

HOUSE BILL NO. 492

**IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE BY REQUEST

Introduced: 2/14/94

Referred: Health, Education & Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to medical malpractice actions; relating to sanctions against
2 certain health care providers; amending Alaska Rules of Civil Procedure 8 and
3 83; repealing Alaska Rule of Civil Procedure 72.1; and providing for an effective
4 date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * Section 1. **PURPOSE.** The purpose of this Act and companion legislation relating to
7 medical liability insurance is to

- 8 (1) provide financial security to health care providers by limiting their liability
9 exposure for medical negligence to the amount of liability insurance coverage required;
10 (2) eliminate the need for the practice of defensive medicine;
11 (3) provide affordable insurance to all health care providers;
12 (4) control or reduce medical negligence insurance costs;
13 (5) resolve the hospital insurance problems created Jackson v. Powers, 743
14 P.2d 1376 (Alaska 1987);

1 (6) establish an expeditious and cost-effective procedure for the resolution of
2 noncatastrophic claims;

3 (7) provide a source for financial recovery for those injured as the result of
4 medical negligence; and

5 (8) reduce litigation costs.

6 * Sec. 2. AS 08.64.326 is amended to read:

7 Sec. 08.64.326. GROUNDS FOR IMPOSITION OF DISCIPLINARY
8 SANCTIONS. (a) The board may impose a sanction if the board finds after a hearing
9 that a licensee

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

12 (2) engaged in deceit, fraud, or intentional misrepresentation while
13 providing professional services or engaging in professional activities;

14 (3) advertised professional services in a false or misleading manner;

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

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

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

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

24 (6) intentionally or negligently permitted the performance of patient
25 care by persons under the licensee's supervision that does not conform to minimum
26 professional standards even if the patient was not injured;

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

29 (8) has demonstrated

30 (A) professional incompetence, gross negligence, or
31 repeated negligent conduct; the board may not base a finding of

1 professional incompetence solely on the basis that a licensee's practice
2 is unconventional or experimental in the absence of demonstrable
3 physical harm to a patient;

4 (B) addiction to, severe dependency on, or habitual
5 overuse of alcohol or other drugs that impairs the licensee's
6 ability to practice safely;

7 (C) unfitness because of physical or mental disability;

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

10 (10) has violated AS 18.16.010;

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

12 or

13 (12) [HAS DENIED CARE OR TREATMENT TO A PATIENT OR
14 PERSON SEEKING ASSISTANCE FROM THE PHYSICIAN IF THE ONLY
15 REASON FOR THE DENIAL IS THE FAILURE OR REFUSAL OF THE PATIENT
16 TO AGREE TO ARBITRATE AS PROVIDED IN AS 09.55.535(a); OR

17 (13)] has had a license or certificate to practice medicine in another
18 state or territory of the United States, or a province or territory of Canada suspended
19 or revoked unless the suspension or revocation was caused by the failure of the
20 licensee to pay fees to that state, territory, or province.

21 (b) In a case involving (a)(12) [(a)(13)] of this section, the final findings of
22 fact, conclusions of law, and order of the authority that suspended or revoked a license
23 or certificate constitutes a prima facie case that the license or certificate was suspended
24 or revoked and the grounds under which the suspension or revocation was granted.

25 * Sec. 3. AS 08.68.270 is amended to read:

26 Sec. 08.68.270. GROUND~~S~~ FOR DENIAL, SUSPENSION, OR
27 REVOCATION. The board may deny, suspend, or revoke the license of a person who

28 (1) has obtained or attempted to obtain a license to practice nursing by
29 fraud or deceit;

30 (2) has been convicted of a felony or other crime if the felony or other
31 crime is substantially related to the qualifications, functions or duties of the licensee;

1 (3) habitually abuses alcoholic beverages, or illegally uses controlled
2 substances;

3 (4) has impersonated a registered or practical nurse;

4 (5) has intentionally or negligently engaged in conduct that has resulted
5 in a significant risk to the health or safety of a client or in injury to a client;

6 (6) practices or attempts to practice nursing while afflicted with
7 physical or mental illness, deterioration, or disability that interferes with the
8 individual's performance of nursing functions;

9 (7) is guilty of unprofessional conduct as defined by regulations
10 adopted by the board;

11 (8) has wilfully or repeatedly violated a provision of this chapter or
12 regulations adopted under it;

13 (9) is professionally incompetent [;

14 (10) DENIES CARE OR TREATMENT TO A PATIENT OR PERSON
15 SEEKING ASSISTANCE IF THE SOLE REASON FOR THE DENIAL IS THE
16 FAILURE OR REFUSAL OF THE PATIENT OR PERSON SEEKING ASSISTANCE
17 TO AGREE TO ARBITRATE AS PROVIDED IN AS 09.55.535(a)].

18 * Sec. 4. AS 09.55 is amended by adding a new section to read:

19 Sec. 09.55.532. LIMITATION ON ACTIONS AGAINST STATE INSURED
20 HEALTH CARE PROVIDER. (a) A person may not recover damages against a
21 health care provider in excess of the insurance coverage limits provided to the health
22 care provider by the Medical Insurance Corporation if the health care provider is
23 insured by the Medical Insurance Corporation and the damages result from professional
24 negligence.

25 (b) In an action for professional negligence against a health care provider who
26 is insured by the Medical Insurance Corporation, the corporation and not the health
27 care provider shall be named in the pleadings as a defendant.

28 * Sec. 5. AS 09.55.535 is repealed and reenacted to read:

29 Sec. 09.55.535. MANDATORY ARBITRATION. (a) An action against a
30 health care provider for damages resulting from professional negligence shall be
31 arbitrated under this section if the claimed damages are \$200,000 or less. Arbitration

1 shall begin after the answer is filed and the action may not proceed, except as provided
2 in this section, until the arbitrator renders a decision.

3 (b) When a claim is arbitrated as required by (a) of this section, the parties
4 shall jointly choose an arbitrator. If the parties cannot agree on an arbitrator, the court
5 shall appoint an arbitrator to review the claim as provided under AS 09.43.030.

6 (c) The arbitrator shall establish a period for discovery and a date for a
7 hearing. Until the arbitrator renders a decision, in a case for which arbitration is
8 required, discovery shall be limited to interrogatories, requests for production, and
9 requests for admissions. The hearing date may not be more than 120 days after the
10 appointment of the arbitrator. A hearing may not last more than two days. A party
11 may not use more than one person as a medical expert at the hearing unless the
12 arbitrator finds that the claim cannot be presented without additional medical experts.

13 (d) An arbitrator shall render a decision within 10 days after hearing a claim
14 under (c) of this section. The decision must contain findings of fact and conclusions
15 of law. The decision of the arbitrator may be rejected by a party.

16 (e) If the decision of the arbitrator is rejected by a party, the arbitrator shall
17 notify the court and the action may proceed. The arbitrator's decision is admissible
18 evidence in that action.

19 (f) At trial, the arbitrator shall be called by the court as the first witness and
20 shall be considered as a friend of the court. The witness cost of the arbitrator shall be
21 paid by the party who rejected the arbitrator's decision.

22 (g) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
23 apply to an arbitration under this section to the extent the provisions do not conflict
24 with the provisions of this section.

25 * Sec. 6. AS 09.55 is amended by adding new sections to read:

26 Sec. 09.55.537. CERTIFICATE OF MERIT. (a) In an action for damages due
27 to personal injury or death based upon the provision of professional services by a
28 health care provider, the party bringing the action shall file with the court a certificate
29 of merit. The certificate of merit shall be signed by a person who is a board eligible
30 or certified medical expert in the area of alleged professional negligence and must
31 indicate that a violation of the applicable standard of care has occurred that resulted

1 in personal injury or death to the claimant. If a person who is board eligible or
2 certified is not available, a similarly qualified expert shall be used.

3 Sec. 09.55.538. CERTIFICATION OF VALUE; SANCTION FOR
4 FRIVOLOUS CLAIM. (a) In an action for damages due to personal injury or death
5 based upon the provision of professional services by a health care provider, the
6 attorney filing the action shall indicate by affidavit the attorney's belief that the
7 claimed damages have a reasonably compensable value in excess of \$200,000 or have
8 a reasonably compensable value of \$200,000 or less. An action that has a reasonably
9 compensable value of \$200,000 or less is subject to the mandatory arbitration
10 provisions of AS 09.55.535.

11 (b) In addition to sanctions provided under the Alaska Rules of Civil
12 Procedure, if an arbitrator or the court determines that the reasonably compensable
13 value in the affidavit required under (a) of this section is not well grounded in fact, the
14 arbitrator or the court shall require the attorney filing the certificate to personally pay
15 a civil penalty in the amount of \$1,000.

16 * Sec. 7. AS 09.55.547 is amended to read:

17 Sec. 09.55.547. PLEADING OF DAMAGES. In a cause of action against a
18 health care provider for professional negligence [MALPRACTICE], the complaint or
19 any other pleadings may not contain an ad damnum clause or monetary amount
20 claimed against the defendant health care provider, except as provided in
21 AS 09.55.538 or as necessary for jurisdictional purposes.

22 * Sec. 8. AS 09.55.560 is repealed and reenacted to read:

23 Sec. 09.55.560. DEFINITIONS. In AS 09.55.530 - 09.55.560,

24 (1) "health care provider" means an acupuncturist licensed under
25 AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
26 AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
27 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
28 AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under
29 AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational
30 therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist
31 licensed under AS 08.64; a psychologist and a psychological associate licensed under

1 AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally
2 owned or operated hospital; and an employee of a health care provider acting within
3 the course and scope of employment;

4 (2) "professional negligence" means a negligent act or omission by a
5 health care provider in rendering professional services;

6 (3) "professional services" means services provided by a health care
7 provider that are within the scope of services for which the health care provider is
8 licensed, and that are not prohibited under the health care provider's license or by a
9 hospital in which the health care provider practices.

10 * Sec. 9. Alaska Rule of Civil Procedure 72.1 is repealed.

11 * Sec. 10. AS 09.55.536 is repealed.

12 * Sec. 11. AS 09.55.535(f), enacted by sec. 5 of this Act, has the effect of amending
13 Alaska Rule of Civil Procedure 83 by requiring that the witness fee of an arbitrator be paid
14 by the person who rejects the arbitrator's decision.

15 * Sec. 12. AS 09.55.537, enacted by sec. 6 of this Act, has the effect of amending Alaska
16 Rule of Civil Procedure 8, by requiring an affidavit by a board eligible or certified medical
17 professional in a civil action against a health care provider.

18 * Sec. 13. AS 09.55.538, enacted by sec. 6 of this Act, has the effect of amending Alaska
19 Rule of Civil Procedure 8, by requiring a statement of the value of the monetary damages be
20 filed with the court.

21 * Sec. 14. APPLICABILITY. This Act applies to all causes of action accruing on or after
22 the effective date of this Act.

23 * Sec. 15. (a) This Act takes effect only if an Act establishing the Medical Insurance
24 Corporation is passed by the Eighteenth Alaska State Legislature and becomes law.

25 (b) If the condition described in (a) of this section is fulfilled, this Act takes effect
26 30 days after the corporation described in (a) of this section first provides liability insurance
27 to health care providers.

28 (c) The Medical Insurance Corporation shall notify the revisor of statutes when it first
29 provides liability insurance to health care providers.