

HB

146

STATE OF ALASKA
THE LEGISLATURE

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POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907-463-3800

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. HESS 2-14-98

H. HESS 3-15-98

H. HESS 3-22-98

H. HESS 3-23-98

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 26, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 3/23/90

The HESS Committee considered:

HB 146

HOUSE BILL NO. 146

APPLICANTS FOR MEDICAL LICENSES/PERMITS

"An Act relating to interview requirements for applicants for medical licenses and permits; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CSHB 146 (HESS) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: House (HESS) letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

J. H. Ellis
Cheri Davis
Mr. Schumberg

SIGNING:
(Check approv. column)

	Do Not Pass	No Rec	Amend
<u>Peter J. ...</u>		<input checked="" type="checkbox"/>	

J. H. Ellis
Chairman's Signature

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES



P.O. BOX V, JUNEAU 99811
(907) 465-3759

March 23, 1990

Letter of Intent to
CSHB 146 (HESS)

It is the intent of the Legislature that the Alaska State Medical Board shall increase the licensing fees for physicians to cover the costs associated with the Impaired Physician Program.

A handwritten signature in cursive script, appearing to read "Johnny Ellis".

Rep. Johnny Ellis, Chair

#79

A M E N D M E N T

IN THE HOUSE

TO: CS HB 146 (HESS)

Page 1, line 18: Delete Section 1; add a new Section 1 to read:

* Section 1. AS 08.02.020 is amended to read:

Sec. 08.02.020. LIMITATION OF LIABILITY [FOR MEMBERS OF LICENSING BOARDS AND PEER REVIEW COMMITTEES].

[A PERSON IS NOT LIABLE] An action may not be brought for damages [OR OTHER RELIEF IN AN ACTION BY REASON OF] resulting from:

(1) the person's good faith performance of a duty, function or activity required as:

(A) a member of, or witness before, a licensing board, peer review committee established to review a licensing matter[,];

(B) a member of a committee appointed under AS 08.64.336(c);

(C) a contractor or agent of a contractor under AS 08.64.101(6); or [BY REASON OF]

(2) a recommendation or action in accordance with the prescribed duties of the board, [OR] peer review committee, committee appointed under AS 08.64.336(c), or contractor or agent of a contractor under AS 08.64.101(6) when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person, [OR TO THE] board, [OR]

peer review committee, committee appointed under AS 08.64.336(c),
or contractor or agent of the contractor under 08.64.101(c) after
reasonable efforts to ascertain the facts upon which the action
or recommendation is made.

Page 3, lines 19-21, after "substances":

Delete remainder of subsection (6).

Page 12, lines 17-19:

Delete "A physician appointed under this subsection is
considered an agent of the board for the limited purpose of this
section and is entitled to immunity and indemnity under AS
08.02.020."

A M E N D M E N T # 1

IN THE HOUSE

TO: CS HB 146 (L&C)

Page 2, line 16: add a new bill section to read:

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

Sec. 08.02.025. CONFIDENTIALITY. A communication made in good faith by or on behalf of a person or group to a board established under this title, the department, a peer review committee established to review a licensing matter, or a group or person designated by the board, department or committee relating to an investigation or the proposed initiation of an investigation under this title by the board, department or committee is confidential and not subject to public inspection or copying under AS 09.25.110 and 09.25.120.

A M E N D M E N T

#2

IN THE HOUSE

TO: CS HB 146 (L&C)

Page 3, line 15, after "(6)":

Insert "under regulations adopted by the board,"

Page 3, line 17, after "confront,":

Insert "evaluate"

(Comment: This amendment was adopted at the HESS committee's last meeting on HB 146.)

A M E N D M E N T

3

IN THE HOUSE

TO: CS HB 146 (L&C)

Page 4, line 24, after "list of":

Insert "negotiated settlements or judgments in claims or civil actions alleging"

Page 4, lines 24-25, after "malpractice":

Delete "civil actions filed"

Page 4, line 25, after "of the":

Delete "outcome of each action";

Insert "basis for each claim or action"

(Comment: The revised language requires physician applicants for a medical license to "submit a list of negotiated settlements or judgments in claims or civil actions alleging medical malpractice against the applicant, including an explanation of the basis for each claim or action". The intent is to ensure that the board learns about not only civil judgments in actions filed, but also negotiated settlements of insurance claims whether or not the claim resulted in a lawsuit. Limiting disclosure to settled claims will avoid the reporting of frivolous claims, which are simply denied.)

A M E N D M E N T

4

IN THE HOUSE

TO: CS HB 146 (L&C)

Page 11, line 28, after "province":

Delete "; or"

Insert "."

Page 11, line 29:

Delete subsection (14)

Page 3, line 1, add a new bill section to read:

* Section 3. AS 08.64.100 is amended to read:

Sec. 08.64.100. POWER OF BOARD TO ADOPT REGULATIONS.
The board may adopt regulations necessary to carry into effect
the provisions of this chapter. The regulations may limit or
prohibit the prescription, ordering, dispensation,
administration, supply, sale or transfer of an amphetamine,
sympathomimetic amine drug, or compound identified as a
schedule IIA controlled substance under AS 11.71.150, by a
person licensed under this chapter.

Renumber following bill sections accordingly.

(Comment: This provision allows the Board the flexibility to control the use of certain drugs and controlled substances by means of regulation, in light of contemporary medical standards.)

A M E N D M E N T

4a

IN THE HOUSE

TO: CS HB 146 (L&C)

Page 11, line 28, after "province":

Delete "i or"

Insert "."

Page 11, line 29:

Delete subsection (14)

Page 3, line 1, add a new bill section to read:

* Section 3. AS 08.64.100 is amended to read:

Sec. 08.64.100. POWER OF BOARD TO ADOPT REGULATIONS.
The board may adopt regulations necessary to carry into effect
the provisions of this chapter. The regulations may limit or
prohibit the prescription, ordering, dispensation,
administration, supply, sale or transfer of a drug or
compound, including a drug or compound identified as a
controlled substance under AS 11.71.150, by a person licensed
under this chapter.

Renumber following bill sections accordingly.

(Comment: This provision allows the Board the flexibility to control the use of drugs and controlled substances by means of regulation, in light of contemporary medical standards.)

A M E N D M E N T

#5

IN THE HOUSE

TO: CS HB 146 (L&C)

Page 14, line 24, after "should be":

Delete "an annual"

Insert "a biennial"

(Comment: This amendment was adopted by the HESS committee at its last meeting on HB 146.)

A M E N D M E N T

#6

OFFERED IN THE HOUSE

TO: CSHB 146(L&C)

Page 10, line 6:

Delete "or by"

Insert " , "

Before ".":

Insert " , or a person designated for that purpose by the board"

A M E N D M E N T

7

IN THE HOUSE

TO: CS HB 146 (L&C)

Page 1, line 18: Delete Section 1; add a new Section 1 to read:

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

Sec. 08.02.020. IMMUNITY AND INDEMNITY RELATED TO LICENSING FUNCTIONS. (a) An action for damages may not be brought against a witness for, or a member of, a board established under this title or a peer review committee established to review a licensing matter as a result of an act or omission that occurred during the good faith performance of actions related to and within the scope of functions of the board or committee.

(b) A person who is or was a witness for or a member of a board established under this title or a peer review committee established to review a licensing matter is not liable for civil damages as a result of an act or omission that occurred during good faith performance of actions related to and within the scope of functions of the board or committee.

(c) The state shall insure or indemnify a person described in (b) of this section against financial loss and expense, including reasonable legal fees and costs, arising out of a claim, demand, suit, or judgment by reason of conduct performed in good faith and related to and within the scope of functions of the board or peer review committee.

(d) The provisions of subsections (a), (b) and (c) of this section apply to actions brought against a person by reason of a recommendation or action of the board or peer review committee when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the board or peer review committee after reasonable efforts to ascertain the facts upon which the action or recommendation is made.

7 comment

(Comment to subsections (a) and (b) : This language deletes references in subsections (a) and (b) of Section 1 [CS HB 146 (L&C)] that would have broadened the scope of immunity beyond witnesses for and members of boards and peer review commissions. Investigators, employees, consultants and agents of these bodies are not immune in the revised Section 1; these individuals are typically paid for their services, and hence there is no reason to offer immunity as an inducement to participation in the peer review process.)

(Comment to subsection (c): The revised language omits unnecessary references to the types of claims to be insured or indemnified against; the state's undertaking extends to all claims arising out of good faith performance of the functions of the board or peer review committee.)

A M E N D M E N T

7a

IN THE HOUSE

TO: CS HB 146 (L&C)

Page 1, line 18: Delete Section 1; add a new Section 1 to read:

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

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(b) A person who is or was a witness for or a member of a board established under this title or a peer review committee established to review a licensing matter is not liable for civil damages as a result of an act or omission that occurred during good faith performance of actions related to and within the scope of functions of the board or committee.

(c) The state shall insure or indemnify a person described in (b) of this section against financial loss and expense, including reasonable legal fees and costs, arising out of a claim, demand, suit, or judgment by reason of conduct performed in good faith and related to and within the scope of functions of the board or peer review committee.

(Comment to subsections (a) and (b) : This language deletes references in subsections (a) and (b) of Section 1 [CS HB 146 (L&C)] that would have broadened the scope of immunity beyond witnesses for and members of boards and peer review commissions. Investigators, employees, consultants and agents of these bodies are not immune in the revised Section 1; these individuals are typically paid for their services, and hence there is no reason to offer immunity as an inducement to participation in the peer review process.)

(Comment to subsection (c): The revised language omits unnecessary references to the types of claims to be insured or indemnified against; the state's undertaking extends all claims arising out of good faith performance of the functions of the board or peer review committee.)

A M E N D M E N T

8

OFFERED IN THE HOUSE

BY REP. GRUENBERG

TO: CS HB 146 (L&C)

Page 11, line 8, after "unconventional" insert:

"or experimental".

A M E N D M E N T

#9

IN THE HOUSE

TO: CS HB 146 (L&C)

Page 13, line 17, after "confront,":

Insert "evaluate"

Page 13, line 21 after "civil":

Delete "or criminal"

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to occupational
licensing; . . .
 Sponsor: House Rules Committee
 Requestor: Governor

Agency Affected: Commerce & Economic Dev.
 BRU: Occupational Licensing
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	22.1	22.1	22.1	22.1	22.1	22.1
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	22.1	22.1	22.1	22.1	22.1	22.1

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PP.	22.1	22.1	22.1	22.1	22.1	22.1
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

- No fiscal impact for FY90.

SEE ATTACHED

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: _____

Approved by Commissioner: Larry Merculieff Date: 1/25/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE ANALYSIS

CSHB 146 (L&C)

The bill repeals and reenacts AS 08.02.020, Immunity and Indemnity Related to Licensing Functions. The bill also makes several amendments to AS 08.64 regarding the State Medical Board. Section 3 adds a new provision to the medical statutes requiring the board to maintain records on licensees concerning malpractice actions and the outcome of each action.

The board is also required to periodically review the records and determine if the licensee should be found professionally incompetent. To assist the board in determining whether a licensee is professionally incompetent and to ensure that licensees report malpractice claims and the outcome to the board as required in Section 25, this fiscal note provides costs of personal services only for a seasonal Investigator II position, six months, Range 16A.

and in the last sentence substituted "an-
other title that" for "any other title
which" preceding "tends to show."

ary 1, 1988, inserted "or occupational
therapist" in the first sentence of subsec-
tion (a).

The 1987 amendment, effective Janu-

Sec. 08.02.011. Professional geologist. The commissioner of com-
merce and economic development shall certify an applicant as a pro-
fessional geologist if the applicant is certified as a professional geolo-
gist by the American Institute of Professional Geologists. (§ 2 ch 142
SLA 1980)

Revisor's notes. — Enacted as AS
08.53.010. Renumbered in 1980.

**Sec. 08.02.020. Limitation of liability for members of licensing
boards and peer review committees.** A person is not liable for
damages or other relief in an action by reason of the person's perfor-
mance of a duty, function, or activity as a member of a licensing board
or peer review committee established to review a licensing matter, or
by reason of a recommendation or action of the board or peer review
committee when the person acts in the reasonable belief that the
action or recommendation is warranted by facts known to the person
or to the board or peer review committee after reasonable efforts to
ascertain the facts upon which the action or recommendation is made.
(§ 45 ch 102 SLA 1976; am § 12 ch 94 SLA 1987)

Cross references. — For constitution-
ality of ch. 102, SLA 1976, see notes to AS
09.55.536 and Alas. Const., art. II, § 14.

mittees" at the end of the catchline, in-
serted "or peer review committee estab-
lished to review a licensing matter," and
inserted "or peer review committee" in
two places.

Effect of amendments. — The 1987
amendment added "and peer review com-

Chapter 03. Termination, Continuation and Reestablishment of Regulatory Boards.

Section

10. Termination dates for regulatory
boards

Section

20. Procedures governing termination,
transition and continuation

Cross references. — For review of the
activities of agencies, boards and commis-
sions, see AS 44.66.



DEPARTMENT OF HEALTH & HUMAN SERVICES
PUBLIC HEALTH SERVICE

February 1, 1990

ALASKA AREA NATIVE HEALTH SERVICE
250 GAMBELL STREET
ANCHORAGE, ALASKA 99501

Refer to: A-DD

(907) 257-1154

Honorable Johnny Ellis
State House of Representatives
Chairman, Health Education and
Social Services Committee
P.O. Box V
Juneau, Alaska 99811

*Jim/Nina,
I want to
follow up on this.
Let's discuss
JE*

Dear Mr. Ellis:

As our major recruiting effort, the Alaska Area Native Health Service brings approximately 250 medical students and residents to the State each year to serve four- to six-week clinical clerkships. These clerkships are located throughout the State at hospitals and clinics operated directly by the Indian Health Service and by Alaska Native Regional Corporations. About one third of these potential recruits are residents who are in a level of training beyond their first post medical school or internship year.

A resident requires a permit under State Law which currently requires an interview by a member of the State Medical Board or its executive secretary. Frequently this can work a hardship on our program and the resident by necessitating rerouting of travel with additional cost and time demands. For example, since no one is available in Sitka to interview, the resident has to be routed through Ketchikan or Juneau for the interview, often requiring an overnight stay. Similar scheduling is required to hold residents in Anchorage when they are assigned to locations such as Nome, Kotzebue or Dillingham.

We would like to suggest alternate wording by the State Medical Licensure Act as follows:

Sec. 08.64.279 INTERVIEW REQUIRED FOR PERMITS

An applicant for a temporary permit for locum tenens practice must be interviewed in person by at least one member of the board or by the executive secretary of the board. An applicant for an intern permit or resident permit must be interviewed in person by at least one member of the board, the executive secretary of the board or by a qualified board-approved designee.

The only change to the law is underlined. This change would provide greater flexibility in obtaining interviews for resident physicians.

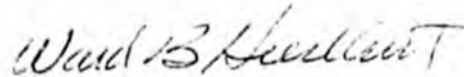
Honorable Johnny Ellis
February 1, 1990
Page 2

I understand the State Medical Board has no objection to this proposed wording change.

We believe our medical student/resident clinical clerkship program is our most effective recruitment tool. We are able to select the very best for our most intensive recruitment. The physicians are also able to determine if they are truly suited to the demands of service in Alaska. Many of the physicians we initially recruit go on to spend their lives in our great State.

Your consideration of this request is very much appreciated. If you wish, I would be happy to provide testimony by telephone to the Committee on this issue.

Sincerely yours,



Ward B. Hurlburt, M.D., F.A.C.S.
Deputy Director/Chief Medical Officer
Alaska Area Native Health Service

CSHB 146 (L&C) "An Act granting immunity and indemnity relating to certain occupational licensing functions; authorizing temporary courtesy licenses for certain occupations; relating to powers and duties of the State Medical Board; requiring persons licensed by the State Medical Board to report medical malpractice actions; requiring the State Medical Board to make a report relating to the use of malpractice claims histories to determine medical competency and to impose sanctions on its licensees; and providing for an effective date."

This bill contains a number of provisions which would increase the effectiveness of the State Medical Board in the performance of its duties relating to licensing and permitting medical professionals; reviewing the malpractice claims history of physicians already licensed in Alaska; and creating a retired status license for physicians retired from active practice. In addition, the bill provides immunity and indemnity for persons assisting occupational licensing boards in general in carrying out their enforcement duties and functions, and creates a "courtesy" status permit for various professionals visiting Alaska.

Section 1 of the bill, repealing and reenacting AS 08.02.020, extends and clarifies the immunity and indemnity provisions already in law to encompass impaired practitioner program volunteers and others who assist occupational licensing boards through the provision of consultation and expert testimony services relative to Division of Occupational Licensing (hereinafter "division") disciplinary cases.

At the present time, various licensing boards and the division have experienced difficulty in identifying in-state licensed professionals willing to serve in advisory capacities to the boards on individual discipline cases or involve themselves in impaired practitioner programs. This reluctance flows from the practitioners' legitimate personal liability fears that the licensee ("respondent" in a discipline case) that is being investigated will decide to personally sue the practitioner who is providing their services to a board and the division.

The division has, for example, also encountered similar reluctance on the part of hospitals to cooperate with division staff when investigating adverse privileging actions taken by a hospital and reported to the State Medical Board under AS 08.64.336(b). We have also found it very difficult to get licensees to serve in a peer review capacity for fear of civil suit.

The department supports the protections this will provide to persons assisting the division and its regulatory boards in licensing actions. Without this language, the state's ability to turn to licensees to assist in disciplinary matters will continue to be severely impeded.

Section 2 of the bill would give the state's twenty-one (21) licensing boards and commissions the ability to issue a "courtesy" license to visiting professionals. This idea was originally conceived in order to accommodate Olympic team physicians when it was anticipated that the Olympics would be coming to

Alaska. In working up this proposal, it was discovered that there are many other occasions when a courtesy license would be helpful: visiting Iditarod veterinarians; international sporting teams playing in Anchorage accompanied by their team physician; visiting foreign delegations accompanied by a variety of professionals. This new provision would allow for the courtesy licensing of visiting professionals and would allow the boards to authorize limited practice restricted to treatment of members of their sports team or delegation while in the state.

Section 3 amends AS 08.64.101 to clarify the Medical Board's (hereinafter "board's") authority to contract with a private professional organization to establish an impaired physician program. The word "contract" is a more accurate term for the relationship between the board, the division, and the private organization establishing such a program, and creates a legal bond between the state and the program in order that the program can be designated an agent of the board for purposes of indemnity and immunity under AS 08.02.020. This section also adds language which more clearly states the range or scope of the impaired physician program.

Thus, this section extends the immunity and indemnity protections to physicians serving in a voluntary capacity on the impaired physician program committee. Currently, the physicians serving on the impaired physician committee have done so with considerable personal risk, given their vulnerability to suit by an angry colleague.

Section 4 of HB 146 pertains to board records and adds two new subsections to AS 08.64.130. The first new subsection [subsection (b)] directs the board to maintain records on each licensed physician concerning civil malpractice actions and their outcomes. The second new subsection [subsection (c)] simply requires that the malpractice records received under new subsection (b) would be available to the public, just as board records regarding the admission of licensed physicians are already available to the public.

Section 5 amends AS 08.64.190 to add to the list of application procedures the requirement that the applicant provide his or her medical work history. The board has, by policy decision, already begun independent verification of each applicant's medical school and internship program records. Section 4 amends AS 08.64.190 to place into statute the specific authority of the board to do so.

Section 6 of the bill amends board provisions concerning the qualifications of physician applicants. The bill adds language to AS 08.64.200 to require the applicant to provide an explanation of medical malpractice civil actions filed against the applicant. New language in this section also provides for the board, or the division on its behalf, to contact other licensing jurisdictions directly if an applicant for licensure in Alaska was licensed in a jurisdiction that does not report its disciplinary actions affecting physicians to the Federation of State Medical Boards. The Federation maintains the disciplinary data bank which is accessed by most jurisdictions for information on physician applicants.

Section 7 amends AS 08.64.205 which deals with qualifications for licensure of osteopathic physician applicants and merely makes these sections equivalent to the allopathic physician applicant requirements in AS 08.64.200, as amended in Section 5 of this bill.

Similarly, Section 8 makes parallel amendments for podiatry applicants.

Section 9 amends the statutory provisions affecting foreign medical graduates by clarifying the language for verification of foreign medical credentials. The proposed language more accurately identifies the national agency responsible for accrediting medical schools and moves the examination specifications into regulation. This action will accommodate substantial changes expected over the next two years as the Educational Commission for Foreign Medical Graduates (ECFMG) exam is phased out and all medical school graduates (U.S. and foreign alike) are required to follow the same examination pathway.

Sections 10 and 11 of the bill clarify the interview requirement for licensure.

Section 12 amends the grounds on which the board may refuse to grant a license. This amendment closes an existing loophole in the statute. Currently, persons who have surrendered a license in another jurisdiction while under disciplinary investigation by that jurisdiction are free to apply for licensure in Alaska. It then falls to the board to spend considerable time and money investigating the causes of the disciplinary problem in that other jurisdiction (in a sense, duplicating the actions of that jurisdiction) in order to determine whether it is appropriate to license the physician, deny the license, or place some conditions on the license.

It seems sensible from a public protection standpoint to require that the physician under disciplinary review in one jurisdiction resolve his or her discipline problem in that jurisdiction before being eligible to apply for licensure in Alaska.

Section 13 contains primarily housekeeping changes to recognize applicants from both the provinces and territories of Canada and to allow for flexibility concerning upcoming changes in the medical examination pathways by putting exam specifications into regulation.

Section 14 and 15 of HB 146 amends physician "temporary" permit provisions by changing the present nature of a temporary permit. Currently, a temporary permit is available to a physician who is applying for a permanent license in the state, has completed all of the documentation for application, and is merely awaiting the next medical board meeting to have his or her application reviewed by the board. The new provisions in this section would allow physicians to serve temporary "tours of duty" in Alaska or to come to Alaska for a brief period of time to determine whether or not they wish to relocate their practice to Alaska.

This section provides that physicians seeking temporary licensure must complete a full, permanent license application and would be issued a temporary permit for up to six months at a reduced fee. If, at the end of that period of time, the physician with the temporary license wishes to seek permanent licensure, he or she would merely pay the remainder of the licensing fees for the biennial licensing period. If the physician has decided not to stay, the temporary permit expires. A temporary license could not be renewed under the proposed amendment.

Section 16 would allow the executive secretary for the Medical Board to conduct interviews and issue permits to applicants for residents-in-training or internships.

The amendments contained in Sections 17 through 20 also allow the executive secretary of the board to conduct interviews for locum tenens physicians. In addition, Section 16 limits a locum tenens permit to sixty (60) consecutive days from its current 120 days.

In recent years, individual board members have encountered severe difficulty in accommodating the requirement imposed on board members to interview locum tenens physicians. As a result, the board has, by policy, delegated to the executive secretary the authority to conduct these interviews where feasible. This language would put that authority into statute.

The board also wishes to restrict the use of the locum tenens permit to its intended statutory purpose, which is to allow a physician licensed in another state to substitute for an Alaska-licensed physician for a limited period of time. These amendments in Section 17-20 are companion to the changes made to the temporary permit in Sections 14 and 15 of the bill and would further clarify the distinction between those physicians coming to Alaska specifically to substitute for an Alaska licensed physician (locum tenens permit) and those coming to take a "look - see" to determine if they wish to pursue practice in Alaska (temporary permit). There are also in these sections some housekeeping changes which would bring this section into line with the rest of the medical practice act relative to interviews and references to both the provinces and territories of Canada.

Section 21 of HB 146 creates a new section, AS 08.64.276, establishing a retired status license. There are a number of physicians who retain licensure far beyond the time it is reasonable for them to practice, mostly out of the sense of pride that licensure brings them and because of an oddity in statute that prohibits them from using the "M.D." after their name if not licensed. (That statute, 08.02.010, is designed to prevent the unlicensed from deluding the public as to their qualifications.)

It is felt that a permanent retired license status will both serve elderly physicians wishing to retain their M.D. title and protect the public. Retired status should also appeal to those physicians who are effectively retired and presently faced with CME requirements they cannot meet due to age and infirmity. The proposed language also empowers the board to make very certain the physician is competent, should a retired physician wish to return to active status.

Section 21 also creates a new section (AS 08.64.279) that authorizes the executive secretary of the board to conduct certain physician candidate interviews. This greatly enhances the efficiency and effectiveness of the board without compromising the standards for license and permit requirements. The executive secretary would conduct interviews for the variety of short-term licenses and permits that are issued by the Medical Board; however, this amendment does not remove the requirement that a physician getting permanently licensed in Alaska must be interviewed by a member of the board itself.

Section 22 amends the grounds for imposition of disciplinary sanctions in AS 08.64.326. The amendments are primarily very minor housekeeping, but two significant changes in this section pertain to the use of amphetamine type controlled substances and to a revision in the reference to "professional incompetence."

New language in this section would prohibit the use and prescription of amphetamines and amphetamine type drugs except for use in the treatment of some specifically enumerated medical disorders. This section would allow the board greater authority to investigate and sanction those physicians who may be prescribing amphetamines for inappropriate purposes. Across the country, amphetamine prescription for weight reduction is the single most significant diversion point of this type of medication into the illicit market. The proposed language was adapted from Wisconsin statutes and recognizes those valid uses of the medication while making other uses subject to disciplinary sanction.

This section also adds a qualifier to the "professional incompetence" standard, stating that the board may not find professional incompetence "solely on the basis that a licensee's practice is unconventional."

Section 23 of the bill amends board statutes which address reports of disciplinary action to the Federation of State Medical Boards and the National Practitioner Data Bank. Present language specifies that disciplinary action taken against licensees is to be reported. The changes in this section broaden the reporting to include (temporary, residency and locum tenens) permit holders as well. The board reports disciplinary actions against permit holders, considering that such reporting falls under the legislative intent of the statute, but we believe it would be best to have specific language in the statute authorizing such reporting.

Sections 24 and 25 amend the "duty to report" provisions of the Medical Board's statute by strengthening the subsection having to do with peer review and physician assistance in investigatory cases, making clear that the immunity and indemnity provisions of the new AS 08.02.020 apply to those persons assisting the board in determining the competency of a physician and his or her potential danger to the public. These sections also specifically include the impaired physician program volunteers in the immunity protections provided for in this section of the statute.

Section 26 amends the board statutes by creating a new section that requires licensed physicians to report to the board any civil malpractice actions filed against them. This is information currently not readily available to the board. It is conceivable that this additional information, combined with consumer complaints and investigatory information obtained independently by the division, could perhaps "tip the scales" in providing enough data to "make a case" against a physician who has been practicing "on the edge" of competency.

It would also allow the board to review such information and determine if there is cause for investigation and/or disciplinary action in those instances where the board/division had not received a complaint against the licensee the civil claim was filed against.

Although this section is controversial and not popular among the medical community, the department does not oppose this section of the bill at this time. We are, however, concerned that this section -- while not giving us substantially better information than now required as a result of Federal Public Law 99-660 -- will engender considerable opposition from the medical community and thus potentially keep this bill from passing. This concerns us because the bill contains many amendments to the board's statutes far more important to the consumer than this one section. Our belief is that only a reporting experience of some years will provide us with adequate data to determine the potential consumer protection value of collecting reports of malpractice claims.

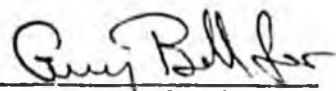
Section 27 amends the definitions section to clarify the issue of who may use the designation "physician," "M.D.," "D.O.," etc. There is presently a great deal of concern over this statute because it effectively prohibits a person who is trained as a physician and received an M.D. degree but who is not licensed or practicing medicine from using the designation M.D. in teaching, authoring books, or other types of activities. It is hoped that the proposed language will clarify this issue and allow persons to use the academic designations they earned without misleading the public that they are licensed to diagnose and treat patients.

Section 28 of HB 146 is related to proposed new AS 08.64.345. It directs the Medical Board to submit a report to the Legislature by January 30, 1992. The report would contain the board's recommendations for statutory changes necessary to implement policies regarding review of medical malpractice claim data.

Section 29 is the effective date clause.

The State Medical Board and the division have spent considerable time reviewing these proposed changes and feel that they would greatly enhance not only the effectiveness of all occupational licensing boards vis-a-vis their discipline and impaired practitioner cases, but that the provisions directly impacting the Medical Board would solve a great many existing licensing complications and substantially benefit Alaska's consumers of medical services.

For the reasons stated above, this department supports passage of CSHB 146 (L&C).


Larry Mercurieff, Commissioner

Date: 1/30/90

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 23, 1990

SUBJECT: Sectional Analysis
(CSHB 146(L&C))

TO: Representative Dave Donley, Chair
Labor and Commerce Committee

FROM: Terri Lauterbach *TL*
Legislative Counsel

In my preparation of CSHB 146(L&C), your instructions were to use material provided on behalf of the State Medical Board if it was new, but to keep the 4/25/89 language of the CS in other respects. If material from the Board conflicted with 4/25/89 language, you instructed me to retain the 4/25/89 language.

Following is the brief sectional analysis you requested:

Sec. 1. Includes new Board-requested immunity and indemnity provisions. I would have preferred to use the usual immunity language about not being liable for damages, but the Board seemed to think that would not be sufficient. I am not certain whether prohibiting an action is broader than providing immunity, so I have provided for both in this section. If this section continues to prompt questions from the Board, I would like your permission to contact the Attorney General's Office to see why attorneys there might have advised the Board that current immunity provisions offer only "flimsy to nonexistent" protection. The indemnity provision is modeled on language relating to school boards and the Board of Regents, AS 14.12.115 and AS 14.40.175. The title of the bill has been broadened considerably to cover the broad application of this section beyond medical licensing.

Sec. 2. As requested by the Board, provides contracting authority for the State Medical Board with respect to private professional organizations for impaired medical profes-

Representative Dave Donley

Page 2

January 23, 1990

sionals programs. Covers these organizations with the immunity and indemnity provisions accorded the Board.

Sec. 3. Retains 4/25/89 language about malpractice actions.

Sec. 4. As requested by the Board, retains 4/25/89 language providing for verification of applications. Retains 4/25/89 language about requiring an applicant to describe the applicant's medical work history.

Sec. 5. Retains 4/25/89 language about medical malpractice civil actions and about Board actions when national data bank information is not available.

Secs. 6 - 7. Retains technical amendments from the 4/25/89 draft.

Sec. 8. Changes requirements for graduates of foreign medical schools, as requested by the Board.

Secs. 9 - 10. Retains 4/25/89 changes regarding personal interviews.

Sec. 11. Adds Board-requested language relating to licenses surrendered in other jurisdictions.

Sec. 12. Adds Board-requested language changing the examination requirement for licensure by credentials.

Secs. 13 - 14. Amend current temporary permit requirements to read as the Board requested.

Sec. 15. Retains 4/25/89 requirement that a personal interview is required.

Sec. 16. Adds the Board-requested changes to the locum tenens permit statute.

Secs. 17 - 18. Retain requirement of a personal interview.

Sec. 19. Adds Board-requested language to limit these permits in duration.

Sec. 20. Adds Board-requested language on retired status permits and courtesy licenses to previous language requiring an interview.

Sec. 21. Adds Board-requested language allowing sanctions for treatment with amphetamine-type substances. Adds a restriction to Board determinations of professional incompetence when unconventional practices have been used by a licensee.

Sec. 22. Adds Board-requested language to "broaden" their reporting responsibility to include actions related to permits. I have included this section for the sake of discussion only. If it is retained in the draft, there are many other sections in AS 08.64 where "permits" should be added, including the disciplinary, refusal, suspension, and surrender statutes cited in AS 08.64.335. If the Board thinks "permits" needs to be added in AS 08.64.335, where does it think it is getting its authority to discipline permittees under AS 08.64.331 or to suspend or take surrendered permits under AS 08.64.332 and 08.64.334? Those statutes refer only to licenses. I think the better view is to interpret "license" throughout the chapter to include "permits".

Sec. 23. Adds Board-requested language applying immunity and indemnity provisions to investigative committees. I think this language is redundant to that in section 1, but doesn't hurt anything by being here.

Sec. 24. Adds Board-requested language concerning organizations that help substance abusers.

Sec. 25. Retains 4/25/89 language about malpractice claims.

Sec. 26. Adds Board-requested language relating to the use of "M.D." in a person's title.

Secs. 27 - 29. Amend the Administrative Procedure Act to add Board-requested language restricting the use of stays, injunctions, and restraining orders in licensing matters. I used the alternative language suggested by the Board rather than their first choice because it is more general. The language of the Board's first choice, by listing only the situations under which a stay (etc.) could be granted carries the risk that the list might, despite our best efforts, turn out to be underinclusive in an important way. The alternative language is more comprehensive and applicable in all foreseeable situations.

Representative Dave Donley
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January 23, 1990

Sec. 30. Retains 4/25/89 language requiring a report by the Board in 1991.

Sec. 31. Refers to the court rule changes that will require two-thirds votes.

Sec. 32. Immediate effective date.

TL:gc
G13/061

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



November 23, 1989

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed CS for HB 146

HB 146, as filed by the Governor, permits the executive secretary of the Medical Board to conduct personal interviews for an intern, resident, or temporary permit for locum tenens practice. Current law permits only members of the Board to conduct the interviews.

The proposed House Labor and Commerce Committee Substitute for HB 146 adds three elements to HB 146. They are:

1. "Whistleblower" protection - Language in the CS specifically grants immunity from liability for any health care provider who testifies or participates in an official inquiry or investigation regarding any other health care provider so long as their participation and/or testimony is in good faith.

In testimony before the Task Force on Liability Insurance, staff to the board and members of the Task Force stated that providing immunity for testimony or participation in investigations was critical to encourage adequate peer review and policing of health care providers.

2. Physicians Data Bank - The CS contains language governing the information exchange between the state and the National practitioners Data Bank. Controversial elements of the reporting requirements regarding medical malpractice cases are outlined in #3 below.
3. Medical Malpractice Claims - The CS requires reporting of claims made, as well as the outcome of claims. The medical board is opposed to this language, arguing that there is little value in information about claims made while the potential for damage is great. Physicians rightfully fear that they will be judged by claims made, even if the claims are proven to be unfounded at a later date.

The concern the CS seeks to address is that there is considerable lag time between a claim being filed and final judgement. Unless the Board is aware of a series of claims being filed that may indicate a practice that presents a danger to the public, they would be unable to

take any action to investigate or correct a potential problem until the claims reached the settlement stage. Under current law, the Board has the power to suspend or revoke a license when they have reason to believe that continued practice constitutes a threat to the public.

The CS requires that information about civil actions, including their outcome, must be reported to the Board and to the national data bank. In addition, the CS requires that this information is available to the public. The CS further requires the board to submit recommendations to the Legislature on statutory changes necessary to implement disciplinary actions based on a review of civil actions filed against a health care provider.

dd/gb
b/hb146-1

HB 146

FROM: Thomas L. Conley, Legislative Committee
State Medical Licensing Board

TO: State Legislature, State Medical Licensing Board,
Other Interested Parties

DATE: November 20, 1989

SUBJ: Proposed Legislation, Explanation of Provisions

Enclosed please find a proposal for legislation to supersede our proposals of last year. It borrows heavily from last year's proposal, incorporates material from the Committee Substitute for HB 146 introduced in House Labor & Commerce and our response to that substitute and uses ideas from Elements of a Modern State Medical Board produced under a HRSA Contract with the Federation of State Medical Boards. For convenience and ease of understanding it is presented in what the committee hopes is standard bill form. The format could be used to introduce a newly numbered bill, as a committee substitute for HB 146 now in Labor & Commerce or taken apart and apportioned into HB 146 as the legislature desires.

The proposed legislation is designed to produce greater efficiency in interviewing candidates for licensure, afford liability protection to the impaired physician program volunteers, close some loopholes in present license provisions, effectively define the difference between temporary and locum tenens licenses, and create categories for retired licensees and for those accompanying sporting teams, especially those accompanying Olympic athletes. It also seeks to prevent diversion of amphetamines (speed) into illegitimate channels and prevent improper prescribing. A strong feature of the proposal is a new definition of immunity, indemnity and protected communication that would apply to all boards [Section 1, revised AS08.02.020]. It is hoped this is a "bullet proof" definition in this important area. It is argued that it should carry a "no sum" fiscal note for though it promises indemnity the immunity grant is so complete as to preclude all but a madman from bringing an action. It is indeed sad to realize, but a clearly inescapable conclusion, that fear of liability is the brake on the whole enterprise and that there can be no cooperation expected in licensing and discipline from hospitals and physicians unless immunity and indemnity is absolute. We hope this language and subsidiary language in other sections, accomplishes this goal. In other sections this definition is applied to the protection of groups such as the impaired physician program and committees reviewing individual physician's competence, by making them agents of the board for the limited purpose of their assignment. Responses by the Attorney General to individuals inquiring into what protection is offered them by the state should they cooperate in good faith with the board in these areas has been quite chilling and the protection promised

flimsy to non-existent. The board is not surprised that we have been completely unable to get volunteers especially to fulfill the provisions of Sec. 08.64.336(c).

It will be helpful to review the bill by sections:

A. Section 1 is referred to above.

B. Sections 2 & 20 are to be read together. "Contract" is substituted for "coordinate" in the language to permit a legal bond between the board and the impaired professional program so that the program can be designated an agent of the board for purposes of immunity and indemnity under 08.02.020. The language adding identification and confrontation to the programs writ conforms to standard practice for such programs, strengthens their effectiveness and by defining such activity as normative and expected further strengthens protection against legal action.

C. Section 3 is adopted from the proposed substitute for HB 146 in Labor and Commerce.

D. Section 4 is similarly adopted from CS for HB 146 (L&C) with deletion of language referring to reporting of claims made. The board feels that the investigation of such reports would serve no useful purpose but would dramatically increase expenses and necessitate a substantial fiscal note for the bill.

E. Sections 5 & 6 are adopted from CS for HB 146 (L&C).

F. Section 7 takes language from CS for HB 146 (L&C), properly designates the agency that accredits medical schools and moves specification of exams into regulation. This latter reflects substantial change expected over the next two years as the ECFMG test is phased out and becomes unavailable and all graduates, US and foreign, become required to follow the same examination pathway to be administered conjointly by the Education Council on Foreign Medical Graduates, the National Board of Medical Examiners and the Federation of State Medical Boards. Putting the matter in regulation permits the board to respond to these changes expeditiously - the final result over several years will be a single national test sequence which we will as a matter of course require as will all jurisdictions (in any case nothing else will be available).

G. Section 8 is adopted from CS for HB 146 (L&C).

H. Section 9. This section closes a loophole. At present, persons who have surrendered a license in another jurisdiction while under investigation are free to apply in Alaska (if they have had the license revoked they are not so permitted). It seems sensible to require that they clear up their problem one way or another in the prior jurisdiction before

applying in Alaska.

I. Section 10. This section also clarifies that required examinations for licensure will appear in regulation.

J. Section 11 & 13 are to be read together.

In the past a temporary license was granted to an individual who had completed all the requirements for a permanent license including an interview and was waiting for the board to meet to confirm the material and grant permanent licensure.

The locum tenens license though statutorily designed to be used only by those substituting for another physician developed an expanded, and to the board, uncomfortable meaning. It was used as intended for substitute physicians but was also used to cover individuals who came to Alaska to work in seasonal jobs, emergency rooms, etc., and those coming up briefly to see if they wanted to relocate to Alaska. Often they were not actually substituting for an Alaskan physician but there seemed no other reasonable category in which to place them without requiring permanent licensure. Some individuals also seemed to acquire such permits on a regular basis and as it were, acquire sort of a permanent license at a cut rate.

By coordinating AS08.64.270 and AS08.275 the board hopes to create two categories.

- a) Temporary Permit - good for 6 months and requiring all the documentation required for a permanent license plus interview by a board member to be used
 - 1) While waiting formal board action at the next regular meeting at which point it is converted to a permanent license.
 - 2) By those filling a temporary slot in an emergency room, seasonal clinic, etc. but not substituting for an Alaskan physician.
 - 3) By those moving to the state who have not yet decided if they wish to stay permanently.
 - 4) Individuals in category 2 & 3 (or for that matter those who wish to get frequent locum tenens permits) can then move on to permanent licensure by paying the remnant 75% of the permanent licensure fee any time up to 6 months after

getting the temporary as they will have complied with all the requirements. The board would still have the discretion of putting a hold on this if the individual had gotten into trouble during the 6 month temporary period.

- b) Locum Tenens Permit - good for 60 days with one renewal and a limit of 240 days in any two years between new permits and renewals. It would require somewhat less documentation than a temporary (but demand a currently valid license in another jurisdiction and clearance by National Federation of State Medical Boards) plus an interview by either a board member or the board's executive secretary. It could be used only by one substituting for an Alaskan physician who would have to be specifically designated. An individual who chose to function repeatedly in the role (i.e. beyond 240 days in two years) would be expected to get a permanent license (either directly or through the temporary license route) in his own right, not as a substitute.

K. Sections 11, 12, 13, and 15 should be read together in reference to new Section 08.64.278. Present statute requires that all licensees and permittees be interviewed by at least one board member. Present policy requires that should the interviewer feel unsure about granting the license after the interview that an interview by the whole board and appropriate investigation by the division be carried out before licensure.

The interview requirement is one that was set by the legislature many years ago. What the legislative intent was is unclear to the board and my research through older versions of the statutes back to 1948 doesn't clarify the issue. Our practical experience is that it has some utility in determining that the applicant is indeed who he says he is (documents and pictures match, etc.), seems to be sober and not flagrantly psychotic, and seems to present a logical sequence of training. The board recognizes that the interview is of significantly less importance than careful review of notarized training, residency, hospital privilege, specialty board testing, and licensure (in other jurisdictions) documentation plus clearance by the DEA and National Federation of State Medical Boards.

Interviews are carried out by both physician and non-physician members of the board without distinction. There is no attempt to use the interview as a test of knowledge both for practical and statutory reasons.

The interviewing of permanent and temporary licensees (most of the latter are expected to go on to permanent license status) should appropriately remain with board members exclusively. It is being found however that interviewing residency and locum

tenens candidates is placing a severe burden on board members' time especially in Anchorage and Fairbanks and leading to delays and resentment on the part of both candidates and volunteer board members. It seems appropriate then that our executive secretary should take on part of that task. That individual is trained in statute and regulation and is familiar with training and testing cycles and the methods of acceptable identification.

L. Section 14. Retired License.

This provision seeks to do a number of things. It is recognized that there are a number of physicians who retain licensure beyond the time it is reasonable for them to practice out of the sense of pride licensure brings them and because of an oddity in statute that prohibits them from using the "M.D." after their name if not licensed. (The statute, 08.02.010, is designed to prevent the unlicensed from deluding the public as to their qualifications).

It is felt that a permanent retired license status will serve their purposes and protect the public health. Retired status should also appeal to those who are effectively retired and presently faced with CME requirements they cannot meet because of age and infirmity. The CME statutes at present make no provision for people in this status.

The proposed stature while not precluding reactivation of retired licenses would empower the board to be very certain that the individual was competent to resume such practice.

M. Section 15. Courtesy License.

This would permit the board to grant courtesy licensure, under appropriate restrictions, to medical practitioners accompanying sports teams (such as the Olympic teams if Anchorage gets the nod for Winter Olympics).

N. Section 17. Amphetamines.

It is clear that 99+% of all amphetamines prescribed are for weight reduction. It is clear that while they may be beneficial for 2-3 weeks, that after that they serve no purpose in that regard and lead to significant habituation. Amphetamine prescription in "weight reduction clinics" is the single most significant diversion point of these medications onto the illicit market.

The proposed legislation, adapted from Wisconsin statutes, recognizes the eight (8) valid uses of the medication (accounting for less than 1% of prescriptions) and makes other use subject to disciplinary sanction.

It will help us in slowing down diversion and will also help the ethical physician when importuned by individuals seeking such medications if he can inform those individuals that such prescribing is illegal.

Such provisions have proved quite useful in other states. From the personal experience of 15 years in a general practice in Ketchikan, I would remark that I have seen only two patients requiring amphetamines; one a patient with documented narcolepsy and one a patient with attention deficit disorder (hyperactivity) who was intolerant of Ritalin (Methylphenidate), the drug usually used for that condition along with Cylert (Pemoline). (Though hyperactivity is clearly over-diagnosed it is a real condition and occasionally requires drug therapy).

It is our suggestion that statutory language of a similar nature be inserted into the pharmacy statutes to further control amphetamine use. The Division along with the boards of pharmacy, nursing and medicine, the DEA, the ASMA and State Troopers are presently engaged in a cooperative effort known as PADS (prescription abuse data system) to try to reduce diversion. The present statute will help in that effort.

O. Section 18. Reports of Disciplinary Action or License Suspension or Surrender.

When this section was crafted for HB 70 in 1986-87, we neglected to insert the word permit. Since certain of our licenses (temporary, locum tenens) and our physician assistant authority are referred to as permits, it could be argued we are prevented from reporting disciplinary and other actions concerning these licenses and permits. We have considered that such reports fall under the legislative intent of the statute so have proceeded to submit reports when appropriate but feel it would be best to clean up the language.

P. Sections 19 & 20 should be read in conjunction with the introduction and Section 1 on immunity, indemnity and protected communication.

Q. Section 21. Preserving Sanctions of the Board.

The division, the board, and the National Federation of State Medical Boards regard medical licensure as a privilege granted to individuals by the state for the convenience and health of its citizens. It is not an inherent right of individuals any more than is a drivers license. Thus when there is good and sufficient reason for the board to believe an individual is not practicing safely and endangering the public health, it seems reasonable to permit sanctions imposed to stand unless and until a court of competent jurisdiction overrules the board on appeal. It must be remembered the board acts cautiously

and in full compliance with the administrative procedures act, assuring rights to a complete hearing, before acting on a license sanction. To then have a court stay the action for long periods of time while an appeal is heard seems to be significantly detrimental to the public's health and safety. In one particularly notorious case within the board's experience an incompetent practitioner who had caused a number of deaths was permitted to practice for seven years after the board revoked his license while he slowly pursued appeals all the way to the U.S. Supreme Court. The board's action was upheld at each level but the practitioner was permitted to endanger the public for an additional seven years after original revocation.

The present statute, with language which protects the licensee against arbitrary action by the board, seeks to correct this most unfortunate state of affairs.




Recognizing that there could be problems with this section if the courts rule that it arrogates to the board functions more proper to the court an alternate method of addressing the problem is presented in an addendum as a change in court rules. It would need to be reworked and properly placed in court rules by Legislative Drafting so there has been no attempt to number it as the committee lacks the expertise for the task.

R. Section 22.


The change is requested as the board finds itself spending inordinate amounts of time and state legal funds pursuing individuals who have earned the academic title M.D., but who are not licensed and who "display" the title in other settings than in seeking patients (i.e., teaching, journal articles, legal consulting, out of personal pride, etc.). The proposed change would permit us to ignore such trivial matters while still empowering the board to pursue those using the title M.D. to dupe the public into believing they can legally diagnose and treat the sick and injured.

Any questions concerning the proposals can be directed to:

Anchorage	Abigail Hensley, Secretary, State Medical Board	346-1802
Anchorage	Pamela Ventgen, Executive Secretary, State Medical Board	561-2878
Ketchikan	Thomas L. Conley, Member, State Medical Board	225-4483
Juneau	Randall Burns, Director, Division of Occupational Licensing	465-2534
Juneau	James Thompson, Chairman, State Medical Board	586-8447



**ELEMENTS OF A
MODERN STATE
MEDICAL BOARD**



A PROPOSAL



**THE FEDERATION OF
STATE MEDICAL BOARDS
OF THE UNITED STATES**

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6

DATE: August 15, 1989

TO: Distinguished State Officials and Legislators

FROM: Melvin E. Sigel, MD, Chairman, Federation Project Work Panel

ABOUT: Enclosed *Elements of a Modern State Medical Board: A Proposal*

Enclosed for your consideration is a copy of a document recently completed by a special task force of the Federation of State Medical Boards of the United States. Called the Project Work Panel, the task force has spent over a year developing the *Elements of a Modern State Medical Board: A Proposal* under a federal contract awarded by the Health Resources and Services Administration of the US Department of Health and Human Services. The document was first introduced during a meeting of the National Conference of State Legislatures' Health Committee at the NCSL's annual meeting in Tulsa on August 7. Its preparation and purpose are discussed succinctly in its preface and introduction, which I hope you will read before reviewing the full document. Let me point out here, however, that the *Elements* is not a policy or position statement by the Federation of State Medical Boards. It is the result of the Project Work Panel's study and discussion under the federal contract and will be evaluated as carefully by the Federation as by others interested in enhancing the effectiveness of state medical boards.

My colleagues and I on the Project Work Panel would be pleased to receive your comments on our effort, and we hope you will find it useful as you evaluate your own medical board. The *Elements* will achieve its purpose if it stimulates constructive discussion concerning the structure and function of state medical boards in this country.

Should you have any comments or should you like to have additional copies of the *Elements*, please write to me care of Mr Dale G Breaden, Associate Executive Vice President, Federation of State Medical Boards, 2630 West Freeway, Suite 138, Fort Worth, Texas 76102-7199.

Thank you for your time.

MES:lm

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PREFACE

To be of value, an idea must be challenging enough to concern us a bit. Certainly, the idea of attempting to specify the elements fundamental to the structure and function of a modern state medical board meets that criterion, given the diversity of the states and the differences among the medical boards now in place. Needless to say, in undertaking preparation of the document you hold in your hand, the Federation of State Medical Boards of the United States was more than aware it faced a challenging idea, but one with which it had to deal.

In early 1988, the Division of Medicine of the Bureau of Health Professions, Health Resources and Services Administration, US Department of Health and Human Services, requested proposals for the development of a document on board structure and function to be a complementary companion to the fifth edition of the Federation's *Guide to the Essentials of a Modern Medical Practice Act*. It was clear the Federation must respond: no other organization had the knowledge, experience, and resources required for the task. And no other could offer as responsible and informed an effort. If the project was to be undertaken at all, and it surely was, the Federation had to do it. The Federation's proposal was accepted and the organization was awarded HRSA Contract Number 240-88-0040 to develop the document and make it available for consideration by the public, the states, the state medical boards, medical organizations, and others.

The result is the *Elements of a Modern State Medical Board: A Proposal*. It is the product of over a year of research, inquiry, meetings, consultation, drafting, and redrafting by a special Federation task force called the Project Work Panel (PWP). The *Elements* is not a detailed model for a complete state medical practice act; it is focused only on the structure and function of a modern state medical board and on the powers, duties, and protections basic to that structure and function. In that context, it reflects the study, concepts, opinions, knowledge, and experience of the members and consultants of the PWP as officers, members, attorneys, and staff of state medical boards and as Federation leaders. It is not intended to be, and is not, a policy or position statement by the Federation of State Medical Boards. Though the outgrowth of a federally funded project conducted under the auspices of the Federation, it will be reviewed and evaluated by the Federation's Board of Directors and membership as carefully and critically as it should be by a wide range of interested and involved agencies, organizations, and individuals. Far from perfect, the *Elements* is simply the best effort of the PWP to develop a proposal for the structure and function of a modern state medical board consistent with the principles expressed in the Federation's formally approved *Guide to the Essentials of a Modern Medical Practice Act*. It is offered as a stimulus for discussion of a number of issues vital to improving the regulation of the medical profession in this country.

During the past year, the PWP carefully studied the basic structural and functional outlines of sixty-five medical boards, contacted fifty-six boards in telephone surveys on several specific issues, reviewed in detail the medical statutes of thirty-eight states, and analyzed the potential impact of the *Elements* if implemented in eighteen widely differing state settings. While developing the document, the PWP benefited greatly from the advice, insight, and counsel of twenty-six state medical board members, eighteen of whom were board presidents, and twenty-three state medical board

executives. They deserve much of the credit for what you may find agreeable in the *Elements* and none of the blame for what you may find disagreeable. They certainly earned the PWP's warmest thanks for their kind cooperation and thoughtful assistance.

The *Elements* is the responsibility of the members and consultants of the PWP, acting at the behest of the Federation to fulfill its federal contract. Whether the project achieved its true purpose or not, only you and time can judge. The idea, however, was worth the trying.

The Federation Project Work Panel

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INTRODUCTION

The organization and activities of each of the more than sixty medical regulatory boards (allopathic, osteopathic, and composite) within the United States are determined by a unique state statute, usually referred to as a *practice act*. The differences among these statutes are related to the general administrative structure of each jurisdiction and to the needs of the public as they are perceived by each responsible legislative body.

The *Elements of a Modern State Medical Board: A Proposal* is not intended to encourage movement toward total uniformity among these statutes. Given the diversity of administrative structures and the variations in perceived needs, that would be a futile exercise. In any case, such differences have a positive creative value, allowing the evolution and testing of a range of new approaches in a number of jurisdictions at once. In light of the concepts and principles it offers for consideration, the *Elements* is intended to nurture that creativity by encouraging the public, state legislators, medical boards, medical societies, and others who have an interest in the regulation of the medical profession to reexamine existing practice acts as they relate to the composition, structure, functions, responsibilities, powers, and funding of medical boards. In doing this, however, the *Elements* does not address issues relating to standards for licensure, grounds for disciplinary action, or rules and regulations. It is not an effort to provide a pattern for a complete medical practice act. It includes only those portions of an act the authors believe focus most directly on the medical board itself.

It is axiomatic that state medical boards can most effectively discharge their important responsibilities to society only if they are properly organized and effectively empowered. The project that resulted in development of the *Elements* was conceived because of the growing realization that some medical practice acts remain inadequate to enable boards to respond to broad public needs. While not advocating total uniformity, which would have a stultifying effect, the Federation of State Medical Boards has, for over three decades, encouraged and facilitated the improvement of the various state medical practice acts through its official publication, *A Guide to the Essentials of a Modern Medical Practice Act*. Now in its fifth edition, *A Guide to the Essentials of a Modern Medical Practice Act* has served as a highly effective stimulus to medical boards and state legislatures for periodic review and revision of their statutes. The *Elements* builds on the foundation of *A Guide to the Essentials of a Modern Medical Practice Act* and is, in effect, an explication of the chapters in that publication relating to board structure and function. Unlike the broad recommendations of *A Guide to the Essentials of a Modern Medical Practice Act*, however, the *Elements of a Modern State Medical Board: A Proposal* is presented in language and detail readily adaptable to statutory formats.

The *Elements* reflects not only relevant characteristics of effective current practice acts but also a number of innovative concepts not yet widely implemented. The result is a document, eclectic in its content, that its authors believe is worthy of consideration for adaptation to the requirements of any jurisdiction. While it could hardly be expected that any one jurisdiction would accept the *Elements* in every particular, the principles of responsibility, empowerment, and accountability the proposal clearly affirms should lead each jurisdiction to assess its present board to

determine if it provides maximum potential for protection of the public interest. Though presented for consideration as an integrated whole, the *Elements* offers significant approaches to a variety of issues that concern and trouble many boards: issues involving funding and budgeting, confidentiality, board authority, personnel and staffing, administration, emergency powers, training of board members, immunity and indemnity, standards of evidence, and the public's right to know, among other things. Any one or a combination of these approaches could be extracted from the *Elements* and adapted to meet the needs of specific boards.

In some states, responsibility for licensing and disciplinary functions is divided between two separate boards. In others, boards are subject to supervision or, in some cases, complete control by larger administrative or umbrella agencies. In a few, the board is simply an advisory body. In most states, the board regulates both allopathic and osteopathic physicians; in others, separate boards exist. And in some states, narrow constitutional restrictions inhibit effective board funding. Clearly, the *Elements* proposes a true working board with real and effective power and support, a proposal some states are much better prepared to implement than others. But it is also a reflection of those principles the authors consider to be basic to the operation of any accountable medical board, regardless of the administrative structure of the state, the size or distribution of the physician population being regulated, the form of legislation required for funding, or the title of the body to which responsibility and power for regulation have been entrusted. It can be drawn upon by both MD and DO boards, making appropriate adaptations in the area of board membership. Larger administrative agencies can use it to better assess their own structures and functions and to explore the broader roles their medical boards might play in meeting public expectations. The *Elements* includes significant material on a wide range of issues, much of which has the potential to benefit any administrative structure.

Recognizing the differences between and among jurisdictions, the authors have designed the *Elements* with the flexibility to accommodate as many of those differences as possible while maintaining the integrity of their overall concept. Specific flexible factors are designated in the text by bracketed, italicized segments and are footnoted. In addition, some sections empower a board to adopt alternatives of its choice provided they are in accord with other state statutes. Finally, some sections, such as that relating to board committees, are phrased permissively or in order to allow a board needed discretionary authority. In a sense, the *Elements* can be seen, not as one proposal, but as various proposals. Each is applicable, in one form or another, to a diversity of settings and all are aimed at increasing or refining the ability of state medical boards to protect the health, safety, and welfare of the public.

The Federation Project Work Panel



**ELEMENTS OF A
MODERN STATE
MEDICAL BOARD**



A PROPOSAL

I. LEGISLATIVE FINDINGS AND DECLARATION

As a matter of public policy, the practice of medicine is a privilege granted by the people of this State acting through their elected representatives. It is not a natural right of individuals. Therefore, in the interests of public health, safety, and welfare, and to protect the people from the unprofessional, improper, and incompetent practice of medicine, it is the responsibility of the Legislature to enact laws regulating the granting and subsequent use of the privilege to practice medicine and to ensure, as far as possible, that only qualified and fit persons hold that privilege. The fundamental purpose of this statute is to protect the public, and any license, certificate, or other practice authorization issued pursuant to this statute shall be a revocable privilege and no holder of such a privilege shall acquire thereby any irrevocable right.

II. DEFINITIONS

License: any license, certificate, or other practice authorization granted by the State Medical Board pursuant to this or any other applicable statute.

Licensee: the holder of any license, certificate, or other practice authorization granted by the State Medical Board.

Statute: this statute or any other statute applicable to the State Medical Board.

III. STATE MEDICAL BOARD

A. Board Created

There is hereby created the State Medical Board (hereafter referred to as the Board) to regulate the practice of medicine in this State in accord with this statute and to otherwise enforce this statute.

B. Delegation of Duty

The duty of determining a person's initial and continuing qualification and fitness for the practice of medicine, of proceeding against the unlawful and unlicensed practice of medicine, and of enforcing this statute is hereby delegated to the Board. That duty shall be discharged in accord with this statute.

C. Interpretation of Powers

It is necessary that the powers conferred on the Board by this statute be liberally construed to protect the health, safety, and welfare of the people of this State.

D. Board Membership

1. Number

The Board shall consist of *[from twelve (12) to twenty-four (24)]* members, twenty-five percent (25%) of whom must be public members *[and at least one (1) of whom must be a doctor of osteopathic medicine].*¹ The remaining members must be doctors of allopathic medicine. The membership of the Board shall be drawn from as many different regions of this State as possible.

2. Qualifications

a. *Public members* must reside in this State and be persons of integrity and good reputation who have lived in this State for at least five (5) years immediately preceding their appointments, have never been authorized to practice a healing art, and have never had a substantial personal, business, professional, or pecuniary connection with a healing art or with a medical education or health care facility, except as patients or potential patients.

b. *Physician members* must reside in this State and be persons of recognized professional ability, integrity, and good reputation who have lived and actively practiced medicine in this State with a full and unrestricted medical license granted by this State for at least five (5) years immediately preceding their appointments.

c. Members must be citizens of the United States who have attained the age of majority as defined in the statutes of this State.

d. Members must be selected without regard to sex, race, national or ethnic origin, creed, religion, or age above majority.

e. No member shall be a registered lobbyist.

f. No member shall be an officer, board member, or employee of a statewide or national organization established for the purpose of advocating

¹**Flexible Factors:** The size of a state's physician population should be considered in determining how many persons would be required, within this range (12-24), to accomplish the work of the Board as envisioned in this document. Similarly, should the Board regulate both MDs and DOs, DO representation should be required if the DO population is judged to be significant.

the interests of or conducting peer review of health care practitioners licensed under this statute.

3. Terms

The term of Board service shall be four (4) years. A person shall not serve as a member of the Board for more than two (2) consecutive full terms, but may be reappointed two (2) years after completion of such service. For the purpose of this paragraph, a person who serves more than two (2) years of an unexpired term shall be considered to have served a full term. Terms of service shall be staggered, one fourth of the Board's membership being appointed each year. The term[s] of no more than [one (1)/two (2)] public member/s/ shall expire in any one year.²

4. Requirements

a. Before entering on the duties of office, each member of the Board shall take the constitutional oath or affirmation of office and shall swear or affirm he or she is qualified to serve under all applicable statutes.

b. The Board shall conduct and new members shall attend a training program designed to familiarize new members with their duties. A training program for new members shall be held annually.

5. Appointment of Members

a. The members of the Board shall be appointed by the Governor, who shall make each appointment at least thirty (30) calendar days prior to the beginning of the Board term being filled. The Governor shall fill an unexpired term within thirty (30) calendar days of the vacancy's occurrence. Should the Governor not act as required by this paragraph, the Board, by majority vote, shall select a qualified person to serve until such time as the Governor acts.

b. Any individual, organization, or group may suggest potential Board appointees to the Governor. Medical societies and associations in this State shall be specifically requested to recommend two or more potential physician appointees for each available physician Board seat.

6. Removal of Board Members

A Board member shall be automatically removed from the Board should he or she

a. cease to be qualified;

b. be found guilty of a felony or an unlawful act involving moral turpitude by a court of competent jurisdiction;

c. be found guilty of malfeasance, misfeasance, or nonfeasance in relation to his or her Board duties by a court of competent jurisdiction;

d. be found mentally incompetent by a court of competent jurisdiction;

e. fail to attend three successive Board meetings without just cause as determined by the Board, or, if a new member, fail to attend the new members' training program without just cause as determined by the Board;

f. be found in violation of this statute.

²Flexible Factor: One (1) per year should the Board have up to four public members, two (2) per year should the Board have more than four public members.

7. Board Compensation/Reimbursement

a. Compensation: Each Board member shall receive compensation equivalent to three-quarters (3/4) the daily rate paid the State Commissioner of Health *[for equivalent State officer]*³ for each day or part of a day spent in Board or Board-related meetings. Other Board-related services shall be compensated at the same level on a pro-rata basis as determined by the Board.

b. Expenses: Each Board member's travel and expenses for active Board service shall be paid at the State's current approved rate.

c. Education/Training: Travel, expenses, and daily compensation shall also be paid for each Board member's absence, in or out of State, at up to ten full days of education or training per year directly related to Board duties and approved by the Board, except that daily compensation shall not be paid to physicians eligible for continuing medical education credit for such education and training.

E. Board Structure

1. Officers

The Board shall elect annually from its members a president, a vice president, a secretary-treasurer, and those other officers it determines are necessary to conduct its business. The officers shall serve for a one (1) year term. No person shall serve more than two (2) years in the same Board office during a single four (4) year Board term.

2. Duties of Officers

a. The president shall preside at Board meetings, arrange the Board agenda, sign Board orders and other required documents, appoint Board committees and their chairmen, coordinate Board activities, represent the Board before legislative committees, and perform those other duties assigned by the Board and this statute.

b. The vice president shall assist the president in all that officer's duties as requested by the president and shall perform the duties of the president in that officer's absence.

c. The secretary-treasurer shall be responsible for the keeping of Board minutes and records, for development of the Board budget, and for authorizing the expenditure of Board funds as directed by the Board and this statute.

3. Committees

To effectively facilitate its work, fulfill its duties, and exercise its powers, the Board may establish standing committees, including, but not limited to, licensing, investigation, finance, administration, personnel, rules, legislative communications, and public information committees. Ad hoc committees may be named as required. Committees shall be comprised of Board members only; and, except as otherwise noted in this statute, the president shall appoint members and chairmen of committees, who shall serve one (1) year terms and

³The highest ranking health official in the State's executive branch.

may be reappointed. In the absence of regular committee members and when necessary to provide a quorum for the conduct of committee business, the president may appoint from the Board temporary members to a committee. Changes in membership shall not be deemed to affect or hinder the continuing business or activity of any committee.

If established, committees of the Board shall conform with the following.

a. A licensing committee shall be comprised of at least one-quarter (1/4) of the Board's members and shall be responsible for reviewing or directing the review of the qualifications of applicants for licensure in accord with this statute and Board policy and rules. It shall recommend to the Board the issuance or denial of licenses to applicants. A licensing committee may also be responsible for recommending or preparing for the Board's consideration and approval those examinations to be used in meeting the examination requirements set by this statute for medical licensure, and for other evaluative purposes. It may also administer or direct administration of all examinations in keeping with this statute and Board policy and rules.

b. An investigation committee shall be comprised of at least three (3) members of the Board, one (1) of whom must be a public member. An investigation committee shall be responsible for reviewing any complaint or charge referred to it in accord with written Board policy, for conducting an investigation to determine if there is a reasonable basis for the complaint or charge, for determining if a hearing is required, and for referring the matter to the appropriate prosecuting authority for presentation to the Board or, if directed to do so by the Board, to a Board designated hearing officer. In performing its duties, it shall have all the powers granted the Board in this statute to compel cooperation and the provision of information by individuals and institutions. The Board shall act in the capacity of the hearing and adjudicatory body, and no member of an investigation committee shall sit with the Board to hear or adjudicate a matter considered by his or her investigation committee nor shall he or she be counted as part of the Board in determining a quorum for the conduct of business during such a hearing or adjudication. Should the volume of complaints and charges require it, more than one investigation committee may be named at the Board's discretion.

c. A finance committee shall be comprised of the secretary-treasurer, acting as chairman, the president and vice president, and one public member of the Board. It shall be responsible for gathering budget information and proposing a budget to the Board for its consideration. It shall also arrange for annual audit of the Board's accounts by the State Auditor's Office *[or equivalent State office]*⁴. Budgets shall be prepared and adopted sufficiently in advance of the fiscal year to allow reasonable notice for increases or decreases in the fees and charges set by the Board.

d. Other committees created by the Board shall have those responsibilities,

⁴That office or authority charged by law with primary responsibility for auditing the State's accounts.

consistent with this statute, delegated to them by the Board.

4. *Advisory Councils*

To assist the Board in the performance of its duty relating to the regulation of health care professionals other than physicians, the president, with advice and approval of the Board, shall appoint a separate Advisory Council for each of the health care fields for which the Board has responsibility under this statute. Each Advisory Council shall be chaired by a member of the Board appointed by the president and shall have four other members. Each of those four other members shall meet the same requirements and be subject to the same limitations and causes for removal as a physician member of the Board, the requirement for medical licensure being replaced by that for full and unrestricted authorization to practice in the particular health care field of the Advisory Council to which he or she is appointed. Terms and limitations of service on an Advisory Council shall be the same as for the Board. The chairman of an Advisory Council shall be compensated and reimbursed as a Board member. The other four members of an Advisory Council may be compensated at an appropriate and reasonable level as determined by the Board and shall be reimbursed for meeting-related travel and expenses at the state's current approved rate. Advisory Councils shall meet at least once each year to review the regulation of their health care fields and to advise the Board on policy and rules relating to that regulation. The Board may also consult them or their members for advice on particular issues or disciplinary matters. The Board shall determine the specific functions of the Advisory Councils in keeping with this statute.

F. *Funding*

1. *Revenues*

The Board shall be fully supported by the revenues generated from its activities, including fees, charges, and reimbursed costs. All such revenues, with the exception of fines, shall be deposited in the State Treasury to the credit of the State Medical Board Account, which is hereby established and which shall also receive all interest earned on the deposit of such revenues. Such funds are appropriated continuously and shall be used by the Board only for administration and enforcement of this statute. All fines levied by the Board shall be deposited in the State General Fund.

2. *Budget*

The Board shall develop and adopt its own budget reflecting revenues, including the interest thereon, and costs associated with each health care field regulated. Revenues, and interest thereon, from each health care field regulated shall fully support Board regulation of that field. The budget shall include allocations for establishment and maintenance of a reasonable reserve fund.

3. *Setting Fees and Charges*

All Board fees and charges shall be set by the Board pursuant to its proposed budget needs. Reasonable notice shall be provided for all increases or decreases in fees and charges.

4. *Fiscal Year*

The Board shall operate on the same fiscal year as the State.

5. *Secretary-Treasurer*

The secretary-treasurer of the Board, at the direction of the Board, shall oversee the collection and disbursement of funds. That officer shall be bonded by the Board in an amount to be fixed by the Board.

6. *Audit*

The State Auditor's Office *[or equivalent State office]*⁵ shall audit the financial records of the Board annually and report to the Board and the Legislature.

G. Board and Committee Meetings

1. *Location*

The Board and its several committees shall meet in the Board's offices or other appropriate facilities in the same city as those offices. At their discretion, however, they may meet from time to time in other areas of the State to facilitate their work or to enhance communication with the regulated professions.

2. *Frequency; Duration*

a. *The Board* shall meet at least bimonthly *[quarterly]*⁶ for a period sufficient to complete the work before it at that time.

b. *Committees* shall meet as directed by the Board. However, each standing committee shall meet at least once per year to review its area of responsibility and to prepare a formal annual report for presentation to the Board.

3. *Special Meetings; Conferences*

a. *Emergency meetings* of the Board may be called at any time by the president or at the request of an officer and two (2) Board members if required to enforce this statute. The Board may establish procedures by which its committees may call emergency meetings.

b. *Informal conferences* of an investigation committee may be called by the chairman of the committee for the purpose of holding discussions with licensees, accused or otherwise, who seek or agree to such conferences. Any disciplinary action taken as a result of such a conference and agreed to in writing by the Board and licensee shall be binding and a matter of public record. The holding of an informal conference shall be at an investigation committee's discretion and shall not preclude formal disciplinary investigation, proceedings, or action.

c. *A telephone or other telecommunication conference* shall be an acceptable form of Board meeting for the purpose of taking emergency action to enforce this statute if the president alone or another officer and two (2) Board members believe the situation precludes another form of meeting. The Board may establish procedures by which its committees may meet by

⁵That office or authority charged by law with primary responsibility for auditing the State's accounts.

⁶Flexible Factor: Bimonthly meetings may not be required in states with small physician population. One meeting per quarter may be sufficient in such cases.

telephone or other telecommunication conference to take emergency action.

4. Notice

a. The Board shall establish a system for giving all Board and committee members reasonable advance notice of all Board and committee meetings.

b. The Board shall establish a system for giving the public, including its regulated professions, reasonable advance notice of all open Board and committee meetings. Emergency meetings, including telephone or other telecommunication conference meetings, shall be exempt from this public notice requirement.

5. Quorum

a. A majority of members shall constitute a quorum for the transaction of business by the Board or any committee of the Board.

b. Notwithstanding any provision of law to the contrary, the business of the Board and its committees shall be conducted in accord with this statute and with rules of parliamentary procedure adopted by the Board.

6. Conflict of Interest

No member of the Board, acting in that capacity or as a member of any Board committee, shall participate in the making of any decision or the taking of any action affecting his or her own personal, professional, or pecuniary interest, or that of a known relative or of a business or professional associate. With advice of legal counsel, the Board shall adopt and annually review a conflict of interest policy to enforce this section.

7. Records

Minutes of all Board and committee meetings and proceedings, and other Board and committee records, shall be prepared and kept in accord with the Board's adopted rules of parliamentary procedure and other applicable State statutes.

8. Open Meetings; Confidentiality

a. All meetings of the Board and its committees shall be open to the public, with the following exceptions:

(1) meetings or portions of meetings of the Board devoted to consideration of personnel and staff employment or evaluation issues, to consultation with legal counsel, to business or contract matters the premature public knowledge of which would adversely affect the financial interests of the Board or the State, and to matters the Board is required to keep confidential by contract or statute;

(2) meetings or portions of meetings of the Board, acting in its capacity as a hearing or adjudicatory body, held to receive testimony or evidence the public disclosure of which the Board determines would constitute an unreasonable invasion of personal privacy, to consult with legal counsel, to deliberate issues, and to arrive at disciplinary judgments;

(3) meetings of an investigation committee;

(4) meetings of a licensing committee.

Recommendations or decisions made in non-public meetings shall be ratified in public and shall be matters of public record.

b. The minutes and all records of non-public meetings are privileged and confidential and shall not be disclosed except to the Board or its designees

for the enforcement of this statute, except that all licensing decisions made by the Board and all disciplinary orders, with the associated findings of fact and conclusions of law, issued by the Board shall be matters of public record.

c. The following shall be privileged and confidential:

(1) application and reregistration forms and any evidence submitted in proof or support of an application to practice, except that the following items of information about each applicant or licensee included on such forms shall be matters of public record:

- (a) full name;
 - (b) date and place of birth;
 - (c) name(s) and location(s) of professional schools attended;
 - (d) school awarding professional degree, date of award, and designation of degree;
 - (e) site(s) and date(s) of graduate professional training;
 - (f) Board recognized specialty certification(s) held and date(s) granted;
 - (g) specialty and professional society memberships;
 - (h) year of initial licensure in this State;
 - (i) other states in which licensed to practice in the same field; and
 - (j) current office address and telephone number;
- (2) all investigations and records of investigations;
- (3) any report from any source concerning the fitness of any person to receive or hold a license;
- (4) any communication between or among the Board and/or its committees, staff, advisors, attorneys, employees, hearing officers, consultants, experts, investigators, and panels occurring outside public meetings;
- (5) the identity of that individual or entity filing an initial complaint with the Board.

d. Notwithstanding the foregoing provisions, the Board may cooperate with and provide documentation to other boards, agencies, or law enforcement bodies of this State, other states, other jurisdictions, or the United States upon written official request by such an entity.

e. Nothing herein shall be construed as prohibiting a respondent or his or her legal counsel from exercising the respondent's right of due process under the law.

H. Offices; Administration

1. Offices

The Board shall maintain offices it determines are adequate in size, staff, and equipment to effectively carry out the provisions of this statute. At its discretion, it may establish branch offices, staffed and equipped as it finds necessary, in as many areas of the State as it believes require such branch offices to facilitate the work of the Board.

2. Administration

The Board, in keeping with applicable State statutes, shall set out the function, operation, and administrative structure of its offices.

I. Staff; Special Personnel

1. Board Authority

The Board is hereby empowered to determine its staff needs and to employ, fix compensation for, evaluate, and remove its own full-time, part-time, and temporary staff in accord with the statutory requirements of this State. It shall define the duties of and qualifications for staff positions and shall bond those members of staff charged with the handling of funds. Staff benefits shall be provided in accord with the statutes of this State.

2. Staff Positions

The Board's staff may include, but need not be limited to, the following:

- a. *an executive director*, who, among administrative and other delegated responsibilities, may assist, at the Board's discretion, in the discharge of the duties of the secretary-treasurer;
- b. *one or more assistant executive directors*;
- c. *one or more medical consultants*, who shall be licensed to practice medicine in this State without restriction;
- d. *office and clerical staff*;
- e. *one or more attorneys*, who may be full-time employees of the Board, or assigned from the Office of the State Attorney General by agreement between the Board and that office, or in private practice;
- f. *one or more hearing officers*, who shall be trained to conduct hearings according to law and vested with full authority to do so on the Board's behalf and in its name, but whose decisions shall be reviewed and approved, modified, or disapproved by the Board;
- g. *one or more investigators*, who shall be trained in and knowledgeable about the investigation of medical and related health care practice;
- h. *experts and consultants*; and
- i. *special agents*.

3. Special Support Personnel

The Board may, at its discretion, and in accord with the statutes of this State, enlist the services of experts, advisors, consultants, and others who are not part of its staff to assist it in more effectively enforcing this statute. Such persons may serve voluntarily, be reimbursed for expenses in accord with State law and policy, or be compensated at a level commensurate with services rendered in accord with State law and policy. When acting for or on behalf of the Board, such persons shall benefit from the same immunity and indemnification protections afforded by this statute to the members and staff of the Board.

J. Immunity; Indemnity; Protected Communication

1. Immunity

There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any current or former member, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness, or any other person serving or having served the Board, either as a part of the Board's operation or as an individual, as a result of any act, omission, proceeding, conduct, or decision related to his or her duties undertaken or performed in good faith and within the scope of

the function of the Board.

2. Indemnity

If a current or former member, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, or any other person serving or having served the Board requests the State to defend him or her against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to his or her duties undertaken or performed in good faith and within the scope of the function of the Board, and if such a request is made in writing at a reasonable time before trial, and if the person requesting defense cooperates in good faith in the defense of the claim or action, the State shall provide and pay for such defense and shall pay any resulting judgment, compromise, or settlement.

3. Protected Communication

a. Every communication made by or on behalf of any person, institution, agency, or organization to the Board or to any person(s) designated by the Board relating to an investigation or the initiation of an investigation, whether by way of report, complaint, or statement, shall be privileged. No action or proceeding, civil or criminal, shall be permitted against any such person, institution, agency, or organization by whom or on whose behalf such a communication was made in good faith.

b. The protections afforded in this provision shall not be construed as prohibiting a respondent or his or her legal counsel from exercising the respondent's constitutional right of due process under the law.

K. Duties of the Board

In addition to any other duties placed on the Board by this statute, the Board, acting in accord with this statute, shall:

1. enforce the provisions of this statute;
2. adopt and enforce rules to carry into effect the provisions of this statute and to fulfill its duties thereunder;
3. develop and use application and other necessary forms and related procedures it finds appropriate for purposes of this statute;
4. prepare or select, conduct or direct the conduct of, set passing requirements for, and assure security of licensing and other required examinations;
5. acquire information about and evaluate the professional education and training of applicants;
6. issue or deny licenses;
7. accept or deny applications for license reregistration based on the evaluation of adverse information, if any, relating to applicant fitness, performance, or practice;
8. review and investigate complaints and adverse information about licensees;
9. establish by rule a mechanism, which, at the Board's discretion, may involve cooperation with and/or participation by one or more Board approved professional organizations, for the identification and monitored treatment of licensees who abuse or are dependent on or addicted to alcohol or other addictive chemical substances;

10. establish by rule a mechanism by which licensees who believe they abuse or are or may be dependent on or addicted to alcohol or other addictive chemical substances, and who have not been identified by the Board through other sources of information, will be encouraged to report themselves voluntarily to the Board and/or, at the Board's discretion, to a professional organization approved by the Board to seek assistance and monitored treatment;
11. conduct hearings in accord with this statute;
12. adjudicate those matters that come before it for judgment under this statute and issue final decisions on such matters;
13. discipline licensees;
14. report all final disciplinary actions, license denials, and voluntary license limitations or surrenders related to physicians, with any accompanying Board orders, findings of fact and conclusions of law, to the Board Action Data Bank of the Federation of State Medical Boards of the United States and to any other data repository required by law, and report all such actions, denials, and limitations or surrenders related to other licensees, with the same supporting documentation, to the appropriate national practitioner data repositories recognized by the Board or required by law;
15. act to halt the unlicensed or illegal practice of medicine and to seek penalties against those engaged in such practice;
16. institute proceedings in courts of competent jurisdiction to enforce its orders and the provisions of this statute;
17. establish appropriate fees and charges to ensure active and effective pursuit of its responsibilities;
18. employ, direct, reimburse, evaluate, and dismiss staff in accord with State procedures;
19. establish policies for Board operations; and
20. recommend to the Legislature those changes in or amendments to this statute that it determines would benefit the health, safety, and welfare of the public.

I. Powers of the Board

In addition to any other powers provided the Board herein, the Board, when acting in accord with this statute, shall have those powers necessary to fulfill its duties under this statute. Those powers shall include, but not be limited to, the following:

1. to employ or contract with one or more organizations or agencies known to provide acceptable examinations for the preparation and scoring of required examinations, and to employ or contract with one or more organizations or agencies known to provide acceptable examination services for the administration of required examinations;
2. to prescribe the time, place, method, manner, scope, and subjects of examination;
3. to impose sanctions, deny licensure, levy fines, seek appropriate civil and/or criminal penalties, or any combination of these, against those who violate or attempt to violate examination security, those who obtain or attempt to obtain licensure by fraud or deception, and those who knowingly assist in

15. to issue conditional, restricted, or otherwise circumscribed licenses as it determines necessary;

16. to take the following actions, alone or in combination, against those found in violation of this statute:

- a. revoke, suspend, restrict, and/or otherwise circumscribe the license;
- b. place the licensee on probation with conditions;
- c. levy fines and/or assess the costs of proceedings against the licensee;
- d. censure, reprimand, and/or otherwise chastise the licensee;
- e. require the licensee to provide monetary redress to another party, and/or provide a period of free public or charitable service;
- f. require the licensee to satisfactorily complete an educational, training, and/or treatment program or programs;
- g. require the licensee to successfully complete an examination or examinations designated by the Board;

17. to summarily suspend a license if it has cause to believe such action is required to protect public health and safety prior to hearing and final adjudication, and no court shall act to lift or otherwise interfere with such suspension while the Board proceeds in a timely fashion;

18. to determine and direct Board operating, administrative, personnel, and budget policies and procedures in accord with applicable State statutes;

19. to set necessary fees and charges, employ, evaluate, and dismiss personnel, and otherwise administer or direct administration of the Board in accord with applicable State statutes.

M. Board Reports

1. Annual Report

The Board shall present to the Governor, the Legislature, and the public, at the end of each fiscal year, a formal report summarizing its licensing and disciplinary activity for that year. The report shall include, but need not be limited to, the following information about each of the Board's regulated professions:

- a. the total number of persons fully licensed by this State and the number of those persons resident in this State;
- b. the number of persons holding each form of limited license authorized by this statute;
- c. the number of persons granted a full license by this State for the first time in the past year, the number of those persons resident in this State, and the number of full licenses denied in the past year;
- d. the number of resident licensees about whom a complaint, a charge, or an adverse item of information required by law was received in the past year;
- e. the number and the sources, by category, of complaints, charges, and adverse items of information required by law received about resident licensees in the past year, and the number of these found not to warrant action under this statute and the rules of the Board;
- f. the number of disciplinary investigations conducted by the Board or its representatives concerning resident licensees in the past year;

- g. the number of disciplinary actions, by category, taken by the Board in the past year against resident and non-resident licensees;
- h. a ranking, by frequency, of primary causes for disciplinary action against resident and non-resident licensees in the past year;
- i. the number of actions taken or instigated by the Board to halt the unlawful practice of medicine in the past year;
- j. a review of disciplinary activity related to holders of limited forms of license in the past year;
- k. a review of the operations of the Board's current mechanisms for dealing with licensees dependent on or addicted to alcohol or other addictive chemical substances;
- l. a schedule of all current fees and charges;
- m. a revenue and expenditure statement for the past year indicating the percentage of revenue from and expenditures for each regulated profession;
- n. a summary of other Board activities and a schedule of days met by the Board and each of its committees during the year.

2. *Public Record; Action Reports*

Each of the Board's license denials and final disciplinary orders, including any associated findings of fact and conclusions of law, shall be matters of public record. Voluntary surrenders of or limitations on licenses shall also be matters of public record. All such denials, orders, surrenders, and limitations shall be promptly reported by the Board to the public, all health care institutions in this State, appropriate State and federal agencies, related professional societies or associations in this State, and any data repository required by Board rules or policy, the laws of this State, or the laws of the United States.

3. *Required Response to Complainants and Others Providing Information*

Persons or entities reporting to the Board adverse information about licensees or instances of possible unlicensed practice shall receive prompt acknowledgment of their reports from the Board. The Board shall also inform them of the final disposition of the matters reported.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that deals with the interview requirements for applicants for medical licenses and permits.

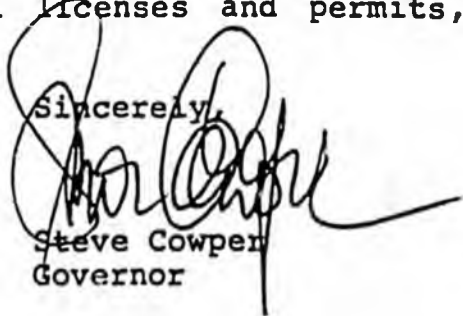
Present law requires that an applicant for a physician or osteopath license be interviewed by a member of the State Medical Board. These interviews allow the board to inquire into issues that cannot be effectively examined in written tests. They also help the board positively identify license applicants. The current law also contains some procedural safeguards that relate to license denials.

The bill also establishes a new interview requirement for medical permits that are issued by the board. This requirement does not provide the same procedural safeguards as for license applicants. This is because the minimal protection the safeguards would provide to permit applicants do not outweigh the administrative burden of giving written notice and explanation to them.

Section 5 of the bill creates the new requirement and says that either a member of the State Medical Board or its executive secretary may conduct the interview. Sections 3 and 4 say that an interview is a prerequisite for an intern or resident permit, or for a permit for temporary substitution, that is, for "locum tenens" practice.

Because this bill will help to ensure the competency of persons who receive medical licenses and permits, I urge your passage of it.

Sincerely,



Steve Cowper
Governor

Commission investigating physicians

HB146

Times
10/10/88

MIAMI (AP) — The Federal Trade Commission is interviewing hundreds of Florida doctors and demanding minutes from medical societies' meetings in an investigation of emergency room boycotts last year, a newspaper reported.

"I don't see any smoking guns," said John Thrasher, general counsel for the Florida Medical Association. "My guess is had they had something, it would have developed by now and something would have been done about it."

The FTC is questioning doctors to determine if they acted as individuals or as a group when they began refusing emergency calls in response to a 33 percent to 42 percent hike in insurance premiums, The Miami Herald reported Sunday.

Federal antitrust laws prohibit businesses from acting together for financial gain.

"We're intimidated," said Dr. Charles Lipman, a thoracic surgeon in North Miami Beach. "It's kind of like you're up against the big boys and that's scary."

The FTC won't discuss the growing investigation, but Lipman and Dade County hospital officials said hundreds of doctors have been questioned, either voluntarily or after being subpoenaed.

Some doctors who canceled their insurance saw eliminating emergency room work as a way to reduce the risk of being sued. Their actions captured the attention of politicians who promised to do something about the cost of malpractice insurance in Florida.

Last spring, the Legislature passed a law making it harder to gain damages in lawsuits from doctors who deliver babies and work in emergency rooms. Injured people must now prove the doctor showed reckless disregard for their care, and all lawsuits involving brain-damaged babies are handled by a state compensation system instead of the courts.

The changes stabilized insurance premiums and brought some doctors back to emergency rooms.

But many more are refusing to return unless Florida voters approve Amendment 10 on the November ballot. The law would ease their malpractice insurance burden by capping non-economic damages or those a jury would give for pain and suffering at \$100,000.

The FTC began last year to investigate whether doctors were legally trying to change the state malpractice law, or illegally trying to pad their wallets.

The agency has forced some medical societies to hand over minutes from meetings and all written communication between its members. That includes identical letters the Palm Beach obstetricians sent to hospitals announcing the boycott.

FTC spokeswoman Dee Ellison said the agency will try to make doctors found to have violated antitrust laws to agree to stop refusing emergency room care.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 146(L&C)

Page 10, line 6:

Delete "or by"

Insert ","

Before ".":

Insert ", or a person designated for that purpose by the board"

midwifery and completes any review of the midwife's credentials required by the regulations. The midwife shall cooperate with the department in the review."

NOTES TO DECISIONS

Cited in *Allison v. State*, Sup. Ct. Op. No. 1703 (File No. 3716), 583 P.2d 813 (1978).

Collateral references. — 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, §§ 9-18, 41.

70 C.J.S., Physicians and Surgeons, §§ 6, 11, 13.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimina-

tion against particular school or method. 16 ALR 709; 37 ALR 680; 42 ALR 1342; 54 ALR 600.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice medicine from owning, maintaining or operating an office therefor. 20 ALR2d 808.

Article 1. State Medical Board.

Section

- 10. Creation and membership of State Medical Board
- 50. Oath of office
- 60. Seal
- 70. Officers
- 85. Meetings of the board
- 90. Quorum
- 100. Power of board to adopt regulations
- 101. Duties

Section

- 103. Investigator; executive secretary
- 105. Regulation of abortion procedures
- 107. Regulation of physician assistants and intensive care paramedics
- 110. Per diem and expenses
- 130. Board records
- 160. Applicability of Administrative Procedure Act

Sec. 08.64.010. Creation and membership of State Medical Board. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five physicians licensed in the state and residing in as many separate geographical areas of the state as possible, and two persons with no direct financial interest in the health care industry. (§ 35-3-82 ACLA 1949; am § 1 ch 148 SLA 1970; am § 11 ch 102 SLA 1976; am § 3 ch 48 SLA 1982)

Cross references. — For constitutionality of ch. 102, SLA 1976, see notes to AS 09.55.536 and *Alas. Const.*, art. II, § 14.

Effect of amendments. — The 1983 amendment deleted "licensed" preceding

"physicians," inserted "licensed in the state and" following "physicians," substituted "geographical areas of the state" for "Alaska judicial districts," and made a minor punctuation change.

Sec. 08.64.020. Term of office (Repealed, § 49 ch 94 SLA 1987. For current law, see AS 08.01.035.)

Sec. 08.64.030. Substitution of members (Repealed, § 19 ch 48 SLA 1983.)

Sec. 08.64.040. Removal of members (Repealed, § 49 ch 94 SLA 1987. For current law, see AS 08.01.020.)

Sec. 08.64.050. Oath of office. Each member shall take an oath of office. The oath shall be filed and preserved in the division of occupational licensing of the department. (§ 35-3-83 ACLA 1949; am § 1 ch 77 SLA 1969; am § 1 ch 101 SLA 1974)

Sec. 08.64.060. Seal. The board shall adopt a seal. (§ 35-3-83 ACLA 1949)

Sec. 08.64.070. Officers. The board shall elect a president and secretary from among its members. The president and secretary may administer oaths. (§ 35-3-83 ACLA 1949; am § 2 ch 77 SLA 1969)

Sec. 08.64.080. Meetings of board (Repealed, § 3 ch 59 SLA 1966.)

Sec. 08.64.085. Meetings of the board. The board shall meet at least four times a year. (§ 6 ch 48 SLA 1983)

Sec. 08.64.090. Quorum. Four members of the board constitute a quorum for the transaction of all business properly before the board. (§ 35-3-83 ACLA 1949; am § 3 ch 148 SLA 1970; am § 13 ch 102 SLA 1976)

Cross references. — For constitutionality of ch 102, SLA 1976, see notes to AS 09.55.536 and Alas. Const., art. II, § 14.

Sec. 08.64.100. Power of board to adopt regulations. The board may adopt regulations necessary to carry into effect the provisions of this chapter. (§ 35-3-95 ACLA 1949)

Sec. 08.64.101. Duties. The board shall

(1) examine and issue licenses to applicants;

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

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

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

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

(6) coordinate with private professional organizations to establish an impaired medical professionals program to treat persons licensed under this chapter who abuse addictive substances. (§ 7 ch 48 SLA 1983; am § 3 ch 87 SLA 1987)

Effect of amendments. — The 1987 amendment added paragraph (6).

Sec. 08.64.103. Investigator; executive secretary. After consulting with the board, the department shall employ two persons who are not members of the board; one shall be assigned as the investigator for the board; the other shall be assigned as the executive secretary for the board. The investigator shall

(1) conduct investigations into alleged violations of this chapter, and into alleged violations of regulations and orders of the board;

(2) at the request of the board, conduct investigations based on complaints filed with the department or with the board; and

(3) be directly responsible and accountable to the board, except that only the department has authority to terminate the investigator's employment and the department shall provide day to day and administrative supervision of the investigator. (§ 4 ch 87 SLA 1987)

Sec. 08.64.105. Regulation of abortion procedures. The State Medical Board shall adopt regulations necessary to carry into effect the provisions of AS 18.16.010 and shall define ethical, unprofessional or dishonorable conduct as related to abortions, set standards of professional competency in the performance of abortions and establish procedures and set standards for facilities, equipment and care of patients in the performance of an abortion. (§ 2 ch 103 SLA 1970)

Opinions of attorney general. — Separation of responsibilities in AS 18.16.010 is clear; the approval of facilities is granted to the Department of Health and Social Services; the ethical and professional responsibilities of medical doctors are committed to the supervision of the State Medical Board. No language in this section vitiates any of the responsibilities granted in 18.16.010(a)(2) to the Department of Health and Social Services. October 7, 1974 Op. Atty Gen.

Sec. 08.64.107. Regulation of physician assistants and intensive care paramedics. The board shall adopt regulations regarding the registration of physician assistants and physician-trained mobile intensive care paramedics, and the medical services that each may perform, including but not limited to (1) the educational and other qualifications, (2) the application and registration procedures, (3) the

scope of activities authorized, and (4) the responsibilities of the supervising or training physician. (1 2 ch 101 SLA 1974)

Sec. 08.64.110. Per diem and expenses. The members of the board are entitled to per diem and expenses authorized by law. (1 35.3.95 ACLA 1949)

Sec. 08.64.120. Coverage of funds and warrants for expenses. (Repealed, 1 3 ch 59 SLA 1966)

Sec. 08.64.130. Board records. The board shall preserve a record of its proceedings, which shall contain the name, age, residence and duration of residence of each applicant for a license, the time spent by the applicant in medical study, the place of medical study, and the year and school from which degrees were granted. The record shall also show whether the applicant was granted a license or rejected. (1 35.3.81 ACLA 1949)

Sec. 08.64.140. Annual report to governor. (Repealed, 1 19 ch 48 SLA 1983)

Sec. 08.64.150. Bond of secretary-treasurer. (Repealed, 1 28 ch 77 SLA 1969)

Sec. 08.64.160. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act. (AS 44.62) (1 2 (ch 2) ch 143 SLA 1959)

Article 2. Licensing.

Section	Section
170 License to practice medicine or osteopathy	260 No examination
180 Application for license	270 Temporary permits
190 Contents of application	272 Residency and internship permits
200 Qualifications of physician applicants	275 Temporary permit for locum tenens practice
205 Qualifications for osteopath applicants	312 Continuing education requirements
207 Qualifications for acupuncture applicants	313 Inactive license
209 Qualifications for pediatry applicants	315 Fees
210 Examination required	320 Grounds for imposition of disciplinary sanctions
220 Contents of examination and grading	331 Disciplinary sanctions
225 Foreign medical graduates	332 Automatic suspension for mental incompetency or insanity
230 License granted	334 Voluntary surrender
240 License refused	335 Reports of disciplinary action or license suspension or surrender
250 License by credentials	336 Duty of physicians and hospitals to report
255 Interview required	338 Medical and psychiatric exams
	340 Statement of grounds of refusal or revocation of license

Collateral references - 61 Am Jur 2d, Physicians, Surgeons and Other Healers, II 5, 19 23, 30 43
70 C.J.S., Physicians and Surgeons, (1 11 1)

Pardon as restoring public office or license eligibility thereof 58 ALR2d 1191
Statute of limitations relating to medical malpractice actions as applicable to actions against unlicensed practitioners 70 ALR2d 114

Sec. 08.64.170. License to practice medicine or osteopathy. (a) A person may not practice medicine, pediatry, osteopathy, or acupuncture in the state unless the person is licensed under this chapter, except that

(1) a physician assistant may examine, diagnose or treat persons under the supervision, control, and responsibility of either a physician licensed under this chapter or a physician exempted from licensing under AS 08.64.370;

(2) a physician-trained mobile intensive care paramedic may render emergency lifesaving service;

(3) a person licensed under AS 08.36 may perform acupuncture in the regular practice of dentistry, subject to the regulations of the Board of Dental Examiners; and

(4) a person who is licensed or authorized under another chapter of this title may engage in a practice that is authorized under that chapter.

(b) (Repealed, 1 4 ch 101 SLA 1974)

(c) A chiropractor practicing in the state on May 16, 1972, is exempt from this section.

(d) A podiatrist practicing in the state on March 26, 1976, is exempt from this section, and shall be issued a license without examination if application is made within one year of March 26, 1976. (1 35.3.81 ACLA 1949, am 1 4 ch 148 SLA 1970, am 1 1 ch 5 SLA 1972, am 1 1 ch 21 SLA 1974, am 1 3, 4 ch 17 SLA 1974, am 1 1, 2 ch 24 SLA 1976, am 1 8 ch 48 SLA 1983)

Effect of amendments. The 1983 (1) added paragraph (4), and made other amendment in subsection (a), substituted word, stylistic changes "licensing" for "licensee," in paragraph

Sec. 08.64.180. Application for license. A person who desires to practice medicine, osteopathy or acupuncture in the state shall apply in writing to the department for a license. (1 35.3.85 ACLA 1949; am 1 1 ch 22 SLA 1960; am 1 4 ch 143 SLA 1964; am 1 3 ch 77 SLA 1969; am 1 2 ch 21 SLA 1974)

Sec. 08.64.190. Contents of application. The application shall state the name, age, residence, the duration of residence, the time spent in medical or osteopathy study, the place, year and school in which degrees were granted, and other information the board considers necessary. The application shall be made under oath (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 4 ch 77 SLA 1969).

Sec. 08.64.200. Qualifications of physician applicants. (a) Except for foreign medical graduates as specified in AS 08.64.225, each physician applicant shall

(1) ~~(Repeat of § 19 ch 48 SLA 1981)~~

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

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

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

(5) be a citizen of the United States or be lawfully admitted for permanent residence;

(b) The board shall determine whether each physician applicant has any disciplinary or other actions recorded in the nationwide disciplinary data bank of the Federation of State Medical Boards (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 1 ch 18 SLA 1963; am § 5 ch 77 SLA 1969; am §§ 5, 6 ch 146 SLA 1970; am § 1 ch 85 SLA 1972; am § 5 ch 101 SLA 1974; am § 19 ch 48 SLA 1983; am § 5 ch 87 SLA 1987).

Effect of amendments. The 1981 amendment added subsection (b). The 1987 amendment added subsection (1).

Sec. 08.64.205. Qualifications for osteopath applicants. Each osteopath applicant shall meet the qualifications prescribed in AS 08.64.200(a)(4) and (5) and shall

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

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

(3) take the examination required by AS 08.64.210 or be certified to practice by the National Board of Examiners for Osteopathic Physicians and Surgeons (§ 1 ch 56 SLA 1966; am § 6 ch 77 SLA 1969; am

§ 7 ch 148 SLA 1970; am § 6 ch 101 SLA 1974; am § 10 ch 14 SLA 1987)

Effect of amendments. — The 1987 amendment substituted "AS 08.64.200(a)(4) and (5)" for "AS 08.64.200(a)(4) and (5)" in the introductory language.

Sec. 08.64.207. Qualifications for acupuncture applicants. Each acupuncture applicant shall meet all of the qualifications prescribed in AS 08.64.200 and shall meet those requirements of experience or education in the practice of acupuncture as may be required by the board (§ 3 ch 21 SLA 1974).

Sec. 08.64.209. Qualifications for podiatry applicants. (a) Each applicant who desires to practice podiatry shall meet the qualification prescribed in AS 08.64.200(a)(4) and shall

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

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

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

(b) The provisions of AS 08.64.180 — 08.64.190, 08.64.220 and 08.64.230 — 08.64.380 relating to the practice of medicine or osteopathy apply to the application procedure, testing, and practice of podiatry, as appropriate (§ 3 ch 24 SLA 1976; am § 11 ch 14 SLA 1987).

Effect of amendments. The 1987 amendment substituted "qualifications prescribed in AS 08.64.200(a)(4) and (4)" in the introductory language of subsection (a).

Sec. 08.64.210. Examination required. (a) The applicant shall take examination. In subjects the board considers necessary, unless excused under provisions of AS 08.64.230.

(b) The deadline for submitting an exam application to the board shall be established by regulation (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 7 ch 77 SLA 1969; am § 8 ch 148 SLA 1970; am § 6 ch 87 SLA 1987).

Effect of amendments. — The 1987 amendment rewrote subsection (b).

Sec. 08.64.215. Insurance required. (Repealed, § 40 ch 177 SLA 1978.)

Sec. 08.64.220. Contents of examination and grading. (a) The board shall offer a written examination sufficient to test the applicant's fitness to practice medicine or osteopathy.

(b) (Repealed by § 27 ch 148 SLA 1970.)

(c) The examinations, answers and scores shall be preserved and filed. (§ 35-3-85 ACIA 1949; am § 1 ch 22 SLA 1960; am §§ 8, 9 ch 77 SLA 1969; am § 9, 27 ch 148 SLA 1970; am § 7 ch 87 SLA 1987.)

Effect of amendments. -- The 1987 amendment reworded subsection (a).

Sec. 08.64.225. Foreign medical graduates. Applicants who are graduates of medical colleges not accredited by the American Medical Association or one of its agencies shall meet the requirements of AS 08.64.200(a), (4) and (5) and must have passed an examination and be certified by the Education Council on Foreign Medical Graduates, or be licensed by examination in another state or territory of the United States or province of Canada. (§ 10 ch 77 SLA 1969; am § 10 ch 148 SLA 1970; am § 7 ch 101 SLA 1974; am § 12 ch 14 SLA 1987.)

Effect of amendments. -- The 1987 amendment substituted "AS 08.64-200(a), (4) and (5)" for "AS 08.64-200(1), (3), (4) and (5)".

Sec. 08.64.230. License granted. (a) If the physician applicant passes the examination and meets the requirements of AS 08.64.200, the board shall grant a license to the applicant to practice medicine in the state.

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

(c) Each license shall be signed by the secretary and president of the board, and have the seal of the board affixed to it. (§ 35-3-85 ACIA 1949; am § 1 ch 22 SLA 1960; am § 11 ch 77 SLA 1969.)

Sec. 08.64.240. License refused. (a) The board may not grant a license if

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

(2) the board determines that the applicant is professionally unfit to practice medicine or osteopathy in the state; or

(3) the applicant fails to comply with a requirement of this chapter.

(b) The board may refuse to grant a license to any applicant for the same reasons that it may impose disciplinary sanctions under AS 08.64.326. (§ 35-3-85 ACIA 1949; am § 1 ch 22 SLA 1960; am § 12 ch 77 SLA 1969; am § 11 ch 148 SLA 1970; am § 9 ch 48 SLA 1983.)

Effect of amendments. -- The 1983 amendment rewrote this section.

Sec. 08.64.250. License by credentials. The board may waive the examination requirement and license by credentials if the physician or podiatry applicant meets the requirements of AS 08.64.200 or 08.64.209, submits proof of continued competence as required by regulation, pays the required fee and has

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

(2) passed an examination given by the National Board of Medical Examiners or the Federation of State Medical Boards of the United States if the applicant is a physician, or passed an examination given by the National Board of Podiatry Examiners if the applicant is a podiatrist. (§ 35-3-85 ACIA 1949; am § 1 ch 22 SLA 1960; am § 13 ch 77 SLA 1969; am § 8 ch 69 SLA 1970; am § 12 ch 148 SLA 1970; am § 10 ch 48 SLA 1983.)

Effect of amendments. -- The 1983 amendment in the undesignated, introductory language substituted "credentials" for "endorsement," inserted "or podiatry," and inserted "or 08.64.209, submits proof of continued competence as required by regulation"; and, at the end of paragraph (2), added the language beginning "if the applicant is a physician."

Sec. 08.64.255. Interview required. All applicants for licensure must be interviewed in person by at least one member of the board before a license will be issued. The interview must be recorded. If the application is denied on the basis of the interview, the denial must be stated in writing, with the reasons for it, and the record must be preserved. (§ 14 ch 77 SLA 1969; am § 13 ch 148 SLA 1970; am § 8 ch 87 SLA 1987.)

Effect of amendments. -- The 1987 amendment substituted "licensure" for "a license" under AS 08.64.250 in the first sentence, substituted "if" for "and if" in

creating the last sentence, and substituted "must" for "shall" throughout the section.

Sec. 08.64.260. Re-examination. (a) If the applicant fails the examination, the applicant may, on the same application and payment of a reexamination fee, take another examination not less than six months nor more than two years after the date of the first examination. If the applicant fails a second examination, the applicant may, after a year or more of further study or training approved by the board, make a new application for licensure.

(b) (Repealed, § 21 ch 87 SLA 1987.)

(c) (Repealed, § 21 ch 87 SLA 1987.)

(d) *(Repealed, § 21 ch 87 S.L.A. 1987; (1) 35-3-92 A.C.L.A. 1949; am § 16 ch 77 S.L.A. 1969; am § 14 ch 148 S.L.A. 1970; am §§ 30, 37 ch 37 S.L.A. 1985; am § 21 ch 87 S.L.A. 1987)*

Effect of amendments. — The 1985 amendment deleted "prescribed in the regulations by the board" at the end of subsection (c) and (d). The 1987 amendment repealed subsections (b) and (d), concerning retaking the examination.

Sec. 08.64.270. Temporary permits. (a) The board may issue a temporary permit to a physician applicant, osteopath applicant, or podiatry applicant who meets the requirements of AS 08.64.200, 08.64.205, or 08.64.209 and pays the required fee.

(b) A temporary permit issued under this section is valid for eight months or until the board meets to consider the application, whichever occurs first.

(c) A temporary permit issued under this section may be renewed at the board's discretion one time only. (1) 35-3-96 A.C.L.A. 1949; am § 16 ch 77 S.L.A. 1969; am § 15 ch 148 S.L.A. 1970; am §§ 2, 3 ch 85 S.L.A. 1972; am § 8 ch 101 S.L.A. 1974; am § 11 ch 48 S.L.A. 1983; am § 9 ch 87 S.L.A. 1987)

Effect of amendments. — The 1981 amendment in subsection (a) inserted "or 08.64.209" and made other minor, stylistic changes. The 1983 amendment in subsection (a) substituted "a physician applicant, osteopath applicant, or podiatry" for "an," and inserted "issued under this section" in subsections (b) and (c).

Sec. 08.64.272. Residency and internship permits. (a) A person may not serve as a resident or intern without a permit issued under this section.

(b) For the limited purpose of residency or internship, the board may issue a permit to an applicant without examination if the applicant meets the requirements of AS 08.64.200(a)(2) and applicable regulations of the board, pays the required fee, and has been accepted by an eligible institution in the state for the purpose of residency or internship.

(c) A permit issued under this section is valid for the period specified by the board, but not to exceed one year after the date of issue. (1) 16 ch 148 S.L.A. 1970; am § 12 ch 14 S.L.A. 1987; am § 10 ch 87 S.L.A. 1987)

Effect of amendments. — The 1987 amendment rewrote this section.

Sec. 08.64.275. Temporary permit for locum tenens practice. (a) A member of the board may grant a temporary permit to a physician or osteopath for the purpose of substituting for another physician or osteopath licensed in this state. The permit is valid for 120 consecutive days. If circumstances warrant, an extension of the permit may be granted by the board.

(b) A physician applying under (a) of this section shall pay the required fee and shall meet the requirements of AS 08.64.200. In addition, the physician shall submit evidence of holding a license to practice medicine in a state or territory of the United States or in a province of Canada.

(c) An osteopath applying under (a) of this section shall pay the required fee and shall meet the requirements of AS 08.64.205. In addition, the osteopath shall submit evidence of holding a license to practice in a state or territory of the United States or in a province of Canada.

(d) Within 10 days after the permit has been granted, the board member shall forward to the department a report of the issuance of the permit. (1) 17 ch 77 S.L.A. 1969; am §§ 17 -- 19 ch 148 S.L.A. 1970; am § 38 ch 37 S.L.A. 1985)

Effect of amendments. — The 1985 amendment in subsection (d) substituted "after" for "from" and "permit has been granted" for "granting of the permit" and deleted "the fee" following "forward" and "with" following "department."

Sec. 08.64.280. Record of license (Repealed, § 10 ch 37 S.L.A. 1986.)

Sec. 08.64.290. Examination fee (Repealed, § 54 ch 37 S.L.A. 1985.)

Sec. 08.64.300. Fee for license by reciprocity (Repealed, § 19 ch 77 S.L.A. 1969.)

Sec. 08.64.310. Annual license fee (Repealed, § 20 ch 77 S.L.A. 1969.)

Sec. 08.64.311. License renewal (Repealed, § 49 ch 94 S.L.A. 1987. For current law, see AS 08.01.100.)

Sec. 08.64.312. Continuing education requirements. (a) The board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by the physician giving evidence satisfactory to the board that the physician is unable to comply with the requirements because of extenuating circumstances. However, a person may not be exempted from more than 15 hours of continuing education in a five-year period. (5 14 ch 102 S.L.A. 1976)

Cross references. For constitutionality of ch. 102, S.L.A. 1976, see notes to AS 09.55.814 and Alas. Const., art. II, § 14.

Sec. 08.64.313. Inactive license. A licensee who does not practice in the state may hold an inactive license. A person who practices in the state, however infrequently, shall hold an active license. (5 21 ch 148 S.L.A. 1970, am § 12 ch 87 S.L.A. 1987)

Effect of amendments. — The 1987 amendment rewrote this section.

Sec. 08.64.315. Fees. The department shall set fees under AS 08.01.065 for each of the following:

- (1) application;
- (2) license by examination;
- (3) license by endorsement or waiver of examination;
- (4) temporary permit;
- (5) locum tenens permit;
- (6) license renewal, active;
- (7) license renewal, inactive;
- (8) license by reexamination. (5 21 ch 77 S.L.A. 1969; am § 22 ch 148 S.L.A. 1970, am § 13 ch 48 S.L.A. 1983; am § 39 ch 37 S.L.A. 1985)

Effect of amendments. — The 1983 amendment increased the fees imposed under this chapter, in paragraph (3) substituted "credentials" for "endorsement," and in paragraphs (6) and (7) deleted "biennial" following "renewal." The 1985 amendment rewrote this section, which included a fee schedule.

Sec. 08.64.320. Disposition of fees. (Repealed, § 54 ch 37 S.L.A. 1985.)

Sec. 08.64.325. Limits or conditions on license; discipline. (Repealed, § 49 ch 48 S.L.A. 1983.)

Sec. 08.64.326. Grounds for imposition of disciplinary sanctions. (a) The board may impose a sanction if the board finds after a hearing that a licensee

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

- (2) engaged in deceit, fraud, or intentional misrepresentation while providing professional services or engaging in professional activities;
- (3) advertised professional services in a false or misleading manner;
- (4) has been convicted, including conviction based on a guilty plea or plea of nolo contendere, of

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

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

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

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

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

(8) has demonstrated

(A) professional incompetence, gross negligence or repeated negligent conduct;

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

(C) unfitness because of physical or mental disability;

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

(10) has violated AS 18.16.010;

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

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

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

(b) In a case involving (a)(13) of this section, the final findings of fact, conclusions of law and order of the authority that suspended or revoked a license or certificate constitutes a prima facie case that the license or certificate was suspended or revoked and the grounds under which the suspension or revocation was granted. (5 14 ch 48 S.L.A. 1983)

NOTES TO DECISIONS

Professional incompetence standard not unconstitutionally vague. — Statutory and regulatory standard of "professional incompetence" under which physician's license may be revoked is not unconstitutionally vague. *Storrs v. State Medical Bd.*, Sup. Ct. Op. No. 2681 (File No. 6882), 664 P.2d 547 (1983), cert. denied, 464 U.S. 937, 104 S.Ct. 346, 78 L. Ed. 2d 312 (1983).

See 08.64.330. Grounds for revocation of license. (Repeated, § 19 ch 48 SLA 1983)

Sec. 08.64.331. Disciplinary sanctions. (a) If the board finds that a licensee has committed an act set out in AS 08.64.326(a), the board may

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

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

(B) limit practice to those areas prescribed;

(C) continue professional education until a satisfactory degree of skill has been attained in those areas determined by the board to need improvement;

(6) impose limitations or conditions on the practice of a licensee;

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

(8) impose one or more of the sanctions set out in (1) — (7) of this subsection.

(b) The board may end the probation of a licensee if it finds that the deficiencies which required this sanction have been remedied.

(c) The board may summarily suspend a license before final hearing or during the appeals process if the board finds that the licensee poses a clear and immediate danger to the public health and safety if the licensee continues to practice. A person whose license is suspended under this section is entitled to a hearing by the board no later than seven days after the effective date of the order and the person may appeal the suspension after a hearing to a court of competent jurisdiction.

(d) The board may reinstate a license that has been suspended or revoked if the board finds after a hearing that the applicant is able to practice with reasonable skill and safety.

(e) The board may suspend a license upon receipt of a certified copy of evidence that a license to practice medicine in another state or territory of the United States or province of Canada has been suspended or revoked. The suspension remains in effect until a hearing can be held by the board.

(f) The board shall be consistent in the application of disciplinary sanctions. A significant departure from earlier decisions of the board involving similar situations must be explained in findings of fact or orders made by the board. (§ 15 ch 48 SLA 1983, am § 13 ch 87 SLA 1987)

Effect of amendments. — The 1987 amendment in subsection (a) designated former paragraph (7) as present paragraph (17) and made a minor stylistic change.

Sec. 08.64.332. Automatic suspension for mental incompetency or insanity. Notwithstanding AS 44.62, if a person holding a license to practice medicine or osteopathy under this chapter is adjudged mentally incompetent or insane by a final order or adjudication of a court of competent jurisdiction or by voluntary commitment to an institution for the treatment of mental illness, the person's license shall be suspended by the board. The suspension shall continue in effect until the court finds or adjudges that the person has been restored to reason or until a licensed psychiatrist approved by the board determines that the person has been restored to reason. (§ 10 ch 101 SLA 1974; am § 14 ch 87 SLA 1987)

Effect of amendments. — The 1987 amendment rewrote this section.

Sec. 08.64.334. Voluntary surrender. The board, at its discretion, may accept the voluntary surrender of a license. A license may not be returned unless the board determines, under regulations adopted by it, that the licensee is competent to resume practice. However, a license may not be returned to the licensee if the voluntary surrender resulted in the dropping or suspension of civil or criminal charges against the physician. (§ 10 ch 101 SLA 1974)

Sec. 08.64.335. Reports of disciplinary action or license suspension or surrender. The board shall promptly report to the Federation of State Medical Boards for inclusion in the nationwide disciplinary data bank license refusals under AS 08.64.240, actions taken by the board under AS 08.64.331, and license suspensions or surrenders under AS 08.64.332 or 08.64.334. (§ 15 ch 87 SLA 1987)

Sec. 08.64.336. Duty of physicians and hospitals to report.

(a) A physician who professionally treats a person licensed to practice medicine or osteopathy in this state for alcoholism or drug addiction, or for mental, emotional, or personality disorders, shall report it to the board if there is probable cause that the person may constitute a danger to the health and welfare of that person's patients or the public if that person continues in practice. The report shall state the name and address of the person and the condition found.

(b) A hospital that revokes, suspends, conditions, restricts, or refuses to grant hospital privileges to, or imposes a consultation requirement on, a person licensed to practice medicine or osteopathy in the state shall report to the board the name and address of the person and the reasons for the action within seven working days after the action is taken. A hospital shall also report to the board the name and address of a person licensed to practice medicine or osteopathy in the state if the person resigns hospital staff privileges while under investigation by the hospital or a committee of the hospital and the investigation could result in the revocation, suspension, conditioning, or restricting of, or the refusal to grant, hospital privileges, or in the imposition of a consultation requirement. A report is required under this subsection regardless of whether the person voluntarily agrees to the action taken by the hospital. A report is not required if the sole reason for the action is the person's failure to complete hospital records in a timely manner or to attend staff or committee meetings. In this subsection "consultation requirement" means a restriction placed on a person's existing hospital privileges requiring consultation with a designated physician or group of physicians in order to continue to exercise the hospital privileges.

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

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

(e) A physician, hospital, or hospital committee that in good faith submits a report under this section or participates in an investigation or judicial proceeding related to a report submitted under this section

is immune from civil or criminal liability for the submission or participation.

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

(1) concerns a matter that was disclosed in the course of a confidential physician-patient or psychotherapist-patient relationship or during a meeting of a hospital medical staff, governing body, or committee that was exempt from the public meeting requirements of AS 44.62.310; or

(2) is required to be kept confidential under AS 18.23.030. (§ 10 ch 101 S.L.A. 1974; am § 16 ch 48 S.L.A. 1983; am § 16 ch 87 S.L.A. 1987)

Effect of amendments. — The 1983 The 1987 amendment rewrote this section.
amendment rewrote this section. tion

Sec. 08.64.338. Medical and psychiatric exams. For the purposes of an investigation under this chapter, the board may order a person to whom it has issued a license or permit to submit to a medical or psychiatric examination by a physician or other practitioner of the healing arts appointed by the board. An examination shall be at the board's expense. An examination may include the required submission of biological specimens requested by the examining physician or practitioner. (§ 17 ch 87 S.L.A. 1987)

Sec. 08.64.340. Statement of grounds of refusal or revocation of license. If the board refuses to issue a license or revokes a license, it shall file a brief and concise statement of the grounds and reasons for the action in the office of the secretary of the board and in the department. The statement, together with the written decision of the board, shall remain of record in the department. (§ 35-3-89 A.C.L.A. 1949; am § 23 ch 77 S.L.A. 1969)

Sec. 08.64.350. Certification of revocation (Repealed. § 10 ch 37 S.L.A. 1986.)

Article 3. Unlawful Acts.

Section

360. Penalty for practicing without a license or in violation of chapter

Sec. 08.64.360. Penalty for practicing without a license or in violation of chapter. Except for a physician assistant, a physician-trained mobile intensive care paramedic under AS 08.64.170, or a person licensed or authorized under another chapter of this title who engages in practices for which that person is licensed or authorized under that chapter, a person practicing medicine or osteopathy in the state without a valid license or permit is guilty of a class A misdemeanor. Each day of illegal practice is a separate offense. (S 35-3-93 ACLA 1949; am § 26 ch 77 SLA 1969; am § 2 ch 6 SLA 1972; am § 11 ch 101 SLA 1974; am § 17 ch 48 SLA 1983)

Effect of amendments. — The 1981 amendment rewrote this section.

Collateral references. — *Illegal practice of medicine under statute, ordinance or other measure involving chemical treatment of water supply.* 43 ALR2d 453. *Hypnotism as illegal practice of medicine.* 85 ALR2d 1128.

Single or isolated transaction as falling

within provisions of licensing requirements. 93 ALR2d 129.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense. 99 ALR2d 654.

Acupuncture as illegal practice of medicine. 72 ALR3d 1257.

Article 4. Miscellaneous Provisions.

Section

366 Liability for services rendered by a physician-trained mobile intensive care paramedic

Section

367 Prescription or administration of laetrile by physicians

Sec. 08.64.365. Physicians acting under emergency circumstances. [Repealed, § 46 ch 102 SLA 1976.]

Sec. 08.64.366. Liability for services rendered by a physician-trained mobile intensive care paramedic. An act or omission of a physician-trained mobile intensive care paramedic done or omitted in good faith while rendering emergency service to a person who is in need of immediate aid in order to avoid serious harm or loss of life does not impose any liability upon the physician-trained mobile intensive care paramedic, the supervising physician, a hospital, the officers, members of the staff, nurses, or other employees of a hospital or upon a federal, state, borough, city or other local governmental unit or upon other employees of a governmental unit; however, this section does not relieve a physician or a hospital of a duty otherwise imposed by law upon the physician or hospital for the designation or training of a physician-trained mobile intensive care paramedic or for the provision or maintenance of equipment to be used by the physician-trained mobile intensive care paramedic. (S 14 ch 101 SLA 1974; am § 1 ch 122 SLA 1986)

Cross references. — For civil liability for emergency aid, see AS 09.65.090.

Effect of amendments. — The 1986 amendment substituted "An" for "No" and substituted "while rendering emergency service to a person who is in need of im-

mediate aid in order to avoid serious harm or loss of life does not" for "while rendering emergency lifesaving service to a person who is in immediate danger of loss of life shall" near the beginning of the section.

Sec. 08.64.367. Prescription or administration of laetrile by physicians. (a) A physician may not be subject to disciplinary action by the State Medical Board for prescribing or administering amygdalin (laetrile) to a patient under the physician's care who has requested the substance unless the State Medical Board in a hearing conducted under the Administrative Procedure Act (AS 44.62) has made a formal finding that the substance is harmful.

(b) A hospital or health facility may not interfere with the physician-patient relationship by restricting or forbidding the use of amygdalin (laetrile) when prescribed or administered by a physician and requested by a patient unless the substance as prescribed or administered by the physician is found to be harmful by the State Medical Board in a hearing conducted under the provisions of the Administrative Procedure Act (AS 44.62) (§§ 1, 2 ch 227 SLA 1976)

Sec. 08.64.368. Permits for isolated areas. [Repealed, § 27 ch 148 SLA 1970.]

Article 5. General Provisions.

Section

370 Persons not affected
380 Definitions

Sec. 08.64.370. Persons not affected. This chapter does not apply to

(1) officers in the regular medical service of the armed services of the United States or the United States Public Health Service while in the discharge of their official duties;

(2) a physician or osteopath, who is not a resident of this state, who is asked by a physician or osteopath licensed in this state to help in the diagnosis or treatment of a case;

(3) the practice of the religious tenets of a church;

(4) [Repealed, § 21 ch 87 SLA 1987.]

(5) a physician in the regular medical service of the United States Public Health Service or the armed services of the United States volunteering services without pay or other remuneration to a hospital, clinic, medical office, or other medical facility in the state;

(6) a person who is registered as a lay midwife by the Department of Health and Social Services under AS 18.05.040 or who is excluded from registration under AS 18.05.057 while engaged in the practice of

lay midwifery whether or not the person accepts compensation for those services. (§ 35-3-97 ACLA 1949; am § 4 ch 93 SLA 1965; am § 26 ch 77 SLA 1969; am §§ 23, 24 ch 148 SLA 1970; am §§ 1, 2 ch 88 SLA 1972; am § 13 ch 127 SLA 1974; am § 1 ch 31 SLA 1985; am § 21 ch 87 SLA 1987)

Effect of amendments. — The 1985 amendment designated former paragraphs (5) and (6) as present paragraphs (4) and (5) and added present paragraph (6).

The 1987 amendment repealed paragraph (4), which read "a person while serving as a student, intern, resident physician, or fellow at a hospital, clinic, or medical facility in the state."

Sec. 08.04.380. Definitions. In this chapter

(1) "acupuncture" means a medical practice to cure disease or relieve pain, alter function or induce anesthesia by piercing portions of the body with needles;

(2) "board" means the State Medical Board;

(3) "department" means the Department of Commerce and Economic Development;

(4) "emergency lifesaving service" means medical assistance given to a person whose physical condition, in the opinion of a reasonably prudent person, is such that the person's life is endangered;

(5) "physician trained mobile intensive care paramedic" means a person who

(A) has successfully completed the advanced first aid course prescribed by the board;

(B) is trained by a licensed physician

(i) to carry out all phases of cardiopulmonary resuscitation,

(ii) to administer drugs under written or oral authorization of a licensed physician,

(iii) to administer intravenous solutions under written or oral authorization of a licensed physician; and

(C) has been examined and certified as a physician-trained mobile intensive care paramedic by the board or by the board's designated representatives;

(6) "practice of lay midwifery" has the meaning given in AS 18.05.070;

(7) "practice of medicine" or "practice of osteopathy" means:

(A) for a fee, donation or other consideration, to diagnose, treat, operate on, prescribe for, or administer to, any human ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition; or to attempt to perform or represent that a person is authorized to perform any of the acts set out in this subparagraph;

(B) to use or publicly display a title in connection with a person's name including "doctor of medicine," "physician," "M.D.," or "doctor of osteopathic medicine" or "D.O." or a specialist designation including

"surgeon," "dermatologist," or a similar title, or any title which tends to show that the person is willing or qualified to diagnose or treat the sick or injured;

(8) "practice of podiatry" means the medical, mechanical, and surgical treatment of ailments of the foot, the muscles and tendons of the leg governing the functions of the foot, and superficial lesions of the hand other than those associated with trauma; the use of preparations, medicines, and drugs as are necessary for the treatment of these ailments; the treatment of the local manifestations of systemic diseases as they appear in the hand and foot, except that

(A) a patient shall be concurrently referred to a physician or osteopath for the treatment of the systemic disease itself;

(B) general anesthetics may be used only in colleges of podiatry approved by the State Medical Board and in hospitals approved by the joint commission on the accreditation of hospitals, or the American Osteopathic Association; and

(C) the use of X ray or radium for therapeutic purposes is not permitted (§§ 35-3-88, 35-3-94 ACLA 1949; am § 25 ch 77 SLA 1969; am § 3 ch 103 SLA 1970; am §§ 25 — 27 ch 148 SLA 1970; am § 9 ch 32 SLA 1971; am § 1 ch 117 SLA 1971; am § 4 ch 85 SLA 1972; am § 4 ch 21 SLA 1974; am §§ 12, 13 ch 101 SLA 1974; am § 1 ch 127 SLA 1975; am § 4 ch 24 SLA 1976; am §§ 27 — 29, 41 ch 177 SLA 1978; am § 6 ch 45 SLA 1982; am §§ 18, 19 ch 48 SLA 1983; am § 2 ch 33 SLA 1985)

Historic notes. — Reorganized in 1987 to alphabetize the defined terms.

Cross references. — For professional designation requirements for medical practitioners and osteopaths, see AS 08.02.010, for malpractice actions, see AS 09.55.510 — 09.55.560.

Effect of amendments. — The 1981 amendment rewrote paragraph (7) and repealed former paragraph (8), which defined "unprofessional or dishonorable conduct."

The 1985 amendment added paragraph (6).

NOTES TO DECISIONS

Unethical behavior. — A physician may be subject to loss of license, censure or reprimand for violating the state Medical Association declaration that publication of patients' names by board members in complying with AS 39.50 (Conflict of Interest law) is unethical. However, the possibility of professional discipline for unethical behavior is irrelevant because the statutory exemption applies only to legal privileges, not ethical mandates. Moreover, to equate ethical directives with legal privilege for purposes of AS

39.50, particularly where a relevant professional standard has been enacted subsequent to the passage of the Conflict of Interest law, would effectively allow an elite professional group to amend the law by declaring itself exempt. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Cited in *Leage v. Martin*, Sup. Ct. Op. No. 131 (File No. 266), 379 P.2d 417 (1963).

Collateral references. — What offenses involve moral turpitude within statute providing grounds for denying license. 103 A.R. 1450

What amounts to conviction within statute making conviction ground for refusing license. 113 A.R. 1179

Chapter 66. Motor Vehicle Dealers.

Section

- 10 Dealers to register
- 20 Application, bond, and fee
- 30 Form of application
- 40 Filing application for registration
- 50 Renewal of registration

Section

- 60 Bond
- 70 Action on bond
- 80 Penalties
- 90 Dealer defined

Collateral references. — 7A Am Jur 2d, Automobiles and Highway Traffic. § 150-153

60 C.J.S., Motor Vehicles, § 78 Regulation or licensing of the business of selling motor vehicles. 57 A.L.R.2d 1265.

Sec. 08.66.010. Dealers to register. A dealer in motor vehicles, trailers or semi-trailers shall, as a condition to engaging in business in the state, register biennially with the Department of Public Safety. (§ 1 ch 135 S.L.A. 1959; am § 3 ch 214 S.L.A. 1975; am § 9 ch 81 S.L.A. 1984)

Effect of amendments. — The 1984 amendment substituted "A" for "Every" and "the state, register biennially" for "this state, register annually."

Sec. 08.66.020. Application, bond, and fee. Application for dealer registration shall be accompanied by a biennial registration fee of \$50 and a bond required by AS 08 66 060. (§ 2 ch 135 S.L.A. 1959; am § 10 ch 81 S.L.A. 1984)

Effect of amendments. — The 1984 amendment substituted "a biennial registration fee of \$50" for "an annual registration fee of \$25"

Sec. 08.66.030. Form of application. The Department of Public Safety shall prescribe and furnish the form of application for dealer registration. The application shall contain

- (1) the name under which the business is conducted;
- (2) the location of business;
- (3) the name and address of all persons having an interest in the business, and in the case of a corporation the application shall contain the name and address of the two principal officers;
- (4) the name and make of all vehicles handled;
- (5) whether or not used vehicles are handled;

(6) a statement that the applicant is a bona fide dealer in motor vehicles, trailers, or semi-trailers with an established business at the location given;

(7) other information the Department of Public Safety requires to administer this chapter. (§ 3 ch 135 S.L.A. 1959, am § 4 ch 214 S.L.A. 1975)

Sec. 08.66.040. Filing application for registration. The application shall be filed with the Department of Public Safety. Upon receipt of the application the department shall examine it and may make an investigation of the information in it. If the department is satisfied that the dealer is entitled to registration, and the fees have been paid and a bond filed, the department shall assign a distinctive registration number to the dealer and file the dealer's application and index it alphabetically and numerically. A dealer is registered when the department assigns a registration number. (§ 4 ch 135 S.L.A. 1959; am § 5 ch 214 S.L.A. 1975)

Sec. 08.66.050. Renewal of registration. A dealer shall renew the registration required by this chapter before January 1 every two years. (§ 4 ch 135 S.L.A. 1959; am § 11 ch 81 S.L.A. 1984)

Effect of amendments. — The 1984 amendment rewrote this section, which formerly read "Each dealer shall renew the registration required by this chapter annually before January 1 of each year"

Sec. 08.66.060. Bond. (a) Every applicant for dealer registration or for renewal of dealer registration shall file with the application or request for renewal, and shall maintain in force while registered, a bond in favor of the state, executed by an authorized corporate surety approved by the commissioner of public safety, in the amount of \$10,000, except that a dealer who sells only motorcycles shall maintain in force while registered a bond in favor of the state, executed and approved in the same manner as bonds required of other dealers under this section, in the amount of \$3,000. Instead of a corporate surety bond the commissioner may, in the commissioner's sole discretion, accept a bond in the same amount with at least two individual sureties, each justifying with real property in twice the amount of the bond. The commissioner shall make the investigation necessary to determine the actual financial responsibility of the individual sureties. The condition of the bond shall be that the applicant will conduct business in accordance with this chapter and will not commit fraud or make fraudulent representations in the course of business.

(b) The bond shall be filed in the office of the commissioner of public safety. A surety may cancel the bond upon 30 days advance notice in writing filed with the commissioner. However, cancellation does not relieve a surety of liability arising on the bond from a sale made by

"or certificates" following "duplicates," inserted "or the failure to receive," and substituted "submission of a written request" for "proof," "attesting to" for "of," and "established by regulation adopted by the department" for "of §2 except as otherwise provided in this title"; substituted "a current register of licenses" for "current a register of licenses" in paragraph (12); substituted "additional" for "secretarial" in paragraph (17); rewrote paragraph (19); and added paragraph (20); and repealed subsection

... concerning the investigator for the State Medical Board.

The third 1987 amendment repealed subsection (c).

Opinions of attorney general. — The investigators employed by the Division of Occupational Licensing do not have the authority to issue citations for violations of the occupational licensing laws, without a specific grant of authority by the legislature, similar to that previously provided by chapter 83, SLA 1985, now codified as various sections of AS 08.18. October 17, 1985 Op. Att'y Gen.

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Collateral references. — Right of person wrongfully refused license upon proper application therefor to do act for which license is required. 30 ALR2d 1006.

Sec. 08.01.065. Fees established by regulation. (a) The department shall adopt regulations that establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by this chapter.

(b) The department may not adopt a regulation under (a) of this section unless the board responsible for regulating the affected occupation concurs.

(c) A fee established under this section should reflect, but should not exceed, the actual costs to the department of the activity for which the fee is charged except that the department may establish a fee that is less than the cost of the activity for which the fee is charged if the department determines that it is not reasonable to impose the full cost of the activity on the applicant or licensee. The actual or anticipated costs to the department of services provided to or on behalf of a board must reflect, to the extent possible, the amount of fees the department collects from persons in occupations regulated by the board.

(d) The commissioner of administration shall separately account for occupational licensing fees deposited in the general fund by the department. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the activities of the division of occupational licensing. (§ 2 ch 37 SLA 1985; am § 4 ch 138 SLA 1986; am § 3 ch 74 SLA 1987; am § 1 ch 87 SLA 1987; am § 5 ch 94 SLA 1987)

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Sec. 08.01.075. Disciplinary powers of boards. (a) A board may take the following disciplinary actions, singly or in combination:

- (1) permanently revoke a license;
- (2) suspend a license for a specified period;
- (3) censure or reprimand a licensee;
- (4) impose limitations or conditions on the professional practice of a licensee;
- (5) require a licensee to submit to peer review;
- (6) impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the licensee;
- (7) impose probation requiring a licensee to report regularly to the board on matters related to the grounds for probation;
- (8) impose a civil fine not to exceed \$5,000.

(b) A board may withdraw probationary status if the deficiencies that required the sanction are remedied.

(c) A board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety. A person is entitled to a hearing before the board to appeal the summary suspension within seven days after the order of suspension is issued. A person may appeal an adverse decision of the board on an appeal of a summary suspension to a court of competent jurisdiction.

(d) A board may reinstate a suspended or revoked license if, after a hearing, the board finds that the applicant is able to practice the profession with skill and safety.

(e) A board may accept the voluntary surrender of a license. A license may not be returned unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.

(f) A board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction. (§ 7 ch 94 SLA 1987)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

- (1) how an examination is to be conducted;
- (2) what is contained in application forms;
- (3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

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FORUM

Remaining ill, with bodies that cannot heal

By DR. ROBERT JAY ROWEN

The Daily News has done a laudable job in recent months reporting on the extent of poisoning of the environment and the appalling content of the typical American diet. The health insurance cost crisis has been presented, yet the wisdom to tie it all together continues to be lacking.

Three years ago, the News published a four-part series on modern cardiology extensively reporting on the latest "wonders" of medicine, drugs and bypass surgery. Not a word was written on prevention or nutritional approaches extolled by many "alternative practitioners," but now, years later, articles are published on the reversibility of coronary disease by diet, nutrition and exercise.

Concurrently, articles are finally reaching the lay public about the gross abuse and failure of the \$50,000-plus bypass in America. Yet it and other surgeries continue.

In the '50s and '60s, the fad surgery was tonsillectomy. The

'70s gave us hysterectomy. The '80s — bypass. Through it all was the maiming radical mastectomy. Skyrocketing insurance costs are often blamed on high technology.

Yet what has all this wizardry given us? Of all the expensive CAT scans, X-rays, MRI's and procedures performed, how many are positive? Or better yet, how many give us information that will actually help the patient instead of creating an intellectual pursuit for the physician and dollars for the industry? In truth, very few.

Treatment is often little better. Aside from costly and dangerous surgery, a quick glance through the bible of medicine, the "Physicians' Desk Reference," reveals that almost every drug used by the doctor is an anti: anti-hypertensive, anti-biotic, ant(i)-acid, anti-histamines, etc.

All of these drugs are designed to interfere with physiologic functions. Physicians are wooed by grand promotions for drugs that are not only costly (and long-term, since they do not cure), but are



often very dangerous. With the possible exception of antibiotics (which don't cure if you don't have an immune system), what other drugs cure any disease?

Are hyperactive children born with a deficiency of Ritalin? What has medicine done to promote or enhance natural healing functions instead of suppressing symptoms? A single nutrient deficiency or excess sugar is known to impair immune function.

Drug treatment of high blood pressure has been going on for years, yet most studies indicate that patients might be better off without the drugs. Further, most hypertensives (and those with high cholesterol) have moderate to severe nutritional deficiencies brought on by the typical American diet, which contributes to the blood pressure and is never ad-

ressed, but is easily, inexpensively and safely treated.

The logic of natural selection suggests that humans have self-healing mechanisms, or we would have died out. Logic further suggests the body must get basic building blocks (nutrients) to repair itself and, further, must avoid toxins or poisons that interfere with normal or repair processes.

It has been standard medical training (mine included) to offer perhaps two hours on these simple truisms and months on drugs and surgical education. Yet published U.S. Drug Administration studies confirm that at least 99 percent of Americans are malnourished in at least one essential nutrient.

The epidemic of malnutrition and chemical contamination in this country parallels the rise in "unexplained illnesses." Insurance pays for the "usual and customary" (expensive drugs, surgery and procedures).

Studies have shown that pa-

tients with metastatic cancer fare worse with their \$15,000 per year average chemical poison program (paid for by insurance and Medicare) than they would if they had done nothing!

Yet a \$10 nutrient that could correct the imbalance creating a disorder and obviate a surgery of illness is not covered. The lay press is full of information on self-help, nutrition and healing from basic science journals that rarely makes it into the mainstream medical journals, which rely heavily on drug promotion. So doctors are kept in the dark.

Until physicians and insurance companies alike give attention to the three basic causes of biological failures — malnutrition, toxic factors and stress — we will continue to pay more and get less as people remain ill with bodies that cannot heal.

Dr. Robert Jay Rowen is an Anchorage physician.

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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 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 civil
12 actions; requiring the State Medical Board to make a
13 report relating to the use of malpractice claims
14 histories to determine medical competency and to
15 impose sanctions on its licensees; and providing for
16 an effective 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 sanctions 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) under regulations adopted by the board, contract [COOR-
16 DINATE] with private professional organizations to establish an
17 impaired medical professionals program to identify, confront, evalu-
18 ate, and treat persons licensed under this chapter who abuse addictive
19 substances; a contractor and agents of the contractor are considered
20 agents of the board when performing duties related to a contract
21 formed under this paragraph; the contractor and its agents are enti-
22 tled to immunity and indemnity under AS 08.02.020.

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

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

29 (c) The board shall make available to the public the information

1 maintained under (a) and (b) of this section for each person licensed
2 under this chapter.

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

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

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

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

17 (1) [REPEALED

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

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

25 (3) submit a list of negotiated settlements or judgments in
26 claims or civil actions alleging medical malpractice against the
27 applicant, including an explanation of the basis for each claim or
28 action;

29 (4) not have a license to practice medicine in another

1 state, province, or territory which is currently suspended or revoked
2 for disciplinary reasons; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (1) the applicart fails or cheats during the examination;

2 (2) the applicant has surrendered a license in another
3 jurisdiction while under investigation and the license has not been
4 reinstated in that jurisdiction;

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

7 (4) [(3)] the applicant fails to comply with a requirement
8 of this chapter.

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

10 Sec. 08.64.250. LICENSE BY CREDENTIALS. The board may waive the
11 examination requirement and license by credentials if the physician or
12 podiatry applicant meets the requirements of AS 08.64.200 or 08.64.-
13 209, submits proof of continued competence as required by regulation,
14 pays the required fee and has

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

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

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

25 Sec 08.64.270. TEMPORARY PERMITS. (a) The board may issue a
26 temporary permit to a physician applicant, osteopath applicant, or
27 podiatry applicant who meets the requirements of AS 08.64.200, 08.64.-
28 205, [OR] 08.64.209, or 08.64.225 and pays the required fee.

29 (b) A temporary permit issued under this section is valid for

1 six [EIGHT] months and shall be reviewed by the board at the next
2 regularly scheduled board meeting that occurs after its issuance [OR
3 UNTIL THE BOARD MEETS TO CONSIDER THE APPLICATION, WHICHEVER OCCURS
4 FIRST].

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

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

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

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

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

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

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

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

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

2 (b) A physician applying under (a) of this section shall pay the
3 required fee and shall meet the requirements of AS 08.64.200 and
4 08.64.279. In addition, the physician shall submit evidence of hold-
5 ing a license to practice medicine in a state or territory of the
6 United States or in a territory or province of Canada.

7 * Sec. 9. AS 08.64.275(c) is amended to read:

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

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

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

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

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

26 (b) A person with a retired status license may apply for active
27 licensure. Before issuing an active license under this subsection,
28 the board may require the applicant to meet reasonable criteria as
29 determined under regulations of the board, that may include submission

1 of continuing medical education credits, reexamination requirements,
2 physical and psychiatric examination requirements, an interview with
3 the entire board, and review of information in the national data bank
4 of the National Federation of State Medical Boards.

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

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

11 (a) The board may impose a sanction if the board finds after a
12 hearing that a licensee

13 (1) secured a license through deceit, fraud, or intentional
14 misrepresentation;

15 (2) engaged in deceit, fraud, or intentional misrepresenta-
16 tion while providing professional services or engaging in professional
17 activities;

18 (3) advertised professional services in a false or mislead-
19 ing manner;

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

22 (A) a felony or other crime if the felony or other
23 crime is substantially related to the qualifications, functions,
24 or duties of the licensee; or

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

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

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

5 (7) failed to comply with this chapter, a regulation adopt-
6 ed under this chapter, or an order of the board;

7 (8) has demonstrated

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

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

15 (C) unfitness because of physical or mental disabil-
16 ity;

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

20 (10) has violated AS 18.16.010;

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

23 (12) has denied care or treatment to patient or person
24 seeking assistance from the physician if the only reason for the
25 denial is the failure or refusal of the patient to agree to arbitrate
26 as provided in AS 09.55.535(a); or

27 (13) has had a license or certificate to practice medicine
28 in another state or [,] territory of the United States, or a province
29 or territory of Canada suspended or revoked unless the suspension or

1 revocation was caused by the failure of the licensee to pay fees to
2 that state, territory, or province.

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

4 Sec. 08.64.335. REPORTS OF DISCIPLINARY ACTION OR LICENSE SUS-
5 PENSION OR SURRENDER. The board shall promptly report to the Fed-
6 eration of State Medical Boards for inclusion in the nationwide disci-
7 plinary data bank license and permit refusals under AS 08.64.240,
8 actions taken by the board under AS 08.64.331, and license and permit
9 suspensions or surrenders unde AS 08.64.332 or 08.64.334.

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

11 (c) Upon receipt of a report under (a) or (b) of this section,
12 the board shall investigate the matter and, upon a finding that there
13 is reasonable cause to believe that the person who is the subject of
14 the report is a danger to the health or welfare of the public or to
15 the person's patients, the board may appoint a committee of three
16 qualified physicians to examine the person and report its findings to
17 the board. A physician appointed under this subsection is considered
18 an agent of the board for the limited purpose of this section and is
19 entitled to immunity and indemnity under AS 08.02.020. Notwithstand-
20 ing the provisions of this subsection, the board may summarily suspend
21 a license under AS 08.64.331(c) before appointing an examining commit-
22 tee or before the committee makes or reports its findings.

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

24 (e) A physician, hospital, [OR] hospital committee, or private
25 professional organization contracted with under AS 08.64.101(6) to
26 identify, confront, evaluate, and treat individuals licensed under
27 this chapter who abuse addictive substances that in good faith submits
28 a report under this section or participates in an investigation or
29 judicial proceeding related to a report submitted under this section

1 is immune from civil liability for the submission or participation.

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

4 Sec. 08.64.345. REPORTS OF MALPRACTICE CLAIMS. A person li-
5 censed under this chapter shall report in writing to the board any
6 medical malpractice civil action filed against the person within 30
7 days after having actual knowledge that the civil action has been
8 filed. The licensee shall also report in writing to the board con-
9 cerning the outcome of each medical malpractice civil action filed.
10 This report shall be made within 30 days of termination of the civil
11 action and shall indicate whether damages have been or are to be paid
12 by the licensee to the plaintiff, whether by judgment or under a
13 settlement.

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

15 (7) "practice of medicine" or "practice of osteopathy"
16 means:

17 (A) for a fee, donation or other consideration, to
18 diagnose, treat, operate on, prescribe for, or administer to, any
19 human ailment, blemish, deformity, disease, disfigurement, dis-
20 order, injury, or other mental or physical condition; or to
21 attempt to perform or represent that a person is authorized to
22 perform any of the acts set out in this subparagraph;

23 (B) to use or publicly display a title in connection
24 with a person's name including "doctor of medicine," "physician,"
25 "M.D.," or "doctor of osteopathic medicine" or "D.O." or a spe-
26 cialist designation including "surgeon," "dermatologist," or a
27 similar title in such a manner as [, OR ANY TITLE WHICH TENDS] to
28 show that the person is willing or qualified to diagnose or treat
29 the sick or injured;

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

4 (1) there should be a biennial board review of the medical mal-
5 practice claim history of physicians licensed in the state;

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

8 (3) during review under (1) and (2) of this section, the board
9 should determine whether the physician or applicant acted with gross negli-
10 gence and whether practice by the physician or applicant might pose a
11 danger to the public health or safety;

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

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

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