

HB

387

SENATE COMMITTEE REPORT

DATE: 3/31/98

FURTHER: Labor and Commerce

DATE TURNED
IN TO OFFICE: 4/6/98

HESS Committee considered CS FOR HOUSE BILL NO. 387(L&C)

"An Act relating to dentists."

and recommends:

- be replaced with _____ CS _____
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR" _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Loren D. Simon</i>	✓	<i>J. Ellis</i>	✓		
		<i>Lyle Green</i>	✓		
CHAIR: <i>Tom White</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>Commerce + Dev</i>	<i>2/18/98</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No: 1

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Bill Version: CSHB 387 (L&C)
(H) Publish Date: 2/20/98

Revision Date: _____
Title: An Act relating to dentists.
Sponsor: Rep. Therriault
Requestor: House Labor & Commerce

Department: Commerce and Economic Development
BRU: Occupational Licensing
Component: Operations
COMPONENT SERIAL NO. 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
HB 387 amends dental statute AS 08.36.070(a). New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager
Division: Occupational Licensing
Approved by Commissioner: Deborah B. Sedwick
Agency: Commerce and Economic Development

Phone: 465-2144
Date: 2/18/98
Date: 2-18-98

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House Of Representatives

Winter Session
State Capitol
Juneau, Alaska
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House District 33

House Bill 387

"An act relating to dentists."

SPONSOR: Rep. Gene Therriault

SPONSOR STATEMENT:

House Bill 387 is intended to give the Board of Dental Examiners the ability to enter into a formal Memorandum of Agreement (MOA) with applicants or licensees who are unable to perform cardio-pulmonary resuscitation.

Currently, the board enters into MOAs when it determines that an applicant or licensee is physically unable to perform cardio-pulmonary. However, during a Legislative Audit conducted last year, it was discovered that the board possesses no statutory authority to enter into such an agreement.

This bill seeks to give that authority to the Board of Dental Examiners while preserving the spirit and intent of the statute: to protect the patients of dentistry.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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MEMORANDUM

TO: The Honorable Gene Therriault
Alaska State House

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: October 24, 1997

RE: Report #08-4556-97 Selected Occupational
Licensing Investigations Issues

This memorandum is in response to your question regarding the circumstances involved with a specific dentist who had entered into a formal Memorandum of Agreement (MOA) with the Board of Dental Examiners. Specifically, you were concerned about the investigative actions of the Division of Occupational Licensing (OccLic) and the appropriateness of a requirement that the dentist continue to practice under the terms of the MOA.

As stated in our report, we were satisfied in general with the procedures followed by OccLic investigators in utilizing MOAs in policing regulated professions. All MOAs included in our audit scope were subject to the review and approval of the relevant licensing board prior to being finalized with the licensed individual. By verifying that OccLic consistently followed this procedure when putting MOAs in place, we were satisfied the licensing board involved was kept informed, had the opportunity to make amendments, and signed off on the terms included in each MOA. In our view, OccLic staff were acting within their authority and discretion with the appropriate oversight and input from the various licensing boards involved.

In the specific circumstances that triggered the audit request, a licensed dentist entered into an MOA with the Board of Dental Examiners. Although this particular MOA was originally developed at a time that preceded the period covered by our audit, we did review the board minutes of the discussion involved with its extension. Attached to this memorandum is an excerpt from the board meeting minutes where the extension of this particular MOA was discussed.

Presumably the board reviewed the terms of the original MOA, and approved an indefinite extension of its terms. This approval was made even though the accompanying letter from OccLic suggests that the Board was being indulgent when setting out the terms of the MOA. Essentially, the board agreed to permit the dentist to continue licensed practice if he made sure he had an individual who was qualified to perform cardiopulmonary resuscitation (CPR) present at all times while he was practicing dentistry. The board ratified this MOA extension, even though the licensing statutes specifically require the licensed individual to have the CPR certification.¹

Further, as reflected in the attached excerpt, the board approved a resolution to accept the conditions of the MOA as "...ongoing, rather than reviewing them every two years, unless there [is] a change of status." In our view, this resolution endorses the language in the OccLic letter notifying the licensee of the MOA extension. In that December 1996 letter (also attached to this memorandum - and originally supplied by your office), the OccLic investigator stated "[i]n the future you may renew your license without having to seek Board approval for the exception granted to you."

Our review of this particular case has raised concerns about whether the board can exercise such discretionary authority. From our reading of the statute it appears the board has, through the use of the MOA, permitted the dentist to continue practice under terms that are inconsistent with the requirements of statute. We have made inquiries of the Department of Law and will be notifying OccLic of our question regarding the board's authority and action in this area. We will keep your office apprised of any further developments in this area.

I hope this memorandum clarifies our analysis of the specific circumstances involved with this particular MOA. As commented previously, we found that in this case and in general, OccLic staff acted appropriately and within their purview with appropriate oversight and input from the licensing board involved. If you have any further questions regarding this issue please contact me at 465-3830.

Jim...
x 817

Kent... x3600
Eric...
x 3573 -CC
120

¹AS 08.36.070(a)(13) states that the Board of Dentistry, shall

require, as a condition of license or license renewal issued by the board, that an applicant or licensee has at the time of licensing or renewal and maintains throughout the period of a license current certification in cardiopulmonary resuscitation techniques.

STATE

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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February 12, 1998

The Honorable Gene Therriault
House of Representatives
State Capital, Room 511
Juneau, Alaska 99801

Re: HB 387

Dear Mr. Therriault:

Your staff requested that this office write a letter addressing the legal effects of proposed House Bill 387. The bill proposes to amend the Dental Practice Act (AS 08.36) to permit the Board of Dental Examiners (Board) to enter into agreements with applicants and licensees to waive the cardiopulmonary resuscitation (CPR) requirements for licensure. Current Alaska law requires that the Board only issue or renew licenses to applicants or licensees that maintain CPR certification. AS 08.36.070(a)(13). In certain instances, this current requirement may be inconsistent with the American with Disabilities Act (ADA), 42 U.S.C. 12101-12213.

The ADA preempts conflicting state laws which provide lesser protection to individuals with disabilities. Specifically, federal regulations prohibit a public entity from administering a licensing program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of a disability. 28 CFR 35.130(b)(6). The regulation further prohibits a public entity from establishing requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of a disability. *Id.*

While this office has never concluded as a matter of law that the ADA preempts the provisions of AS 08.36.070, a question persists whether the two laws conflict. House Bill 387 would remove the question regarding AS 08.36.070(a)(13) and whether the Board licenses dentists and dental hygienists consistent with the ADA.

Representative Gene Therriault
Re: HB 387

February 12, 1998
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If you have further questions, please do not hesitate to call.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL



By:

G. Ken Truitt
Assistant Attorney General

GKT/bm

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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February 12, 1998

The Honorable Gene P. Therriault
House of Representatives
State Capitol, Room 511
Juneau, AK 99801-1182

Dear Representative Therriault:

As requested, our comments on HB 387 "An Act Relating to Dentists," are noted below.

This bill allows the Board of Dental Examiners to waive the cardiopulmonary resuscitation certification (CPR) requirement for dental applicants and licensees, if the licensee agrees to ensure that a person who is certified in CPR will be in the same room as the licensee whenever dentistry is practiced on a living patient.


The board currently has two Memorandum of Agreements permitting dentists, who have physical disabilities which permit them from obtaining CPR certification, to practice dentistry under conditions similar to this bill. The department supports the new statutory authority this bill provides.

The Department recommends narrowing the ability of applicants to request a waiver of the CPR requirement, to those individuals who have satisfactorily documented a physical disability that precludes them from successfully completing CPR certification.

Unless the waiver is limited to physical disabilities, there is a strong likelihood that numerous renewal applicants who fail to update the CPR cards will use the provisions of this bill to request board consideration of a waiver of the CPR requirement until they are able to obtain an updated CPR card.

Finally, the Legislature may want to consider whether the waiver should be extended to dental hygienists.

Sincerely,


Deborah B. Sedwick
Commissioner

DBS/BG/go2770
021298a

cc: Jeff Bush, Deputy Commissioner, DCED
Catherine A. Reardon, Director, Division of Occupational Licensing
Pat Pourchot, Legislative Director, Office of the Governor

February 13, 1998

Representative Gene Therriault
Alaska State Legislature

Dear Representative:

I wish to express my support for the intent of HB 387. As I understand this bill, the intent is to enable or facilitate the licencing of dentists in Alaska who may not be physically able, providing that they have certified staff present, or required by necessity to be able to perform cardiopulmonary resuscitation (CPR) while performing their professional functions.

I do not believe that dentists who suffer physical handicaps but who are still able to provide quality care to their patients should be barrred from practicing if provisons for patient protection can be accomplished. Nor do I believe that dentists who are performing non-clinical administrative functions should be required to be ready and able to perform CPR.

I am concerned that the language of HB 387, as I have seen it, would allow practicing dentists who are not in the above categories to apply for waivers when they have failed to obtain recertification for CPR. I would not like to see a "loophole" such as this created.

I absolutely approve of a bill to allow the Board of Examiners to grant waivers in the licensing process through Memorada of Agreement for dentists who are not capable or required by their job functions to perform CPR. I encourage the approval of a modification of HB 387 which has language which prevents potential implementation problems.

Please continue to pursue this legislation. If I may be of assistance in the future, do not hesitate to contact me.

Sincerely,
Kenneth L. Crooks, DDS