

HB

35



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.

Dr. James McGuire

Medical board's decision outrageous

An emotionally troubled young woman seeks medical help. Instead of assistance, she gets manipulation and sexual abuse. Over several years, the man she trusted for medical help uses her repeatedly for his sexual pleasure. For more than five years, the psychiatrist abused his patient, his license and the community's trust.

Now, only a year after his admissions, the state medical board has decided Dr. James McGuire ought to be able to practice psychiatry again.

That's an outrage.

Sure, the board seeks some restrictions on his license: he should treat only adult men — not women, children or sex offenders, the majority said.

But that's like saying the only thing wrong with his behavior was the physical sex act itself. It ignores the failure of integrity that is truly the heart of this case. What about his judgment? His ethics? His morals?

He lied to his patient and used his position of trust to abuse her. Is that the kind of judgment we expect from doctors in this state? Are his ethics good enough to continue practicing medicine in Alaska? Is this man morally fit for the practice of psychotherapy?

Is this the kind of man we want giving psychiatric counsel to anybody — adult male or otherwise?

It is not. The state medical board should know that. If they're not willing to keep sex abusers from practicing medicine in our community, what good are they?

Doctors always tell us they should be responsible for policing themselves. Don't worry about licensing, or malpractice, or accountability, they say. We'll take care of it.

Like this? If so, the system is a failure. The board has much to answer for in the matter of Dr. James McGuire.

Karma VanGelder, his victim, bravely has gone public with her story and the charges to try and prevent Dr. McGuire from hurting others. She said: "Lots of people say I should be angry. I don't wish any harm to him. I don't want him to do this to anyone else."

The medical board should be so wise.

Ms. VanGelder deserves thanks for her public spirit. The board should be called to account for a profound lack thereof.

Dr. McGuire

What can be done in the future?

After James McGuire's Alaska medical license was suspended last year, he moved to Washington, landed a prison-psychiatry job and obtained counseling required by the state of Alaska. Then he complained that those he was getting treated with weren't professionals and some are child molesters.

What nerve.

But what can be done to assure future Dr. McGuire's are sanctioned adequately?

• Support: Alaska House Bill 35, introduced by Rep. Sean Parneil. It explicitly spells out that the State Medical Board can sanction licensed health professionals who engage in sexual misconduct. HB 35 moved out of the House Judiciary Committee Monday.

State Division of Occupational Licensing director Catherine Reardon says it's a good idea that the legislature step in and make it clear that unprofessional conduct explicitly includes sexual misconduct. The lesson here: Obviously, the medical board can't be given squirm room — or it will squirm.

• Create a state code of ethics for the medical profession. The State Medical Board can redeem itself a small iota in the public's view by adopting a code of ethics, as already allowed by state law. Most states have such codes. That Alaska doesn't reflects poorly on all of us, but particularly the medical board.

• Support: U.S. Rep. Ron Wyden of Oregon's upcoming attempts to hold licensed health professionals like physicians more accountable to the public. The National Practitioner Data Bank is a federal service that keeps track of disciplinary and malpractice actions against medical professionals for health organizations and licensing boards.

Rep. Wyden soon hopes to introduce legislation to make the data bank available to the public and require public organizations like medical boards to access the information.

Legislators and State Medical Board: Get to work

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 35

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						
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

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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130 Seward Street, Suite 409
Juneau, Alaska 99801-2102

MEMORANDUM

March 21, 1995

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

TO: Representative Sean Parnell
Attn: Michael Morner

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:imb
95-149:imb

C.

HOUSE COMMITTEE REPORT

5/2/95

Date Referred: April 18, 1995

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/24

The JUDICIARY 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 (Ind) [] the same title [x] a new title

[] additional referral to _____ Committee

[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Cost)

APPROVES PREVIOUS: (Cost/Date)

[] fiscal note(s) _____

[] fiscal note(s) _____

[] zero fiscal note(s) _____

[x] zero fiscal note(s) Income - Insurance development 4/18/95

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
Brian S. Porter	Porter	✓			
[Signature]	Torrey	✓			
[Signature]	Green	✓			
Beth Davis	B. DAVIS	✓			
[Signature]	Finkelshteyn			X	
[Signature]	Bunde	-			
		(S)		(C)	

CHAIR'S SIGNATURE Brian S. Porter

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/Case)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) CED

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Harry L. Davis</i>	✓			
<i>Carl R. Davis</i>	✓			
<i>Robert J. Davis</i>	✓			
<i>Robert J. Davis</i>	✓			

CHAIR'S SIGNATURE *Carl R. Davis*

Alaska State House of Representatives
Nineteenth Legislature
First Session

RCS# 605
Item 4

05-05-95
11:07:21

CSHB 15(JUD)
Third Reading
Final Passage

Yeas: 39 Austerman, Barnes, Brice, Brown, Bunde,
Davies, B.Davis, G.Davis, Elton,
Finkelstein, Foster, Green, Grussendorf,
Hanley, Ivan, James, Kelly, Kohring, Kott,
Kubina, Mackie, Martin, Masek, Moses,
Mulder, Navarre, Nicholas, Ogan, Parnell,
Phillips, Porter, Robinson, Rokeberg,
Sanders, Therriault, Tochey, Veray,
Williams, Willis

Nays: 1 MacLean

Excused: 0

Absent: 0

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

3601 C STREET, SUITE 200
ANCHORAGE, ALASKA 99503-5986
PHONE: (907) 561-2978
FAX: (907) 562-5781

February 8, 1995

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

Dear Representative Pamell:

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:1

xc: Representative Cynthia Toohey
Board Members

pamell.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 (AWAPE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bereng Sea Women's Clinic (BSWC); Eastern Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC);
Marshall Regional Women's Crisis Program; Parents Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
Sisters Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR);
Tongass Community Counseling Center; Tundra Women's Coalition (TWC);
Unassured Against Sexual Assault & Family Violence (USAASFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WCCA);
Women in Safe Homes (WSH); 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 1992

- 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.

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

³ *Supra*, p. 10.