

HB

35

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 35

Revision Date: February 6, 1995
 Title: An Act relating to the grounds for imposing
disciplinary sanctions... by the State Medical Board.
 Sponsor: Representative Parnell
 Requestor: Representative Parnell

Department: Commerce and Economic Development
 BRU: Occupational Licensing
 Component: Operations
 COMPONENT SERIAL #: 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 35 amends the grounds for imposing disciplinary sanctions on medical licensees if the licensee engages in sexual misconduct with a patient. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Admin. Officer
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 2/6/95
 Date: 2/6/95

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HOUSE COMMITTEE REPORT

(9)

Date Referred: January 16, 1995

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 4/13/95

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 35

HOUSE BILL NO. 35

SEXUAL MISCONDUCT BY MEDICAL PROFESSIONAL

"An Act relating to the grounds for imposing disciplinary sanctions on persons licensed by the State Medical Board."

recommends it be replaced
with the following committee substitute

CS HB 35 (HES)

the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) CED

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Henry L. Davis</i>	✓			
<i>Carl Beards</i>	✓			
<i>W. D. ...</i>	✓			
<i>Caren ...</i>	✓			

CHAIR'S SIGNATURE *Carl Beards*



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

State Capitol
Juneau, AK 99801-1182

Sponsor Statement

House Bill 35

Sexual Misconduct by Medical Professionals

This legislation provides the State Medical Board with the authority to sanction doctors who make sexual contact with their patients. Current statutory language governing such conduct is vague, sanctioning doctors for "unprofessional conduct, or in lewd or immoral conduct in connection with the delivery of professional services to patients."

Granting the Medical Board authority to sanction doctors in this case is critical for several reasons:

- *the degree of patient emotional and physical vulnerability which is inherent in virtually every doctor/patient relationship.

- *the extent to which a doctor may use his or her status in the professional relationship to induce the patient's consent to sexual activity.

- *the doctor's medical judgment is compromised by his or her sexual interest in the patient.

HB 35 brings specificity to the existing statute, giving the Medical Board and its examiners a viable mechanism to address this area of concern.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

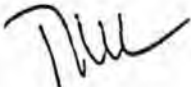
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 21, 1995

SUBJECT: Sectional Analysis of HB 35 (Work Order No. 9-LS0170A)

TO: Representative Sean Parnell
Attn: Michael Morter

FROM: Terri Lauterbach 
Legislative Counsel

This memorandum is a sectional analysis of HB 35. Since you have asked no particular questions about the bill, this memorandum is brief. Please let me know if you need additional assistance.

Section 1.

Clarifies that "sexual misconduct" is a ground for imposing disciplinary sanctions on a physician. Defines some of the conduct included in "sexual misconduct."

Section 2.

Limits the applicability of the bill to conduct occurring after the effective date, thereby avoiding an ex post facto problem.

TML.lmb
95-149.lmb

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

3601 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503-5986
PHONE: (907) 561-2878
FAX: (907) 562-5781

February 8, 1995

Representative Sean Parnell
State Capitol - Room 515
Juneau AK 99801-1182

Dear Representative Parnell:

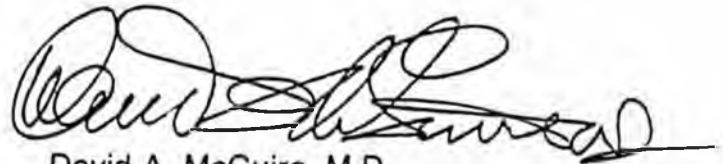
At the February 2-3, 1995, meeting of the Alaska State Medical Board, House Bill 35 adding sexual misconduct language to AS 08.64.326, which you sponsored, was reviewed and discussed by the board.

The board wishes to advise you of their support of your efforts with this bill and to express appreciation for your advocacy on this important issue. As we have discussed, all parties agree such behavior is unacceptable by any health care provider under any circumstance. We are concerned that the words "... generally accepted methods of examination or treatment..." in the proposed bill may prove exceedingly difficult to define, and indirectly provide an ambiguity through which the intent of this law may be evaded by the unscrupulous practitioner whom this law seeks to address.

We are working on regulatory language to define "sexual misconduct"; if you think it beneficial, perhaps this proposed regulatory definition may accompany your bill. Certainly the passage of your bill will give our effort a great measure of support.

We know that it is through the endeavors of legislators such as yourself and Representative Cynthia Toohey who recognize the magnitude and significance of such legislation that the people of Alaska will be protected and we, as a board, support those endeavors.

Sincerely,



David A. McGuire, M.D.
Chairman, State Medical Board

LGH:l

xc: Representative Cynthia Toohey
Board Members

parnell.doc.4100

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward Street, No. 501 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC); Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Alaska Women's Center for
Standing Safe Women's Group (SSWG); Anchorage Women's Center;
Kodiak Women's Resource & Crisis Center (KWRC);
Marinaq Regional Women's Crisis Program; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
Sikans Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR);
Tongass Community Counseling Center; Tundra Women's Coalition (TWC);
Unalaskans Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WCCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

HOUSE BILL 35 SEXUAL MISCONDUCT BY MEDICAL PROFESSIONALS

The Alaska Network on Domestic Violence and Sexual Assault (Network) is a statewide coalition of 22 nonprofit programs. Shelter, advocacy, crisis intervention and counseling, and referral services are offered by member programs to victims of domestic violence and sexual assault. During FY94, over 9,500 victims and minor children sought and received services from member programs.

The Network supports passage of HB35. The American Medical Association and most state boards have condemned sexual relationships concurrent with the physician/patient relationship, and have established standards and grounds for sanctions for those physicians who choose to engage in sexual misconduct. It is the physician's responsibility to establish and maintain professional boundaries. Consequences should be imposed when he or she crosses the line.

Self-reporting survey statistics are revealing. Nationwide some 7.1% of the male psychiatrists and 3.1 % of the female psychiatrists admitted to sexual involvement with patients. Overall, physician figures are estimated to be about 10%. The typical offender is between the ages of 40-50, has been practicing over 10 years, and is married with children.¹

Most sexual abuse involves a perpetrator exploiting a position of trust. Physicians have a unique position of trust with patients. In addition, they:

- 1) Have access to private information about patients.

¹Rhode Island Department of Health Bulletin, Summer 1993

- 2) Are in a physically intrusive position.
- 3) Can feel invisible and invincible because of their status and special relationship with patients.
- 4) Can rationalize that the patient's interest in them is personal rather than a by-product of the unique doctor-patient relationship.²

When health care providers are faced with their behavior, many try to say that particular act was the only one. Unfortunately, statistics and experience do not concur with their assertion. Dr. Gene Abel studied a group of 567 men who had engaged in sexual misconduct. Those 567 men accounted for 294,000 separate acts of legal sexual misconduct, and 195,000 victims. Over time, sexual misconduct tends to escalate; we see increased rates of offending and more intrusive behavior. Perpetrators are unlikely to stop the misconduct without intervention.³

HB35 gives notice to medical professionals of Alaska's commitment to ending sexual violence. It provides a mechanism for holding accountable those who choose to disregard a person's right to consent to sexual contact.

²Health Care Providers and Sexual Misconduct Irwin S. Dreiblatt, Ph.D., p.8.

³ *Supra*, p.10.

USA Today
4.6.95

More doctors disciplined in '94

By Elizabeth Neus
Gannett News Service

WASHINGTON — Medical boards disciplined 3,685 doctors in 1994, an 11.8% increase over 1993 — but it's a sign of more aggressive policing, not necessarily more bad doctors, say authors of a new report.

The public "should be reassured that we're doing a better job of finding those (cases) that need action," says Dr. Gerald Bechamps of the Federation of State Medical Boards.

Doctors disciplined make up less than 1% of the nation's 615,854 licensed, practicing doctors. Based on reports from 64 of the nation's 68 medical boards, the federation found:

► 86% of the 4,155 actions were "prejudicial" — the doctors lost their licenses or had their practices restricted.

► The number of such actions rose 16.5% over 1993.

"In general, they are doing a better job," says Dr. Sidney Wolfe of Public Citizen's Health Research Group, which

re-analyzes the federation's numbers for its own report on doctors. "But when you look at how poorly some of these huge states are doing, the people there shouldn't be reassured."

Most common offense, says the report, is improper prescription of drugs. Other infractions: substance abuse, Medicare or Medicaid fraud, sexual misconduct with patients.

The federation scores each state on how aggressive it has been in chasing down bad doctors. States are not ranked by number of doctors punished or by their scores. But the most recent report by Wolfe's group says the worst at disciplining doctors are the District of Columbia, Hawaii, New Hampshire, Delaware, Pennsylvania, Utah, Minnesota, Alabama, New Mexico and Connecticut. The best: Wyoming, Alaska, Montana, Kentucky, Oklahoma, West Virginia, Iowa, Georgia, Mississippi, North Dakota.

People can call their state medical boards to find out if a doctor has been disciplined.

AMENDMENT
TO HB 35

#1

TITLE AMENDMENT

"An Act relating to [the] sexual misconduct as grounds for imposing disciplinary sanctions on persons licensed by the State Medical Board."

adopted

AMENDMENT
TO HB 35

#2

- | | |
|-------------------------------------|-----------------------|
| p. 2, ln. 23 | delete "(A)" |
| p. 2, ln. 28 | delete " <u>and</u> " |
| p. 2, ln. 29 through
p. 3, ln. 1 | delete all material |

adopted



Alaska State Legislature
 House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

PLEASE FILL IN
 ALL PARTS OF
 WITNESS SHEET

SUBJECT OF MEETING:
 HB 35: Sexual Misconduct
 by a Medical
 Professional.

DATE: APRIL 13 1995

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Catherine Reardon	Occupational Licenses	Dept of Commerce			2538	<input checked="" type="radio"/>	<input type="radio"/>	HB 35
Jayne Andreen	CDVSA	Box 11200 Juneau, AK	99811		4356	<input checked="" type="radio"/>	<input type="radio"/>	✓
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
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