Ann Boudreaux, Director
Division of Occupational Licensing
Department of Commerce
and Economic Development

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Medical Board questions on hospitals' duty to report restrictions on physicians' privileges, regulation of mobile intensive care paramedics

and
Sarah J. Felix
Assistant Attorney General
Commercial Section - Juneau

In January 1991, the former director of the Division of Occupational Licensing asked for our advice on two questions posed by the State Medical Board (board). Please excuse the delay in responding to these requests. We understand that the first question concerns the scope of a hospital's duty to report a restriction on a physician's hospital privileges as set out in AS 08.64.336(b). We understand that the second question concerns the board's regulatory authority over a person licensed as both a mobile intensive care paramedic and an emergency medical technician.

DISCUSSION

Question One

The answer to question one is ascertainable from the detailed text of AS 08.64.336(b).[1] The text of the statute

[1] The current version of AS 08.64.336(b) was enacted in sec. 16, ch. 87, SLA 1987 (SCSCSHB 70 (Jud am S)); it provides:

> (b) A hospital that revokes, suspends, conditions, restricts, or refuses to grant hospital privileges to, or imposes a consultation requirement on, a person licensed to practice medicine or osteopathy in the state shall report to the board the name and address of the person and the reasons for the action within seven working days after the action is taken. A hospital shall also report to the board the name and address of a person licensed to practice medicine or osteopathy in the state if the person resigns hospital staff privileges while under investigation by the hospital or a committee of the hospital and the investigation could result in

imposes comprehensive requirements on hospitals to report restrictions on physicians' privileges. In particular, the law provides:

> A report is not required if the sole reason for the action is the person's failure to complete hospital records in a timely manner or to attend staff or committee meetings.

This passage sets out the only two exceptions to the hospital's obligation to report hospital-initiated restrictions on a physician's privileges. A hospital must report a hospital-initiated restriction unless the restriction falls within the two specified exceptions.

You inquired whether a hospital must report a voluntary, agreed-upon restriction. AS 08.64.336(b) provides that a hospital-initiated restriction must be reported even if the restriction is voluntary and by agreement between the physician and the hospital. You also inquired whether restrictions on procedural and admitting privileges should be treated differently.[2] There is no indication in the statute

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> the revocation, suspension, conditioning, or restricting of, or the refusal to grant, hospital privileges, or in the imposition of a consultation requirement. A report is required under this subsection regardless of whether the person voluntarily agrees to the action taken by the hospital. A report is not required if the sole reason for the action is the person's failure to complete hospital records in a timely manner or to attend staff or committee meetings. In this subsection "consultation requirement" means a restriction placed on a person's existing hospital privileges requiring consultation with a designated physician or group of physicians in order to continue to exercise the hospital privileges.

[2] We understand that "procedural" and "admitting" are medical terms of art in this context. "Procedural privileges" concern specific areas of practice such as obstetrics or surgery. "Admitting privileges" concern the physician's ability to admit

that these restrictions should be treated differently; thus, we think a hospital is required to report a hospital-initiated restriction on either of these types of privileges.

In addition, AS 08.64.336(b) also requires a hospital to report a physician-initiated restriction as follows:

> A hospital shall also report to the board . . . if the person resigns hospital staff privileges while under investigation by the hospital . . . and the investigation could result in the revocation, suspension, conditioning, or restricting of, or the refusal to grant, hospital privileges, or in the imposition of a consultation requirement.

If a physician independently decides to relinquish a hospital staff privilege outside of the circumstances set forth above, the hospital is not required to report.

The applicable rule of statutory construction followed in Alaska provides that where a statute is clear on its face the court will not go beyond the text of the statute to consider legislative history and determine the legislative intent. Lake v. Construction Machinery, Inc. 787 P.2d 1027, 1030 (Alaska 1990); State v. City of Anchorage, 513 P.2d 1104, 1109 (Alaska 1973). In any event, we have reviewed the legislative history of AS 08.64.336(b), and this history confirms the language of the statute.[3]

That the legislature intended to broaden hospitals' reporting obligations is further supported by the repeal and reenactment of AS 08.64.336(b) in 1987. That subsection, as it read before 1987, required hospitals to report only in cases where the hospital restricted the physician because the physician posed a danger to the public. It was replaced in 1987 with the current language and the "danger to the public" limitation was

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patients to the hospital.

[3] This history demonstrates that the legislature intended that AS 08.64.336(b) broaden a hospital's obligation to report restrictions on a physician's privileges. S. Fin. Comm. discussion of HB 70, May 15, 1987; H. Jud. Comm. Discussion of HB 70, Feb. 24, 1987; H. Fin. Comm. discussion of HB 70, Apr. 2, 1987; H. Fin. Comm. discussion of HB 70, Mar. 25, 1987; H. Labor & Comm. Comm. discussion of HB 70, Feb. 17, 1987.

dropped.[4] We believe the legislature intended that hospitals report nearly all restrictions and that the board screen these reports to determine if the restriction warrants action, such as a disciplinary action against a physician.

Question Two

The board would also like to know which set of regulations would take precedence if a person is licensed as both a mobile intensive care paramedic (paramedic) and an emergency medical technician III (EMT III), in the event of a conflict between the paramedic regulations and the EMT III regulations? The Department of Health and Social Services (DHSS) regulates EMTs. The board regulates paramedics. We believe that there is no conflict in this situation and that there is no need to determine which set of regulations takes precedence over the other.

A person licensed as both an EMT III and a paramedic (dual licensee) may act within the scope of authorized practice for both of these occupations. The primary goal of licensure in the health care professions is protection of the public health and safety. Clearly, this interest is served when a person secures both licenses. Although the scope of the two licenses may sometimes overlap, the two licensing authorities, DHSS and the board, are each independently responsible for regulation of a dual licensee. The board's and DHSS's authority do not overlap and each entity has independent disciplinary authority. There may be instances in which one or both authorities could discipline a dual licensee. Although the board and DHSS have independent powers it is a good idea to communicate and cooperate on regulation of dual licensees.

We trust that this memorandum answers your questions.

SJF:jp

cc: Alaska State Medical Board

Pam Ventgen, Executive Secretary
State Medical Board

Barbara Gabier, Supervisor
Nancy Ferguson, Licensing Examiner
Division of Occupational Licensing, DCED

[4] Sec. 16, ch. 87, SLA 1987.