

HB

35

CS FOR HOUSE BILL NO. 35(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 4/18/95

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES PARNELL, Bunde, Robinson

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. AS 08.64.32 j(a) is amended to read:

5 (a) The board may impose a sanction if the board finds after a hearing that a
6 licensee

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

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

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

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

14 (A) a felony or other crime if the felony or other crime is

1 substantially related to the qualifications, functions, or duties of the licensee;
2 or

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

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

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

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

12 (8) has demonstrated

13 (A) professional incompetence, gross negligence, or repeated
14 negligent conduct; the board may not base a finding of professional
15 incompetence solely on the basis that a licensee's practice is unconventional or
16 experimental in the absence of demonstrable physical harm to a patient;

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

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

20 (9) engaged in unprofessional conduct, in sexual misconduct, or in
21 lewd or immoral conduct in connection with the delivery of professional services to
22 patients; in this paragraph, "sexual misconduct" includes sexual contact or
23 attempted sexual contact with a patient outside the scope of generally accepted
24 methods of examination or treatment of the patient, regardless of the patient's
25 consent or lack of consent, ^{during the course of the physician -} ~~whether during the course of treatment or outside of~~
26 the treatment setting, unless the patient is the licensee's spouse or a person in an
27 equivalent domestic relationship with the licensee; (existing)

28 (10) has violated AS 18.16.010;

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

30 (12) has denied care or treatment to a patient or person seeking
31 assistance from the physician if the only reason for the denial is the failure or refusal

1 of the patient to agree to arbitrate as provided in AS 09.55.535(a); or
2 (13) has had a license or certificate to practice medicine in another state
3 or territory of the United States, or a province or territory of Canada, suspended or
4 revoked unless the suspension or revocation was caused by the failure of the licensee
5 to pay fees to that state, territory, or province.

6 * **Sec. 2. APPLICABILITY.** AS 08.64.326(a)(9), as amended by this Act, applies to
7 conduct by a licensee that occurs on or after the effective date of this Act.

#2

P. 2 line 23

After "sexual contact"

Insert:

"as defined by the board
in regulations adopted under
this section."

Conceptual

amendment -

to Rewrite page

MEMO

To: Rep. Brian Porter
House Judiciary Committee

From: Anne Carpeneti
Staff Counsel

Subject: CSHB 35 (HES) - An Act relating to sexual misconduct as grounds for imposing disciplinary sanctions of persons licensed by the State Medical Board
Scheduled for April 24, 1995 meeting

Date: April 23, 1995

This bill amends the section in AS 08.64 - the State Medical Board- which sets forth the bases for disciplinary action against a physician. It expands the prohibition of unprofessional conduct to specifically prohibit sexual misconduct.

The bill also defines sexual misconduct, which is the hard part. There are two issues regarding the definition, both raised by Rep. Parnell in his very helpful memo (attached). One is the use of "outside the accepted methods of examination or treatment of the patient"; there is fear that this is too vague and might leave loopholes for bad acts. It is certainly clearer that the present language (lewd or immoral conduct), and the board has the power to adopt regulations (AS 08.64.101) to define this more specifically.

The second problem raised by Rep. Parnell is the phrase "outside of the treatment setting" - which the department believes goes beyond the professional relationship and into the physician's private life. It is not uncommon to require that professionals who are in a position of trust in the professional relationship refrain from forming attachments with clients outside the professional relationship. For example, in general, lawyers are not allowed to have sexual relationships with clients, with some exceptions.

Physicians are in a similar position of trust. This bill goes beyond the lawyer-client prohibition, however.

Sometime when you have lots of time on your hands you might be interested in the attached ethics opinion by the Alaska Bar Association.

Alaska State Legislature

REPRESENTATIVE
SEAN R. PARNELL



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While in Juneau
STATE CAPITOL
JUNEAU, ALASKA 99801-1112
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HOUSE OF REPRESENTATIVES

April 21, 1995

The Honorable Brian Porter, Chair
House Judiciary Committee

Dear Representative Porter:

Per your request earlier this session for "frank" letters regarding bill content, I am writing this memo for use by you and your staff in reviewing the CS for House Bill 35(HSS), sexual misconduct by medical professionals.

This legislation is not groundbreaking in nature; six states proscribe such conduct through statute and numerous other states have adopted similar regulations. Alaska currently has no express statutory or regulatory language prohibiting sexual misconduct by medical professionals.

The Department of Commerce and Economic Development has ultimate oversight of doctors via the State Medical Board. Interestingly enough, the department's position on the bill is neutral while the Board is supportive of this legislation. Commerce is on record stating that existing statute which prohibits "unprofessional conduct" is broad enough to regulate sexual misconduct, yet the Board would prefer to see "sexual misconduct" specifically in statute. Both groups have expressed some concerns with aspects of the bill as highlighted below:

page 2, line 23, beginning after "patient"

"outside the scope of generally accepted methods of examination or treatment of the patient"

The Medical Board believes this language will be difficult to define and because of this, may indirectly provide a loophole for an unscrupulous practitioner. One option is to delete this language but doing so would leave some doctors vulnerable by nature of their practice (OB-GYNs for example). At this point, I believe the standard set forth in the bill is

Rep. Porter memo
April 21, 1995
page 2

sufficiently descriptive to guide expert opinion in investigations, and I oppose deleting this language. However, I am open to other suggestions or modifications.

page 2, line 25

"whether during the course of treatment *or outside of the treatment setting,*"

The Administration and others raised concerns that this reaches beyond the '9-5' office schedule and into the doctors' personal lives. However, I believe the potential for a doctor to leverage his or her influence upon a patient can easily be extended beyond normal office hours.

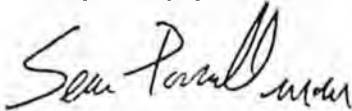
After the bill was drafted, we learned about proposed language from Rhode Island that might be appropriately for substituted here:

"during the existence of the physician-client relationship"

In my view, if the doctor and client choose to pursue a romantic relationship, the doctor would need to properly document termination of the professional relationship and referral to another doctor.

As a final note, sexual contact is not defined in the bill. It is my intent to provide this framework for the Medical Board to develop the necessary regulatory language; Legal Services has indicated no concerns with this approach.

Very truly yours,



Sean R. Parnell
Representative

Fax Transmittal Memo 7672

No of Pages 6

body Date 4-24-95 Time

To ANNIE CARPENETI

Company

From STEVE VAN GOOR
 ALASKA BAR ASSOCIATION
 Location FAX # 1-907-272-2932
 Fax # PHONE # 1-907-272-7469

Location

Fax # 1-907-465-3834 Telephone #

Comments

-Annie:
 Ethics Op. 92-6 as you requested. Please let me know if I can be
 of further assistance.
 Steve Van Goor

Original Delivery Return Call for return

**ALASKA BAR ASSOCIATION
 ETHICS OPINION NO. 92-6**

**Propriety of an Intimate Relationship
 Between an Attorney and a Client
 of the Attorney's Law Firm**

The Committee has been asked previously whether it is in violation of the Code of Professional Responsibility for an attorney to commence a sexual relationship with a client during the time the attorney is representing that client. In Ethics Opinion 88-1, the Committee responded by setting forth criteria that would render such a relationship unethical. More recently, we have been asked to assess whether Ethics Opinion 88-1 applies to a sexual relationship commenced between an attorney and a client of the attorney's law firm. Specifically, we have been asked to determine whether it was unethical for a lawyer to become intimately involved with a client of the firm during the course of the firm's representation in a termination of parental rights proceeding.

The Committee has concluded that this conduct is unethical if:

- (1) The sexual relationship has an adverse affect on the lawyer's ability to protect the client's interests, or is otherwise prejudicial or damaging to the client's case;
- (2) The sexual relationship creates the potential that the attorney will be called as a witness on behalf of the client or to testify on issues prejudicial to the client;
- (3) The client is involved in a legal matter of the type that is generally recognized to be emotionally charged; or
- (4) The sexual conduct is exchanged for legal services, non-consensual, coercive, or illegal.

These factors recognize that there are some circumstances and types of representation under which a sexual relationship is inconsistent with a professional relationship between an

The Committee has taken this opportunity to expand and clarify the standards for determining when an intimate relationship is unethical and warrants withdrawal or disqualification. Most notable changes are those now set forth in criteria (2) and (3).

attorney and client. The Committee's basic concern is that the attorney-client relationship, once established, should not be exploited by the attorney. The attorneys' foremost duty must be loyalty to the client, not personal gratification.

It is the opinion of the Committee that a sexual relationship between an attorney and a client of the attorney's firm is improper to the same extent as a relationship between an attorney and the attorney's own client, with certain limited exceptions. First, an attorney not directly involved in representing the client must know or have reason to know of the attorney/client relationship existing between the client and the attorney's firm. Second, such attorney may rebut with objective evidence the presumption established in criterion (3), which assumes that an attorney who is sexually involved with a client during cases that are by nature emotionally charged is unethically exploiting the attorney-client relationship.

In the case presented, the Committee has not been provided with sufficient facts to determine whether the attorney's sexual relationship with the firm's client was proper. However, the fact that the client was involved in a proceeding to terminate parental rights would trigger the presumption in criterion (3), which is not satisfactorily rebutted by the client's subjective statements that he or she was not harmed by the short-lived affair. The attorney must carefully consider this and the remaining criteria to determine the propriety of his or her conduct. If any of the criteria are met, the attorney's conduct is unethical, and no member of the attorney's firm may continue to represent the client under principles of imputed disqualification embodied in DR 5-105(d). Accordingly, the firm must withdraw.

For further guidance, the above criteria are discussed separately below.

(1) Adverse Impact on Client's Case

In some situations, a sexual relationship with a client during the course of representation may adversely affect the client's case or otherwise prejudice or damage the client's position. The Oregon State Bar has evaluated the propriety of an attorney's sexual relationship with an unemployed woman he was representing in a divorce proceeding. Oregon State Bar Ethics Opinion 429 (May 1979). The opinion stressed that the particular facts are extremely important in each case. It concluded that there were several facts militating in favor of a finding that the lawyer's conduct was improper under DR 5-101, which prohibits a lawyer from accepting employment if

the exercise of his professional judgment on behalf of the client will be affected by personal interests. First, the lawyer's conduct could significantly aggravate the other spouse and threaten a reasonable settlement. Second, in the event of a trial, the potential for an embarrassing disclosure of the lawyer's affair might cause him to curb effective and aggressive representation.

Similarly, Maryland Ethics Opinion 84-9 (September 7, 1983), advises that a lawyer must withdraw from employment when he is sexually involved with a client who is seeking advice regarding the sale of property owned by the client and her husband, the transfer of property from the husband and wife, and a possible divorce. In these circumstances, an intimate personal relationship between the lawyer and the client may have an adverse effect on the lawyer's ability to protect his client's interests.

Although not directly discussed by the Oregon or Maryland opinions, a sexual relationship may also prove damaging to the merits of a client's case in particular circumstances. For example, in matters involving child custody, a parent's conduct is closely scrutinized, and the details of an intimate relationship may conceivably become part of this scrutiny, particularly to the extent it may affect the children in question. Not only could the parent's conduct be negatively viewed by the court, but the lawyer would face a serious risk of becoming a material witness and being required to withdraw. Additionally, the lawyer's professional judgment and ability to render competent representation may be compromised. Bourdon's Case, 565 A.2d 1052 (N.H. 1989); Kentucky Bar Assn. v. Meredith, 752 S.W.2d 786 (Ky. 1988).

Clearly, sexual relationships should be avoided because they pose a number of potential violations of DR 7-101(A)(3), which prohibits a lawyer from intentionally prejudicing or damaging his client during the course of the professional relationship. The fact that a lawyer's associate, not the lawyer, is sexually involved with the lawyer's client has little bearing on this analysis. Like the lawyer, the associate is ethically bound to refrain from conduct that prejudices or damages a client of the firm.

(2) Potential For Becoming a Witness

If an attorney or attorney's associate should be called as a witness on the client's behalf, the continued representation of the client by the attorney or the attorney's firm is jeopardized pursuant to DR 5-102. The risk of becoming a witness is particularly great where the client's ongoing

conduct is at issue, such as in a divorce, custody or adoption dispute; a matter involving the client's physical, mental or emotional limitations or injuries, including a personal injury and wrongful death case; and a criminal matter where a client's compliance with court orders may be at issue. In such cases, attorneys or associates who place themselves in a position to know first-hand intimate details of a client's life create a likelihood that they will learn information that either (1) ought to be divulged in the client's behalf at trial, which would require disqualification pursuant to DR 5-102(a), or (2) might prejudice the client, if the attorney or associate is called as a witness other than on the client's behalf. Such a risk is unacceptable because the potential of harm to the client is too great. Again, whether the lawyer or lawyer's associate is sexually involved with the client is irrelevant -- if either is in a position to be called as a witness, continued representation by the firm is jeopardized.

(3) Presumed Emotional Vulnerability

The Committee is of the view that sexual relationships with clients must be presumed to be harmful to clients in cases that can be viewed objectively as emotionally traumatic. Examples of such cases include, but are not limited to, divorce, child custody or adoption disputes, or criminal matters involving the client, client's spouse or other family member. These cases involve the loss or potential loss or incarceration of persons of significance to the client, such as spouses or children. Because such cases by nature involve emotional issues, clients' judgments on emotional matters can be expected to be impaired, making them more vulnerable to the advances of a lawyer or more likely to initiate advances of their own. A lawyer has a duty to be cognizant of this vulnerability and to refrain from sexual relationships for the duration of representation. See Drucker's Case, 577 A.2d 1198 (N.H. 1990); Levy, Attorneys, Clients and Sex: Conflicting Interests in the California Rule, 5 GEO. J. LEGAL ETHICS 649 (1992). This duty extends to the lawyer's associates, who are also in a position to exploit a client's emotional vulnerability through their affiliation with the firm and potential familiarity with the case.

(4) Sex that is Non-consensual, Coercive, Illegal, or Accepted in Exchange for Legal Services

A sexual relationship with a client that is initiated by an attorney under circumstances reflecting that the client may have been deprived of free choice with regard to the relationship is unethical. As an example, in People v.

0005 000

Gibbons, 685 P.2d 168 (Co. 1984), an attorney undertook representation of seven co-defendants charged with burglary. The lawyer, who was sixty-six years of age, initiated a sexual relationship with a twenty-three year old female defendant as a condition for his representation of her and her husband. Following the conclusion of the criminal case, his clients filed a complaint alleging blackmail because the sexual relationship was made a condition of representation. In disbarring the attorney based upon the sexual relationship and other matters relating to the attorney's responses to the grievance proceeding, the court noted that the client was in a stressful situation and she was placed "in a position in which she was unduly dependent on the respondent and in which she may not have been able to exercise free choice." *Id.* at 175. If the sexual relationship with the client, or sexual conduct toward the client, is illegal, the attorney is violating DR 1-102(A)(3), which prohibits a lawyer from engaging in illegal conduct involving moral turpitude. An attorney who had been retained to represent a female client on a drunk driving charge was found to violate DR 1-102(A)(3) when he made sexual advances to the client in the jail library and later in his car. In Re Littleton, 719 S.2d 772, 776 (Mo. en banc 1986). The Littleton court noted that DR 1-102(A)(3) does not require a conviction of a crime, but only illegal conduct. The court further noted that moral turpitude includes everything contrary to justice, honesty, modesty and good morals. In holding that the attorney had violated his professional obligations, the court stated:

Respondent and [client] entered into a professional relationship. [Client] had a right to expect that Respondent would conduct himself in that relationship in a manner consistent with the honorable position of the legal profession -- a tradition founded on service, integrity, vigorous commitment to the client's best interest, and that leads us to the rule of law. Instead of remaining true to that tradition, however, Respondent chose to exploit it, seeking to turn the professional relationship into a personal one. *Id.* The court also emphasized that the non-consensual nature of the sexual relationship was an important factor in the finding of impropriety. An attorney who grabbed his female client, kissing her and raising her blouse, was also found to engage in illegal conduct involving moral turpitude. In the Matter of Adams, 428 N.E.2d 786 (Indiana 1981).

Finally, an arrangement between an attorney and client under which the client would provide sexual favors in exchange for legal representation would also violate DR 1-102(A)(3). Iowa State Bar Assn. v. Hill, 436 I.W. 2d 57 (Iowa 1989); Carter v. Kritz, 560 A.2d 360 (R.I. 1989). Similarly, the

withholding of services or provision of damaging legal advice because of a client's refusal to engage in sex is improper. McDaniel v. Gile, 281 Cal. Rptr. 242, 245-46 (Cal. 1991). Again, no separate standard is warranted for a lawyer's associate. If the sexual conduct is non-consensual, coercive, illegal, or induced in exchange for legal services, it is improper regardless of whether the attorney involved represents the client directly or is simply an associate of the client's attorney.

(5) Conclusion

The Committee concludes that sexual relationships with clients commenced during the course of representation by either an attorney or the attorney's law firm are unethical under any of the four circumstances described above. This opinion is not intended to prohibit representation of a client in a case where the attorney and client have been engaged in a mutually consensual and on-going sexual relationship prior to the commencement of the representation. In this regard, the Committee emphasizes that its chief concern is to diminish the potential for legal or personal harm to a client, for exploitation of a client's vulnerability, or for illegal coercion or force that are posed by the commencement of sexual relationships during or as a condition of representation by either a client's attorney or the attorney's associate. While the Committee would recommend that a lawyer not represent any client with whom he or she is sexually involved when the above circumstances exist, it is the commencement of a sexual relationship during the course of representation that is of greatest concern.

Approved by the Alaska Bar Association Ethics Committee on October 1, 1992.

Adopted by the Board of Governors on October 30, 1992.

Amendment Finlaystein
HB 35

~~P. 25~~

P. 2 line 25 Delete "whether"

P 2 line 25-26

Delete "or outside of the
treatment setting"

not offered



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.

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 35

1995 LEGISLATIVE SESSION

Revision Date: February 6, 1995

Department: Commerce and Economic Development

Title: An Act relating to the grounds for imposing disciplinary sanctions....by the State Medical Board.

BRU: Occupational Licensing

Sponsor: Representative Parnell

Component: Operations

Requestor: Representative Parnell

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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150 Seneca 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: Tern 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

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) _____

SIGN	#	RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>			✓			
<i>[Signature]</i>			✓			
<i>[Signature]</i>			✓			
<i>[Signature]</i>			✓			

CHAIR'S SIGNATURE *[Signature]*

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

3601 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503-5986
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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:I

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); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Erimonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC);
Matanuska Regional Women's Crisis Program; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
Sitka 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.3.

³ *Supra*, p.10.

No. 1

Bill Version: CSHB 35 (HES)

(H) Publish Date: 4/18/95

FISCAL NOTE

STATE OF ALASKA

1995 LEGISLATIVE SESSION

Revision Date: February 6, 1995 Department: Commerce and Economic Development
 Title: An Act relating to the grounds for imposing BRU: Occupational Licensing
disciplinary sanctions....by the State Medical Board. Component: Operations
 Sponsor: Representative Parnell
 Requestor: Representative Parnell 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, Phone: 465-2144
 Division: Occupational Licensing Date: 2/6/95
 Approved by Commissioner: William L. Hensley Date: 2/6/95
 Agency: Commerce and Economic Development

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