

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5895 HOUSE LABOR & COMMERCE

299

1 assets appropriated, loaned, or transferred to the authority for
2 deposit in the account [,] and other money or assets deposited in the
3 account by the authority. While money is on deposit in the economic
4 development account, it [THE ACCOUNT] may be used only to finance,
5 acquire, manage, and operate development projects that the authority
6 intends to own and operate either solely or by partnership, joint
7 venture, or other agreement with another person. The term "operate"
8 includes operation directly by the authority[,], or by an agent of the
9 authority.

10 * Sec. 13. AS 44.88.900(4) is repealed and reenacted to read:

11 (4) "development project" means the same as "project," as
12 defined in this section;

13 * Sec. 14. AS 44.88.900(9) is amended to read:

14 (9) "project" means

15 (A) a plant or facility used or intended for use

16 [(i)] in connection with making, processing, pre-
17 paring, transporting, or producing in any manner, goods,
18 products, or substances of any kind or nature or in connec-
19 tion with developing or utilizing a natural resource, or
20 extracting, smelting, transporting, converting, assembling,
21 or producing in any manner, minerals, raw materials, chemi-
22 cals, compounds, alloys, fibers, commodities and materials,
23 products, or substances of any kind or nature;

24 [(ii) AS AN INDUSTRIAL PARK; IN CONNECTION WITH
25 TRANSPORTATION; FOR THE PREVENTION, LIMITATION OR CONTROL OF
26 POLLUTION; FOR THE DISPOSAL OF SEWAGE OR SOLID WASTE; FOR
27 THE LOCAL FURNISHING OF GAS; FOR THE FURNISHING OF WATER; AS
28 OR IN CONNECTION WITH MASS COMMUTING VEHICLES; FOR LOCAL
29 DISTRICT HEATING OR COOLING; AS A PARKING FACILITY; OR AS A

1 STORAGE OR TRAINING FACILITY DIRECTLY RELATED TO A PLANT OR
2 FACILITY DESCRIBED IN THIS PARAGRAPH;]

3 (B) a plant or facility used or intended for use in
4 connection with a business enterprise;

5 (C) commercial activity by a small enterprise;

6 * Sec. 15. AS 44.88.090(g) and (i), 44.88.105(e) and (g), 44.88.157,
7 44.88.158, 44.88.159(c), 44.88.160, 44.88.172(b) and (c), 44.88.175, 44.-
8 88.176, 44.88.212(a), and 44.88.900(3) are repealed.

9 * Sec. 16. This Act takes effect immediately under AS 01.10.070(c).

LEGISLATIVE TELECONFERENCE NETWORK



SIGN-IN SHEET

SPONSOR: House Labor & Commerce

SUBJECT: HB 123 AIDEA

START/END TIME: 8:30-11:00 DATE: 2/18/89

PLEASE PRINT

	NAME/REPRESENTING	ADDRESS	PHONE #	TESTIFY	OBSERVE	BILL #
1	Jan Sieberts	NBA	265-2991	X		
2	Bert Wagner	AIDEA	274-1651	X		
3						
4						
5						
6						
7						
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LEGISLATIVE TELECONFERENCE NETWORK



SIGN-IN SHEET 2

SPONSOR: HL+C

SUBJECT: _____

START/END TIME: _____ DATE: _____

PLEASE PRINT

	NAME/REPRESENTING	ADDRESS	PHONE #	TESTIFY	OBSERVE	BILL #
1	MATTHEW ALLEN	227 S. ...	272-1554			
2	JACK JESSEL	Vice chair of AIDA Board 6610 AMALCOY RD	541-1670		?	
3	CHRIS JESSEL	SAME	SAME		X	
4						
5						
6						
7						
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 * DELIVER TO: LIOCMAB *
 *
 * ORIGINAL *
 * SENT: 02/18/89 TIME: 08:54 *
 * FROM: LTCCFBX *
 * SUBJECT: HL&C;PL#1 - HB123;2-18 *
 * PRINT DATE: 02/18/89 TIME: 08:54 *
 *

T/C NO: 89-01-014
 DATE: 02/18/89
 SPONSOR: HOUSE LABOR AND COMMERCE
 SUBJECT: HB123
 MODERATOR: ANNIE
 SITE: FAIRBANKS

PARTICIPANT LIST

 TESTIFIED

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

 OBSERVED

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. FRED PRATT,	P.O. BOX 72981, FBKS.		99707
2.	(IF THERE IS ANY BACK UP INFORMATION BESIDES THE BILL WE WOULD		
3.	APPRECIATE RECEIVING IT BY FAX. THANKS.)		

HB

135

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: An Act relating to insurance policy binders and providing for an effective date BRU: Insurance
 Sponsor: Ulmer Components: Operations
 Requestor: House Labor & Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No financial impact on the division.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 2-3-89

Approved by Commissioner: Larry Merculieff Date: 2/7/89
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: An Act relating to insurance policy binders and providing for an effective date BRU: Insurance
 Sponsor: Ulmer Components: Operations
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) No fiscal impact in FY 90.

No financial impact on the division.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: _____
 Approved by Commissioner: Larry Merculieff Date: 5/2
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

HB

143

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Environmental Conservation
 Title: An Act providing for the Regulation of above ground and underground tanks BRU: Environmental Quality
 Sponsor: Rules Committee Components: Environmental Quality
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		237.5	425.0	425.0	425.0	
TRAVEL		28.5	50.5	50.5	50.5	
CONTRACTUAL		25.0	45.0	45.0	45.0	
SUPPLIES		2.5	4.5	4.5	4.5	
EQUIPMENT		10.5	19.5	19.5	19.5	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		304.0	544.5	544.5	544.5	

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

GENERAL FUND		304.0	544.5	544.5	544.5	
FEDERAL FUNDS						
OTHER						
TOTAL		304.0	544.5	544.5	544.5	

POSITIONS:

FULL-TIME		5	9	9	9	
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dan Easton Phone: 465-2640
 Division: Environmental Quality Date: 12/22/88

Approved by Commissioner: [Signature] Date: February 2, 1989
 Agency: Department of Environmental Conservation

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Background

While the Department of Environmental Conservation has statutory authority to respond to and clean up oil and chemical spills, it lacks authority to require measures to prevent spills from oil storage facilities with a capacity of 10,000 barrels or less and chemical storage tanks of any size.

The proposed legislation would allow the Department to establish a State Underground Storage Tank/Above ground Storage Tank Program to prevent pollution from, and leaking of, oil and chemicals from storage tanks. It provides authority for the Department to require proof of financial responsibility for releases, design and installation standards, requirements for inspection and maintenance, early release detection, and other spill prevention measures for oil and chemical storage tanks.

The Department receives a small grant from the U.S. Environmental Protection Agency to inventory underground storage tanks in the State and to establish one position in the Southcentral Regional Office to inspect the installation and removal of tanks. This level of federal support is expected to continue.

FY 90 Program

FY 90 funds will be used to evaluate and develop a new state program to prevent spills and leakage from both underground and above ground oil and chemical storage tanks. During FY 90 the Department will initiate the following major tasks for Above ground Storage Tanks:

- 1) collect data and compile an inventory of existing Above ground Storage Tanks;
- 2) establish classes of Above ground Storage Tanks based on the size, type, age, and content;
- 3) develop draft regulations for each class of Above ground Storage Tanks; and,
- 4) organize a working group comprised of industry, agencies, and public representatives to provide regulation and program development assistance.

An inventory of existing Underground Storage Tanks has already been completed by the Department. The FY 90 approach and tasks for Underground Storage Tanks will include the following:

- 1) establish classes of Underground Storage Tanks based on the size, type, age, and contents;
- 2) develop draft regulations for each class of Underground Storage Tanks; and

3) organize a working group to provide agency, industry, and public input into the development of regulations.

To complete these tasks the Department will establish 5 positions for FY 90; 3 Ecologists to develop an Above-ground Storage Tank inventory, organize working groups, and to draft Underground Storage Tank/Above ground Storage Tank regulations; 1 Ecologist in the Northern Regional Office to assist in data collection and in developing regulations that will address the unique aspects of cold climates; and 1 Clerk Typist.

FY 91 and Ongoing Program

FY 91 tasks will include completing regulations for both Underground Storage Tanks/Above ground Storage Tanks, initiating a public/industry information program, and implementing the newly established regulations.

Staff required for FY 91 and ongoing operation of the program include 7 Ecologists and Field Officers distributed throughout the Department, and 2 Clerk Typists. Major field tasks will include inspection of tank construction, installation and abandonment; review of facility records for inspection, maintenance, and release detection that may be required by the new regulations; enforcement; and technical assistance to installers and owners of tanks.

HB

144

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 3, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3-21-89

The LABOR & COMMERCE Committee recommends that:

HOUSE BILL NO. 144 [EXTEND BD OF BARBERS & HAIRDRESSERS]
"An Act continuing the Board of Barbers and Hairdressers; and providing for an effective date."

[] be replaced with _____ [] 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: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [] fiscal impact
- [] zero fiscal note
- [] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published:
- _____
- [] zero fiscal notes(s) published:
- _____

SIGNING DO PASS:

David Dawley
Joseph M. ...
...
...

SIGNING OTHER THAN DO PASS:

(Do Not Pass, No Recommendation, Amend)

... (no rec.)
... (no rec.)

David Dawley
 Chairman's signature

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 144
PUBLISH DATE: HOUSE 2/3/89

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: An Act continuing the Board of BRU: Occupational Licensing
Barbers and Hairdressers; and providing for an effective date.
Sponsor: Rules Committee Components: Administration
Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
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	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Funding for the board is included in the department's FY 90 operating budget request.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
Division: Occupational Licensing Date: December 27, 1988

Approved by Commissioner: Larry Merzuli Date: 1/11/89
Agency: Commerce and Economic Development

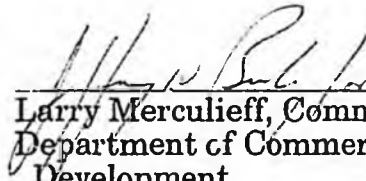
Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HB 144: An Act continuing the Board of Barbers and Hairdressers, and providing for an effective date.

The bill proposes to extend the termination date of the Board of Barbers and Hairdressers to June 30, 1993. The board presently licenses approximately 2,834 practitioners and continues to operate in the best interest of the public by granting licensure only to competent, qualified individuals.

Over the past year and a half, the board has worked hard to improve. It has substantially amended its regulations and, in doing so, has established new licensing criteria, set school curriculum that recognizes the real differences between barbers and hairdressers, and assisted students seeking entry into the profession by offering more frequent examinations.

The performance report by the Division of Legislative Audit recommended that the Board of Barbers and Hairdressers be reestablished. The department concurs with the audit recommendation and supports HB 144, which will extend the board to June 30, 1993.



Larry Mercurieff, Commissioner
Department of Commerce and Economic
Development

Date: 2/16/89

LM/JS/dgl3284D
021689c

HB

145

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: APA Power Project Fund
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Commerce & Econ. Dev.
BRU: Div. of Investments
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Martin Richard, Director
Division: Division of Investments
Approved by Commissioner: Larry Mercurieff, Commissioner
Agency: Dept. of Commerce & Economic Development

Phone: 465-2500
Date: 1/4/1989
Date: 1/4/1989

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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1 4 5

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: APA Power Project Fund
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Commerce & Econ. Dev.
BRU: Div. of Investments
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Martin Richard, Director Phone: 465-2500
Division: Division of Investments Date: 1/4/1989
Approved by Commissioner: Larry Mercurieff Commissioner Date: 1/4/1989
Agency: Dept. of Commerce & Economic Development

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: AK Power Authority
 Title: Act relating to Power Project BRU: _____
 fund
 Sponsor: Rules
 Requestor: Governor Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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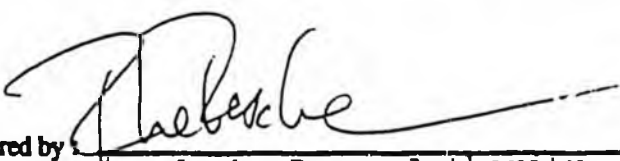
FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PT-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: 
 Division: Alaska Power Authority Phone: 465-3575
 Date: 1/4/89
 Approved by Commissioner: Larry Merculieff Date: 1/10/89
 Agency: DCED

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

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1 4 6

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 3, 1989

FURTHER REFERRALS: HESS

Date of Committee Action: 1/23/90

The LABOR & COMMERCE Committee recommends that:

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."

[] be replaced with CS HB146 (LTC) [] 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: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [] fiscal impact
- [] zero fiscal note
- [] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published: _____
- [] zero fiscal notes(s) published: _____

SIGNING DO PASS:

David Dwyer
[Signature]

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

[Signature]
[Signature]
Mark Boyer no rec

David Dwyer
Chairman's signature

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 *LM* 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.

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 4/25/89 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

Page 4

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

go0779h
Lauterbach
1/23/90

Original sponsor(s): RULES/GOVERNOR

1 IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 146 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to occupational licensing; amending
7 Rules 205, 603, and 611(d), Alaska Rules of Appellate
8 Procedure, and Rules 62 and 65, Alaska Rules of Civil
9 Procedure; and providing for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

12 Sec. 08.02.020. IMMUNITY AND INDEMNITY RELATED TO LICENSING
13 FUNCTIONS. (a) An action for damages may not be brought against a
14 person who is or was a witness or investigator for, or a member,
15 employee, agent, or consultant of a board established under this
16 title, the Department of Commerce and Economic Development, or a peer
17 review committee established to review a licensing matter as a result
18 of an act or omission that occurred during the good faith performance
19 of actions related to and within the scope of functions of the board,
20 department, or committee under this title.

21 (b) A person who is or was a witness or investigator for, or a
22 member, employee, agent, or consultant of a board established under
23 this title, the department, or a peer review committee established to
24 review a licensing matter is not liable for civil damages as a result
25 of an act or omission that occurred during good faith performance of
26 actions related to and within the scope of functions of the board,
27 department, or committee under this title.

28 (c) The state shall insure or indemnify and protect a person
29 described in (b) of this section against financial loss and expense,

1 including reasonable legal fees and costs, arising out of a claim,
2 demand, suit, or judgment by reason of alleged negligence, alleged
3 violation of civil rights, or alleged wrongful act resulting in death
4 or bodily injury or accidental damage to or destruction of property if
5 the person at the time of the act or omission on which the claim,
6 demand, suit, or judgment is based was in good faith performing
7 actions related to and within the scope of functions of the board,
8 department, or peer review committee under this title.

9 * Sec. 2. AS 08.64.101 is amended to read:

10 Sec. 08.64.101. DUTIES. The board shall

- 11 (1) examine and issue licenses to applicants;
- 12 (2) develop written guidelines to ensure [INSURE] that
13 licensing requirements are not unreasonably burdensome and the issu-
14 ance of licenses is not unreasonably withheld or delayed;
- 15 (3) submit an annual report of its proceedings to the
16 governor, including a statement of money received and disbursed;
- 17 (4) after a hearing, impose disciplinary sanctions on
18 persons who violate this chapter [,] or the regulations or orders of
19 the board;
- 20 (5) adopt regulations ensuring [INSURING] that renewal of
21 licenses is contingent upon proof of continued competency on the part
22 of the licensee; and
- 23 (6) contract [COORDINATE] with private professional organi-
24 zations to establish an impaired medical professionals program to
25 identify, confront, and treat persons licensed under this chapter who
26 abuse addictive substances; a contractor and agents of the contractor
27 are considered agents of the board when performing duties related to a
28 contract formed under this paragraph; the contractor and its agents
29 are entitled to immunity and indemnity under AS 08.02.020.

1 * Sec. 3. AS 08.64.130 is amended by adding new subsections to read:

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

7 (c) The board shall make available to the public the information
8 maintained under (a) and (b) of this section for each person licensed
9 under this chapter.

10 * Sec. 4. AS 08.64.190 is amended to read:

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

20 * Sec. 5. AS 08.64.200 is amended to read:

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

24 (1) [REPEALED

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

29 (2) [(3)] submit a certificate from a recognized hospital

1 certifying that the applicant has satisfactorily performed the duties
2 of resident physician or intern for a period of one year;

3 (3) submit a list of medical malpractice civil actions
4 filed against the applicant, including an explanation of the outcome
5 of each action;

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

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

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

19 * Sec. 6. AS 08.64.205 is amended to read:

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

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

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

29 (3) take the examination required by AS 08.64.210 or be

1 certified to practice by the National Board of Examiners for Osteo-
2 pathic Physicians and Surgeons.

3 * Sec. 7. AS 08.64.209(a) is amended to read:

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

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

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

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

15 * Sec. 8. AS 08.64.225 is amended to read:

16 Sec. 08.64.225. FOREIGN MEDICAL GRADUATES. Applicants who are
17 graduates of medical colleges not accredited by the Association of
18 American Medical Colleges and the Council on Medical Education of the
19 American Medical Association must [OR ONE OF ITS AGENCIES SHALL] meet
20 the requirements of AS 08.64.200(a)(2) - (5) and 08.64.255, [AS 08.-
21 64.200(a)(3), (4) AND (5)] and must have passed examinations as spec-

22 ified by the board in regulations [AN EXAMINATION AND BE CERTIFIED BY
23 THE EDUCATION COUNCIL ON FOREIGN MEDICAL GRADUATES,] or be licensed by
24 examination in another state or territory of the United States or
25 province or territory of Canada.

26 * Sec. 9. AS 08.64.230(a) is amended to read:

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

1 * Sec. 10. AS 08.64.230(b) is amended to read:

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

5 * Sec. 11. AS 08.64.240(a) is amended to read:

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

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

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

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

13 (4) [(3)] the applicant fails to comply with a requirement
14 of this chapter.

15 * Sec. 12. AS 08.64.250 is amended to read:

16 Sec. 08.64.250. LICENSE BY CREDENTIALS. The board may waive the
17 examination requirement and license by credentials if the physician or
18 podiatry applicant meets the requirements of AS 08.64.200 or 08.64.-
19 209, submits proof of continued competence as required by regulation,
20 pays the required fee and has

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

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

1 * Sec. 13. AS 08.64.270 is amended to read:

2 Sec. 08.64.270. TEMPORARY PERMITS. (a) The board may issue a
3 temporary permit to a physician applicant, osteopath applicant, or
4 podiatry applicant who meets the requirements of AS 08.64.200, 08.64.-
5 205, [OR] 08.64.209, or 08.64.225 and pays the required fee.

6 (b) A temporary permit issued under this section is valid for
7 six [EIGHT] months and shall be reviewed by the board at the next
8 regularly scheduled board meeting that occurs after its issuance [OR
9 UNTIL THE BOARD MEETS TO CONSIDER THE APPLICATION, WHICHEVER OCCURS
10 FIRST].

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

13 * Sec. 14. AS 08.64.270 is amended by adding new subsections to read:

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

17 (e) Upon application by the permittee and approval of the board,
18 a permit issued under this section may be converted to a biennial
19 license upon payment of the biennial fee minus the six-month permit
20 fee paid under (d) of this section, plus the appropriate application
21 fee.

22 * Sec. 15. AS 08.64.272(b) is amended to read:

23 (b) For the limited purpose of residency or internship, the
24 board may issue a permit to an applicant without examination if the
25 applicant meets the requirements of AS 08.64.200(a)(1) [AS 08.64.-
26 200(a)(2)] and applicable regulations of the board, meets the require-
27 ments of AS 08.64.279, pays the required fee, and has been accepted by
28 an eligible institution in the state for the purpose of residency or
29 internship.

1 * Sec. 16. AS 08.64.275(a) is amended to read:

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

7 * Sec. 17. AS 08.64.275(b) is amended to read:

8 (b) A physician applying under (a) of this section shall pay the
9 required fee and shall meet the requirements of AS 08.64.200 and
10 08.64.279. In addition, the physician shall submit evidence of hold-
11 ing a license to practice medicine in a state or territory of the
12 United States or in a territory or province of Canada.

13 * Sec. 18. AS 08.64.275(c) is amended to read:

14 (c) An osteopath applying under (a) of this section shall pay
15 the required fee and shall meet the requirements of AS 08.64.205 and
16 08.64.279. In addition, the osteopath shall submit evidence of hold-
17 ing a license to practice in a state or territory of the United States
18 or in a territory or province of Canada.

19 * Sec. 19. AS 08.64.275 is amended by adding a new subsection to read:

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

23 * Sec. 20. AS 08.64 is amended by adding new sections to read:

24 Sec. 08.64.276. RETIRED STATUS LICENSE. (a) On retiring from
25 practice and payment of an appropriate one-time fee, a licensee in
26 good standing with the board may apply for the conversion of an active
27 or inactive license to a retired status license. A person holding a
28 retired status license may not practice medicine, osteopathy, or
29 podiatry in the state. A retired status license is valid for the life

1 of the license holder and does not require renewal. A person holdi
2 a retired status license is exempt from AS 08.64.312.

3 (b) A person with a retired status license may apply for acti
4 licensure. Before issuing an active license under this subsection
5 the board may require the applicant to meet reasonable criteria
6 determined under regulations of the board, that may include submissio
7 of continuing medical education credits, reexamination requirements
8 physical and psychiatric examination requirements, an interview wit
9 the entire board, and review of information in the national data base
10 of the National Federation of State Medical Boards.

11 Sec. 08.64.277. COURTESY LICENSE. The board, by regulation, ma
12 set criteria for issuing a temporary courtesy license to a medical o
13 osteopathic physician or a podiatrist who accompanies an interstate o
14 international sporting team or contingent participating in activities
15 in the state. The term of a license issued under this section is
16 limited to the duration of the team's or contingent's presence in the
17 state, up to a maximum of 45 days. A license issued under this sec-
18 tion authorizes the licensee's scope of practice in the state to
19 include only the team or contingent members, their dependents, and
20 foreign nationals who are accompanying the group if it is an interna-
21 tional group.

22 Sec. 08.64.279. INTERVIEW REQUIRED FOR PERMITS. An applicant
23 for an intern permit, a resident permit, or a temporary permit for
24 locum tenens practice must be interviewed in person by at least one
25 member of the board or by the executive secretary of the board.

26 * Sec. 21. AS 08.64.326(a) is amended to read:

27 (a) The board may impose a sanction if the board finds after a
28 hearing that a licensee

29 (1) secured a license through deceit, fraud, or intentional

1 misrepresentation;

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

5 (3) advertised professional services in a false or mislead-
6 ing manner;

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

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

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

14 (5) has procure^d, sold, prescribe^d, or dispensed drugs in
15 violation of a law, regardless of whether there has been a criminal
16 action;

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

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

23 (8) has demonstrated

24 (A) professional incompetence, gross negligence, or
25 repeated negligent conduct; the board may not base a finding of
26 professional incompetence solely on the basis that a licensee's
27 practice is unconventional;

28 (B) addiction to, severe dependency on, or habitual
29 overuse of alcohol or other drugs that [WHICH] impairs the

1 licensee's ability to practice safely;

2 (C) unfitness because of physical or mental disabil-
3 ity;

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

7 (10) has violated AS 18.16.010;

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

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

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

19 (14) has prescribed, ordered, dispensed, administered,
20 supplied, sold, or given an amphetamine, sympathomimetic amine drug,
21 or compound identified as a schedule IIA controlled substance under
22 AS 11.71.150 to or for a person except for the

23 (A) treatment of attention deficit disorder (hyper-
24 kinesis), narcolepsy, drug-induced brain dysfunction, or epilep-
25 sy;

26 (B) differential diagnostic evaluation of depression;

27 (C) treatment, of up to three weeks' duration, of
28 depression shown to be refractory to other therapeutic modalities
29 but only if the patient is hospitalized, is over the age of 60.

1 suffers from involuntional depression, and, in the licensee's
2 clinical judgment, would probably die during the period that
3 would be necessary to achieve full therapeutic effects of other
4 antidepressant medications; treatment with these other anti-
5 depressant medications shall be simultaneously commenced with the
6 other treatment authorized under this paragraph, unless medically
7 contraindicated;

8 (D) clinical investigation of the effects of the drugs
9 or compounds; the investigative protocol for an investigation
10 authorized under this paragraph shall be submitted to the board
11 and approved by it before the investigation begins.

12 * Sec. 22. AS 08.64.335 is amended to read:

13 Sec. 08.64.335. REPORTS OF DISCIPLINARY ACTION OR LICENSE SUS-
14 PENSION OR SURRENDER. The board shall promptly report to the Fed-
15 eration of State Medical Boards for inclusion in the nationwide disci-
16 plinary data bank license and permit refusals under AS 08.64.240,
17 actions taken by the board under AS 08.64.331, and license and permit
18 suspensions or surrenders under AS 08.64.332 or 08.64.334.

19 * Sec. 23. AS 08.64.336(c) is amended to read:

20 (c) Upon receipt of a report under (a) or (b) of this section,
21 the board shall investigate the matter and, upon a finding that there
22 is reasonable cause to believe that the person who is the subject of
23 the report is a danger to the health or welfare of the public or to
24 the person's patients, the board may appoint a committee of three
25 qualified physicians to examine the person and report its findings to
26 the board. A physician appointed under this subsection is considered
27 an agent of the board for the limited purpose of this section and is
28 entitled to immunity and indemnity under AS 08.02.020. Notwithstand-
29 ing the provisions of this subsection, the board may summarily suspend

1 a license under AS 08.64.331(c) before appointing an examining commit-
2 tee or before the committee makes or reports its findings.

3 * Sec. 24. AS 08.64.336(e) is amended to read:

4 (e) A physician, hospital, [OR] hospital committee, or private
5 professional organization contracted with under AS 08.64.101(6) to
6 identify, confront, and treat individuals licensed under this chapter
7 who abuse addictive substances that in good faith submits a report
8 under this section or participates in an investigation or judicial
9 proceeding related to a report submitted under this section is immune
10 from civil or criminal liability for the submission or participation.

11 * Sec. 25. AS 08.64 is amended by adding a new section to Article 2 to
12 read:

13 Sec. 08.64.345. REPORTS OF MALPRACTICE CLAIMS. A person li-
14 censed under this chapter shall report in writing to the board any
15 medical malpractice civil action filed against the person within 30
16 days after having actual knowledge that the civil action has been
17 filed. The licensee shall also report in writing to the board con-
18 cerning the outcome of each medical malpractice civil action filed.
19 This report shall be made within 30 days of termination of the civil
20 action and shall indicate whether damages have been or are to be paid
21 by the licensee to the plaintiff, whether by judgment or under a
22 settlement.

23 * Sec. 26. AS 08.64.380(7) is amended to read:

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

26 (A) for a fee, donation or other consideration, to
27 diagnose, treat, operate on, prescribe for, or administer to, any
28 human ailment, blemish, deformity, disease, disfigurement, dis-
29 order, injury, or other mental or physical condition; or to

1 attempt to perform or represent that a person is authorized to
2 perform any of the acts set out in this subparagraph;

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

10 * Sec. 27. AS 44.62.570(f) is amended to read:

11 (f) Except as provided in (j) of this section, the [THE] court
12 in which proceedings under this section are started may stay the
13 operation of the administrative order or decision until

14 (1) the court enters judgment;

15 (2) a notice of further appeal from the judgment is filed;

16 or

17 (3) the time for filing the notice of appeal expires.

18 * Sec. 28. AS 44.62.570(h) is amended to read:

19 (h) If further appeal is taken, the supreme court may, in its
20 discretion, stay the superior court judgment or agency order, except
21 as provided in (j) of this section.

22 * Sec. 29. AS 44.62.570 is amended by adding a new subsection to read:

23 (j) A court or justice may not, pending appeal, stay, temporari-
24 ly enjoin, or issue a restraining order against, the portion of an
25 administrative decision under which a license, permit, or similar
26 credential has been denied under AS 08 or under which a disciplinary
27 sanction has been imposed under AS 08 unless the person requesting the
28 stay, injunction, or order demonstrates to the satisfaction of the
29 court or justice that

- 1 (1) the person is likely to prevail on appeal;
- 2 (2) the person is likely to suffer irreparable harm without
- 3 the stay, injunction, or order;
- 4 (3) the stay, injunction, or order is not likely to have
- 5 substantially harmful effects on other parties to the proceedings; and
- 6 (4) irreparable damage to the public is not likely to result
- 7 from the stay, injunction, or order.

8 * Sec. 30. The State Medical Board shall submit to the legislature by

9 January 30, 1991, a report containing its recommendations for statutory

10 changes necessary to implement the following policies:

11 (1) there should be an annual board review of the medical mal-

12 practice claim history of physicians licensed in the state;

13 (2) there should be a board review of the medical malpractice

14 claim history of license applicants;

15 (3) during review under (1) and (2) of this section, the board

16 should determine whether the physician or applicant acted with gross negli-

17 gence and whether practice by the physician or applicant might pose a

18 danger to the public health or safety;

19 (4) the board should be able to deny or revoke a license if

20 practice by a person might pose a danger to the public health or safety,

21 based on its review of the person's medical malpractice claim history,

22 unless the board determines that suspension or license restrictions would

23 be sufficient to protect the public health and safety;

24 (5) reviews of medical malpractice claim history should include

25 claims filed and cases concluded by judgment or settlement.

26 * Sec. 31. COURT RULE CHANGES. AS 44.62.570(f) and (h), as amended by

27 secs. 27 and 28 of this Act, and AS 44.62.570(j), as enacted by sec. 29 of

28 this Act, have the effect of amending Rules 205, 603, and 611(d), Alaska

29 Rules of Appellate Procedure, and Rules 62 and 65, Alaska Rules of Civil

1 Procedure, by limiting the circumstances under which a court or justice
2 may, pending appeal, issue a stay, preliminary injunction, or restraining
3 order against certain administrative decisions.

4 * Sec. 32. This Act takes effect immediately under AS 01.10.070(c).
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HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



November 27, 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: HB 146 Bill File Tabs

The following are explanations of the tabs located in your HB 146 bill file.

- Tab #1 CS for HB 146
- Tab #2 Original bill, HB 146, filed by the Rules Committee at the request of the Governor.
- Tab #3 Proposal and bill draft submitted by the State Medical Licensing Board.

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 make 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

Words underlined are new.
Words bracketed and capitalized are deleted.

BY THE _____ COMMITTEE
AT THE REQUEST OF THE
STATE MEDICAL BOARD

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

FOR AN ACT ENTITLED: "An Act relating to medical licensure; and providing for an effective date."

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

Section 1. Section AS08.02.020 is repealed and readopted to read:

Sec. 08.02.020. Immunity; Indemnity; Protected Communication.

(a) 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 a licensing 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 licensing board.

(b) 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 a licensing 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.

(c)(1) Every communication made by or on behalf of any person, institution, agency, or organization to a licensing board or to any person(s) designated by the board relating to an investigation or the initiation of any 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.

(2) 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.

Section 2. AS08.64.101(6) is amended to read:

Sec. 08.64.101(6). Contract [COORDINATE] with private professional organizations to establish an impaired medical professional program to identify, confront and treat persons licensed under this chapter who abuse addictive substances. The agents of the contractor shall be considered agents of the board for this limited purpose and shall enjoy all rights to immunity, indemnity and protected communication set forward in Sec. 08.02.020.

Section 3. AS08.64.190 is amended to read:

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. The board may verify information in the application through direct contact with the appropriate schools, medical boards, or other agencies that can substantiate the information.

Section 4. AS08.64.200 is amended to read:

Sec. 08.64.200. QUALIFICATIONS OF PHYSICIAN APPLICANTS.
(a) Except for foreign medical graduates as specified in AS08.64.224, each physician applicant shall

(1) [REPEALED

(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;

(2) [(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;

(3) submit a list of medical malpractice civil judgments and or negotiated settlements entered against the applicant;

(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. If the physician applicant was licensed or practiced in a jurisdiction that does not record information with the data bank of the Federation of State Medical Boards, the board shall contact the medical regulatory body of that jurisdiction to obtain comparable information about the applicant.

Section 5 AS08.64.205 is amended to read:

Sec. 08.64.205. QUALIFICATION FOR OSTEOPATH APPLICANTS. Each osteopath applicant shall meet the qualifications prescribed in AS08.64.200(a)(3) - (5) [AS08.64.200(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 AS08.64.210 or be certified to practice by the National Board of Examiners for Osteopathic Physicians and Surgeons.

Section 6 AS08.64.209(a) is amended to read:

(a) Each applicant who desires to practice podiatry shall meet the qualifications [QUALIFICATION] prescribed in AS08.64.200(a)(3) and (4) [AS08.64.200(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 AS08.64.210; 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.

Section 7 AS08.64.225 is amended to read:

Sec.08.64.225. FOREIGN MEDICAL GRADUATES. Applicants who are graduates of medical colleges not accredited by the [THE AMERICAN MEDICAL ASSOCIATION OR ONE OF ITS AGENCIES] the Association of American Medical Colleges and the Council on Medical Education of the American Medical Association [SHALL] must meet the requirements of AS08.64.200 (a)(3), (4) and (5) [AND MUST HAVE PASSED AN EXAMINATION AND BE CERTIFIED BY THE EDUCATION COUNCIL ON FOREIGN MEDICAL GRADUATES] and AS0864.255 and must have passed examinations as specified by the board in regulation, or be licensed by examination in another state or territory of the United States or province, or territory, of Canada.

Section 8 AS08.64.230 is amended to read:

Sec. 08.64.230. LICENSE GRANTED. (a) If the physician applicant passes the examination and meets the requirements of AS 08.64.200 and AS08.64.255, 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 AS08.64.205 and AS08.64.255, 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.

Section 9 AS08.64.240(a) is amended to read:

Sec. 08.64.240. LICENSE REFUSED. (a) The board may not grant a license if

(4) The applicant has surrendered a license in another jurisdiction while under investigation and the license has not been re-instated in that jurisdiction.

Section 10. AS0864.250 is amended to read:

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 AS08.64.200 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 as specified by the board in regulation.

Section 11. AS0864.270 is repealed and readopted to read:

Sec. 08.64.270. TEMPORARY PERMIT. (a) The board may issue a temporary permit to a physician applicant, osteopathic applicant, or podiatry applicant who meets the requirements of AS08.64.200, 08.64.205, 08.64.209 or 08.64.225 and pays the required fee.

(b) A temporary permit issued under this section is valid for six months and must be reviewed for approval by the board at the next regularly scheduled meeting of the board after it is issued.

(c) A temporary permit issued under this section may not be renewed. The fee for the permit shall be one quarter of the biennial licensing fee (plus the appropriate application fee). At the discretion of the licensee and with board approval the temporary license may be converted to a biennial license (permanent license) upon payment of the remainder of the fee due for such a license.

Section 12. AS08.64.272(b) is amended to read:

(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 AS08.64.200(a)(2) and applicable regulations of the board, meets the requirements of AS08.64.278, pays the required fee, and has been accepted by an eligible institution in the state for the purpose of residency or internship.

Section 12. AS08.64.275 is amended to read:

Sec. 08.64.275. TEMPORARY PERMIT FOR LOCUM TENENS PRACTICE. (a) A member of the board or the executive secretary 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] 60 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 AS08.64.200 and of AS08.64.278. 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 AS08.64.205 and of AS08.64.278. 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.

(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.

(e) A limit of four such permits and/or extensions (limit of 240 days) may be granted to a single individual during a two year period.

Section 14. AS08.64 is amended by adding a new section to read:

Sec. 08.64.276. RETIRED LICENSE. (a) On retiring from practice, and on payment of an appropriate one time fee, a licensee in good standing with the board may apply for the conversion of an active or inactive license to retired status.

(b) A retired license is issued for the remainder of the licensee's life and does not require renewal.

(c) Individuals holding retired licenses are exempt from the provisions of 08.64.312.

(d) Individuals holding a retired license are prohibited from practicing medicine, osteopathy or podiatry, as the case may be, in the State of Alaska.

(e) Retired licensees may reapply for active licensure but are required to meet any reasonable criteria set by the board in the individual case including but not limited to demonstration of adequate CME credits, retaking of national examinations such as the FLEX exam, physical and psychiatric examination, interview with the board as a whole, and clearance by the National Data Bank of the National Federation of State Medical Boards.

Section 15. AS08.64 is amended by adding a new section to read:

Sec. 08.64.277. COURTESY LICENSE. The State Medical Board may by regulation set criteria for issuing temporary courtesy

licenses to medical and osteopathic physicians and podiatrists accompanying interstate and international sporting teams and international contingents participating in activities in Alaska. Such licenses shall be limited in time to that length of time the contingent or sporting team is present in Alaska and in any case no longer than 45 days. Such licensees will be limited to practicing on team or contingent members, their dependents and foreign nationals accompanying international groups.

Section 16. AS08.64 is amended by adding a new section to read:

Sec. 08.64.278. INTERVIEW REQUIRED FOR PERMITS. An applicant for an intern permit, a resident permit, or 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.

Section 17. AS08.64.326 is amended by adding a new subsection to AS08.64.326 numbered AS08.64.326(a)(14) to read:

Sec. 08.64.326. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANCTIONS. (a) (14) Has prescribed, ordered, dispensed, administered, supplied, sold, or given any amphetamine, sympathomimetic amine drug or compound identified as a schedule II controlled substance under AS11.71.150 to or for any person except for the treatment of narcolepsy, or for the treatment of attention deficit disorder (hyperkinesis), or for the treatment of drug induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, for the treatment of hospitalized elderly patients with involuntional depression for periods not to exceed three weeks where clinical judgment suggests they will die during that period necessary to achieve full therapeutic effects of other antidepressant medications and provided these other medications are started simultaneously, or for the clinical investigation of the effects of such drugs or compounds in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the board before such investigation has been begun.

Section 18. AS08.64.335 is amended to read:

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 or permit refusals under AS08.64.240, actions taken by the board under AS08.64.331, and license or permit suspensions or surrenders under AS08.64.332 or 08.64.334.

Section 19. AS08.64.336(c) is amended to read:

Sec. 08.64.336(c). Upon receipt of a report under (a) or (b) of this section, the board shall investigate the matter and, upon 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. Physicians so appointed will be considered agents of the board for the limited purpose of this section and shall enjoy all rights to immunity, indemnity and protected communication set forward in Sec. 08.02.020. Notwithstanding the provisions of this subsection, the board may summarily suspend a license under AS08.64.331(c) before appointing an examining committee or before the committee makes or reports its findings.

Section 20. AS08.64.336(e) is amended to read:

Sec. 08.64.336. DUTY OF PHYSICIANS AND HOSPITALS TO REPORT.
(e) A physician, hospital, hospital committee, or private professional organization designated under AS.08.64.101(6) to identify, confront and treat individuals licensed under this chapter who abuse addictive substances, that in good faith submit 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.

Section 21. AS08.64 is amended by adding a new section to read:

Sec. 08.64.369. PRESERVING SANCTIONS OF THE BOARD. A refusal of or a sanction of a license or permit issued under this chapter may not be temporarily enjoined nor an action of the board in refusing or sanctioning a license stayed pending appeal to a court of competent jurisdiction or temporarily enjoined or stayed pending appeal to superior appellate review unless the court granting such an injunction or stay does so on demonstration of reasonable cause to presume the board's refusal to grant a license or permit or sanction a license or permit may have been based on discrimination on the basis of race, creed, color, sex, national origin, or handicapping condition that does not impair safe practice, on conspiracy in restraint of trade, or malicious intent to injure the applicant or licensee or permittee.

Section 22. AS08.64.380(7)(b) is amended to read:

Sec. 08.64.380(7)(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 similar title [, OR ANY TITLE WHICH TENDS TO SHOW THAT THE PERSON IS WILLING OR QUALIFIED TO DIAGNOSE OR TREAT THE SICK OR INJURED;] in such manner as to show that the person is willing or qualified to diagnose or treat the sick or injured:

Section 23. This Act takes effect immediately under AS01.10.070(c).

ADDENDUM

If it is adjudged that AS08.64.369 is unacceptable court rules could be altered to set stricter requirements for the granting of stays using the criteria set out below. As noted I have made no attempt to write specific language as I am not sure where it would fit into the statutes nor what subsidiary language would have to be altered. It should likely apply to all boards but the inclusion of the idea that a stay would not be granted unless the public health was protected would effectively limit applicability to boards with responsibilities in the healing arts. The idea comes from a review of the laws of about 40 states and I have included a few examples.

In essence the envisioned language would run something like:

A refusal of or a sanction of a license or permit issued by a board chartered under the provision of Chapter 8 of the Alaska Statutes may not be temporarily enjoined nor an action of a board in refusing or sanctioning a license stayed pending appeal to a court of competent jurisdiction or temporarily enjoined or stayed pending appeal to superior appellate review unless the court granting such an injunction or stay does so on a demonstration that:

- 1) The person requesting the injunction or stay is likely to prevail on the merits of the case when the court finally disposes of the matter; and
- 2) without relief the person requesting the injunction or stay will suffer irreparable injury; and
- 3) the grant of relief to the person requesting the injunction or stay will not substantially harm other parties to the proceedings; and
- 4) no irreparable damage to the public health will result from the grant of a stay or injunction.

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

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX 114

November 13, 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: Sectional Analysis - Proposed CS for HB 146 (L&C)
(Work Order No. g00779hE by Lauterbach, dated 4/25/89)

Section 1

Amends AS 08.02 by adding new section 08.02.030 (a) granting immunity to health care providers from civil liability for testimony or other participation in a hearing or investigation conducted by DCED or a regulatory board established under this title, including participation or testimony in a disciplinary review panel if (1) the investigation relates to another health care provider and (2) the testimony is in good faith. Paragraph (b) defines health care provider by listing all applicable licensees.

Section 2

Amends AS 08.64.130 by adding new subsection (b) requiring the medical board to maintain records for each licensee concerning malpractice civil actions and their outcomes and to periodically review such records to determine if licensee should be found professionally incompetent under AS 08.64.326(a)(8)(A).

Paragraph (c) requires board to make information available to the public.

Section 3

Amends AS 08.64.190 to state that the board may directly contact appropriate schools, medical boards, or other agencies to substantiate information on an application for licensure.

Section 4

Amends AS 08.64.200(a) to add a requirement (3) that applicants submit a list of medical malpractice civil actions filed against the applicant including the outcome of the action/s. Paragraph (b) is amended to require the board to contact the medical regulatory body that had jurisdiction over an applicant if the applicants record is not recorded in the national physician data base.

Section 5 through 7

Technical amendment to comply with Section 4.

Section 8 and 9

Technical amendment to comply with Section 4 and 7.

Section 10 through 12

Technical amendment to comply with Section 4 and 13.

Section 13

Amends AS 08.64 by adding new section 08.64.278 to provide that an applicant for an intern, resident or 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.

Section 14

Amends AS 08.64 by adding new section 08.64.345 to require that a licensed practitioner must report to the board in writing any medical malpractice civil action filed against the person within 30 days and to report the outcome of each civil action within 30 days of termination indicating whether damages have been or are to be paid by the licensee to the plaintiff, whether by judgement or settlement.

Section 15

Requires the State Medical Board to submit recommendations to the legislature by January 30, 1990 for statutory changes necessary to implement the following: (1) an annual board review of medical malpractice claim history of licensed physicians, (2) a board review of medical malpractice claim history of applicants, (3) requirement that the board determine, when reviewing the above information, whether continued practice by the licensee may pose a danger to the public health or safety, (4) allowing the board to deny, revoke, sanction, or suspend a license if continued practice may pose a danger to public health and safety, and (5) requiring that the board review of medical malpractice claim history include claims filed and cases concluded by judgment or settlement.

Section 16

Immediate effective date.

go0779hE-
Lauterbach
4/25/89

Original sponsor: Rules/Governor

IN THE HOUSE

CS FOR HOUSE BILL NO. 146
IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the State Medical Board; providing civil immunity for testimony and participation of health care providers and their employees during certain proceedings; and providing for an effective date."

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

* Section 1. AS 08.02 is amended by adding a new section to read:

Sec. 08.02.030. LIMITATION OF LIABILITY FOR HEALTH CARE PROVIDERS IN CERTAIN PROCEEDINGS. (a) A health care provider is immune from civil liability for testimony or other participation in a hearing or investigation conducted under this title by the Department of Commerce and Economic Development or a regulatory board established under this title, including participation on a disciplinary review panel and testimony before a disciplinary review panel, if

(1) the hearing or investigation relates to another health care provider or a person who may be practicing as a health care provider without appropriate credentials; and

(2) the testimony or other participation is in good faith.

(b) In this section, "health care provider" means an audiologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a clinical social worker licensed under AS 08.95; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.-71; a naturopath licensed under AS 08.45; an optometrist licensed

under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician, osteopath, podiatrist, or acupuncturist licensed under AS 08.64; a psychologist and a psychological associate licensed under AS 08.86; and an employee of a health care provider.

* Sec. 2. AS 08.64.130 is amended by adding new subsections to read:

(b) The board shall maintain records for each person licensed under this chapter concerning malpractice civil actions and their outcomes as reported under AS 08.64.200(a) and 08.64.345. The board shall periodically review these records to determine if the licensee should be found to be professionally incompetent under AS 08.64.-326(a)(8)(A).

(c) The board shall make available to the public the information maintained under (a) and (b) of this section for each person licensed under this chapter.

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

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, the applicant's medical work history, and other information the board considers necessary. The application shall be made under oath. The board may verify information in the application through direct contact with the appropriate schools, medical boards, or other agencies that can substantiate the information.

* Sec. 4. AS 08.64.200 is amended to read:

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) [REPEALED

(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;

(2) [(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;

(3) submit a list of medical malpractice civil actions filed against the applicant, including an explanation of the outcome of each action;

(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. If the physician applicant was licensed or practiced in a jurisdiction that does not record information with the data bank of the Federation of State Medical Boards, the board shall contact the medical regulatory body of that jurisdiction to obtain comparable information about the applicant.

* Sec. 5. AS 08.64.205 is amended to read:

Sec. 08.64.205. QUALIFICATIONS FOR OSTEOPATH APPLICANTS. Each osteopath applicant shall meet the qualifications prescribed in AS 08.64.200(a)(3) - (5) [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.

* Sec. 6. AS 08.64.209(a) is amended to read:

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

* Sec. 7. AS 08.64.225 is amended to read:

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 must [SHALL] meet the requirements of AS 08.64.200(a)(2) - (5) and 08.64.255 [AS 08.64.200(a)(3), (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.

* Sec. 8. AS 08.64.230(a) is amended to read:

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

* Sec. 9. AS 08.64.230(b) is amended to read:

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

* Sec. 10. AS 08.64.272(b) is amended to read:

(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)(1) [AS 08.64.-200(a)(2)] and applicable regulations of the board, meets the requirements of AS 08.64.278, pays the required fee, and has been accepted by an eligible institution in the state for the purpose of residency or internship.

* Sec. 11. AS 08.64.275(b) is amended to read:

(b) A physician applying under (a) of this section shall pay the required fee and shall meet the requirements of AS 08.64.200 and 08.64.278. 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.

* Sec. 12. AS 08.64.275(c) is amended to read:

(c) An osteopath applying under (a) of this section shall pay the required fee and shall meet the requirements of AS 08.64.205 and 08.64.278. 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.

* Sec. 13. AS 08.64 is amended by adding a new section to read:

Sec. 08.64.278. INTERVIEW REQUIRED FOR PERMITS. An applicant for an intern permit, a resident permit, or 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.

* Sec. 14. AS 08.64 is amended by adding a new section to read:

Sec. 08.64.345. REPORTS OF MALPRACTICE CLAIMS. A person licensed under this chapter shall report in writing to the board any medical malpractice civil action filed against the person within 30 days after having actual knowledge that the civil action has been filed. The licensee shall also report in writing to the board concerning the outcome of each medical malpractice civil action filed. This report shall be made within 30 days of termination of the civil action and shall indicate whether damages have been or are to be paid by the licensee to the plaintiff, whether by judgment or under a settlement.

* Sec. 15. The State Medical Board shall submit to the legislature by January 30, 1990, a report containing its recommendations for statutory changes necessary to implement the following policies:

(1) there should be an annual board review of the medical malpractice claim history of physicians licensed in the state;

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

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

(4) the board should be able to deny or revoke a license if practice by a person might pose a danger to the public health or safety, based on its review of the person's medical malpractice claim history,

unless the board determines that suspension or license restrictions would be sufficient to protect the public health and safety;

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

* Sec. 16. This Act takes effect immediately under AS 01.10.070(c).



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
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(907) 465-3991

May 1, 1989

MEMORANDUM

TO: Representative Dave Donley

FROM: Maria Gladziszewski *MG*
Legislative Analyst

RE: Medical Licensing and Oversight Laws
Research Request 89.309

You asked us to compare medical licensing laws in Alaska with other states' laws. Specifically, you asked about the professions regulated by the Alaska Medical Board (physicians, physician assistants and paramedics). You were particularly interested in the methods used to assure initial and continued competency, disciplinary measures, peer review procedures, and other measures used to "weed out" incompetent practitioners. Because state and federal legislative action has focussed on physicians, this memorandum first discusses general issues being addressed by state legislatures regarding oversight and regulation of physicians and then discusses recent federal legislation regarding physician competency; finally, current licensing practices in Alaska are discussed.

Randall Burns, director of Alaska's Division of Occupational Licensing in the Department of Commerce and Economic Development, reported general satisfaction with the medical board's physician oversight authority with two exceptions. Mr. Burns stated that the peer review provision listed in AS 08.01.075(a)(5) should be mandated as part of the investigatory process rather than as part of the disciplinary process. As a disciplinary action, professional boards can "require the licensee to submit to peer review." The assistance of a peer review panel would be more helpful in the investigatory process (e.g., helping to determine if a physician has demonstrated professional incompetence). Mr. Burns also stated that the division does not have adequate subpoena powers. In order to issue a subpoena for the attendance of witnesses or the production of documents, AS 08.01.087(b) requires that the Commissioner considers it "in the public interest" and must request approval by "telephone or telegraph all board members..." Mr. Burns considers this process "incredibly cumbersome."

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State Oversight and Regulation of Physicians

According to the Intergovernmental Health Policy Project (IHPP), 44 state legislatures enacted more than 100 laws between 1987 and 1988 to strengthen their oversight and monitoring of physician behavior. In most states, the same body that grants physician licenses also has the authority to discipline physicians deemed unfit to practice. The IHPP states that "although all state medical boards have the authority to revoke or suspend a physician's license, the percentage of those who are actually disciplined is, by all accounts, small compared to the number of doctors believed to be professionally incompetent to practice." Many state medical boards operate with an "overwhelming administrative backlog of cases to be investigated." The IHPP reports that between 1982 and 1984, state medical boards saw a 45 percent increase in the number of disciplinary actions taken.

The IHPP concluded that the laws of Florida, Maryland, and Illinois are good examples of how states have added teeth to their physician licensure and quality assurance regulations. Aspects of reform include peer review initiatives (i.e., extending protection to people who act in good faith while providing information to professional review boards regarding the competence of a physician), strengthening the authority of medical boards to sanction physicians, tightening licensure regulations (e.g., reciprocity between state licensing boards is no longer automatic), and strengthening hospital regulations to enable improved scrutiny of medical staff (new accreditation standards from the Joint Commission on Accreditation of Healthcare Organizations require hospitals to improve investigations of physicians applying for new or renewed privileges).

Florida enacted broad tort reform measures in February and June of 1988. The newly established Division of Medical Quality Assurance, within the Department of Professional Regulation, is authorized to use whatever resources are necessary to investigate and discipline physicians guilty of unprofessional conduct "in order to take forceful corrective measures to assure quality medical care throughout the state." Eighty-nine new positions in the division will be supported mainly by a trust fund generated from licensure fees collected by the state. Disciplinary actions available in Florida include denying, revoking or suspending a doctor's license, imposing administrative fines, issuing reprimands or imposing probation with requirements for further professional training, supervision or treatment. The state now also requires nurses to report physician misconduct to the division or risk disciplinary action.

Maryland operated a part-time system of physician discipline with volunteer physicians from the state medical society. The commission received 800 complaints in 1987 but disciplined only five physicians. Last year, the commission operated with a backlog of more than 700 cases. Maryland's new law provides for hiring full-time investigators and hearing officers to handle complaints. Physician sanctions have been strengthened (e.g., the law mandates automatic suspension of physicians convicted of crimes of immorality and allows for permanent revocation of a physician's license).

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Illinois replaced a 1923 law with the Medical Practice Act of 1987. A new nine-member board will handle physician discipline and another seven-member board will continue to regulate licensure. The new law mandates increased reporting requirements of disciplinary actions to the appropriate board, increases postgraduate clinical training requirements from 12 to 24 months, adds requirements for physicians to self-report disciplinary actions (including voluntarily surrendering medical practice privileges), and allows civil fines of up to \$5,000 for physician misconduct.

Attachment A ("Focus on State Oversight and Regulation of Physicians," prepared by IHPP in September 1988) lists physician competence and discipline laws enacted in 1987 - 1988 and includes a chart comparing features of enacted legislation on physician oversight. Attachment B, (State Health Notes, July/August 1988, "Physician Discipline Emerges as a State Priority" and Medicine and Health Perspectives, May 2, 1988, "Doctor Discipline or Doctor Bashing?") provide additional information on physician discipline legislation.¹

Federal Legislation

Congress passed the Health Care Quality Improvement Act of 1986 (PL 99-660) in response to concerns about physician competency and discipline. The act provides immunity protection for appropriate peer reviews and requires the creation of a national registry for malpractice and disciplinary data. The "shield" part of the law, protecting physicians from retaliatory suits by colleagues disciplined after peer review of their actions, extends to state

¹The following publications are available from the National Clearinghouse on Licensure, Enforcement, and Regulation, [606-231-1850]:

State Regulation of the Health Occupations and Professions: 1985-86
(204 pages) \$30

This publication discusses state regulations concerning the following professions: Dentists, Dental Hygienists, Dental Assistants, Denturists, Allopathic Physicians, Osteopathic Physicians, Physician Assistants, and Respiratory Therapists.

State Regulation of the Health Occupations and Professions: 1986-87
(208 pages) \$35

This publication discusses state regulations concerning the following professions: Dieticians, Medical Technicians, Opticians, Optometrists, Pharmacists, Pharmacist Assistants, Speech Language Pathologists and Audiologists, Veterinarians, and Veterinarian Technicians.

State Credentialing of Health Occupations and Professions (1986)
(213 pages) \$25

This publication discusses state regulations concerning the following professions: Acupuncturists, Chiropractors, Practical Nurses, Registered Nurses, Nurse Practitioners, Nurse Midwives, Occupational Therapists, Physical Therapists, and Podiatrists.

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courts in 1989. States have until October 1989 to either adopt the federal peer review provisions or enact their own peer review statutes.

The new data system required by federal law is designed to prevent doctors with histories of being disciplined from relocating their practices in other states. The National Practitioner Data Bank will collect data on malpractice payments, professional disciplinary actions, professional society membership revocations and adverse actions on clinical privileges. Insurance companies, boards of medical examiners and peer review groups will be required to report information, under penalty of fines. The system is expected to be operating by September 1, 1989 (see Attachment C for more information).

Regulation of Physicians in Alaska

According to AS 08.64.331, disciplinary sanctions available to Alaska's medical board include authority to permanently revoke, suspend or censure a license to practice; issue a letter of reprimand; place a licensee on probationary status and require the licensee to report regularly to the board; and impose a civil fine of not more than \$10,000. The board may also summarily suspend a license before final hearing or during appeals "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."

Some states report backlogs of hundreds of cases under investigation. Randall Burns, director of Alaska's Division of Occupational Licensing in the Department of Commerce and Economic Development, reports that the division has cleaned out the old cases within the last year and "is pretty up to date," (most cases currently under investigation are under a year old). Between 1981 and the present, action against physicians has been taken in 23 cases (1,0,4,2,1,2,5 and 5 annually, and 3 to date in 1989); the division is currently investigating 52 cases.² Mr. Burns reports general satisfaction with the process of physician discipline in Alaska, with the exception of the peer review provisions and the inability to subpoena records or witnesses without going through a cumbersome process.

Alaska statutes already contain provisions protecting from liability members of licensing boards and peer review committees (AS 08.02.020). Mr. Burns reported some difficulty getting physicians to serve on peer review committees during investigations because although Alaska statutes protect peer review committees, peer review is mandated as a disciplinary action in AS 08.01.075 and not as part of the investigatory process; physicians worry about being sued by the physician being investigated if they assist in a review that leads to disciplinary action being taken against the licensee being investigated.

²Attachment D lists the disciplinary codes used by Alaska's Medical Board when disciplining physicians and contains a list of physicians who were disciplined in Alaska between 1983 and the present.

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AS 08.64.336 requires that a physician who professionally treats another physician 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..." The statute also requires hospitals to report to the medical board any disciplinary action taken against physicians, including if the person voluntarily resigns hospital staff privileges while under investigation.

Attachment E includes the centralized licensing statutes (AS 08.01-.03), state medical board statutes (AS 08.64), occupational licensing regulations (12 AAC 02), and state medical board regulations (12 AAC 40).

I hope this information is useful. Please call this office if you have additional questions.

Attachments

ATTACHMENT A
"Focus On...State Oversight and Regulation
of Physicians," Intergovernmental Health Policy Project
September 1988, No. 22