under a
23 settlement.
24 * Sec. 26. AS 08.64.380(7) is amended to read:
25 (7) "practice of medicine" or "practice of osteopathy"
26 means:
27 (A) for a fee, donation or other consideration, to
28 diagnose, treat, operate on, prescribe for, or administer to, any
29 human ailment, blemish, deformity, disease, disfigurement,

1 disorder, injury, or other mental or physical condition; or to
2 attempt to perform or represent that a person is authorized to
3 perform any of the acts set out in this subparagraph;
4 (B) to use or publicly display a title in connection
5 with a person's name including "doctor of medicine," "physician,"
6 "M.D.," or "doctor of osteopathic medicine" or "D.O." or a spe-
7 cialist designation including "surgeon," "dermatologist," or a
8 similar title in such a manner as [, OR ANY TITLE WHICH TENDS] to
9 show that the person is willing or qualified to diagnose or treat
10 the sick or injured;
11 * Sec. 27. The State Medical Board shall submit to the legislature by
12 January 30, 1992, a report containing its recommendations for statutory
13 changes necessary to implement the following policies:
14 (1) there should be a biennial board review of the medical mal-
15 practice claim history of physicians licensed in the state;
16 (2) there should be a board review of the medical malpractice
17 claim history of license applicants;
18 (3) during review under (1) and (2) of this section, the board
19 should determine whether the physician or applicant acted with gross negli-
20 gence and whether practice by the physician or applicant might pose a
21 danger to the public health or safety;
22 (4) the board should be able to deny or revoke a license if
23 practice by a person might pose a danger to the public health or safety,
24 based on its review of the person's medical malpractice claim history,
25 unless the board determines that suspension or license restrictions would
26 be sufficient to protect the public health and safety;
27 (5) reviews of medical malpractice claim history should include
28 claims filed and cases concluded by judgment or settlement.
29 * Sec. 28. This Act takes effect immediately under AS 01.10.070(c).