

Byron Mallott  
Lieutenant Governor  
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Anchorage, Alaska 99501  
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LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**MEMORANDUM**

**TO:** Jun Maiquis  
Department of Commerce, Community and Economic Development

**FROM:** Scott Meriwether, Office of the Lieutenant Governor *cb*  
465.4081

**DATE:** July 25, 2016

**RE:** Filed Permanent Regulations: State Medical Board

Regulations re: reporting of criminal charges by licensees and federal exemptions for persons who practice in a tribal health program in this state (12 AAC 40.967(26); 12 AAC 40.981)

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Attorney General File:	JU2015200833
Regulation Filed:	July 25, 2016
Effective Date:	August 24, 2016
Print:	219, October 2016

cc with enclosures: Linda Miller, Department of Law  
Micaela Fowler, Department of Commerce, Community & Economic  
Development  
Dianne Blumer, Administrative Regulation Review Committee  
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO  
REGULATIONS OF THE STATE MEDICAL BOARD


The attached two pages of regulations, dealing with unprofessional conduct and federal licensure exemptions for persons who practice in an Alaska tribal health program, are hereby certified to be a correct copy of the regulation changes that the State Medical Board adopted at its November 5-6, 2015 meeting, under the authority of AS 08.01.070, AS 08.64.100, AS 08.64.107, AS 08.64.170, AS 08.64.313, and AS 08.64.326 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the State Medical Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

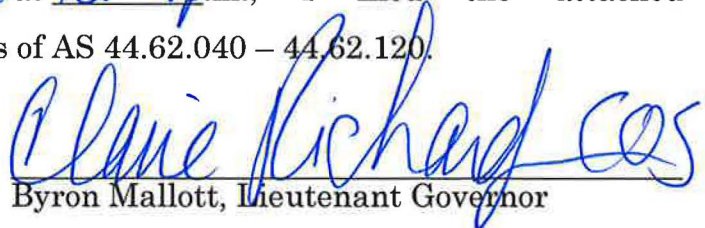
DATE: Nov 5, 2015  
Anchorage, Alaska

  
\_\_\_\_\_  
David A. Miller, M.D., President  
State Medical Board

*for Claire Richardson*

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on July 25, 2016 at 12:29 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.

*for Claire Richardson*  
  
\_\_\_\_\_  
for Byron Mallott, Lieutenant Governor

Effective: August 24, 2016.

Register: 219, October 2016.

**FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY**

**I, BYRON MALLOTT, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employee to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:**

**Claire Richardson, Special Assistant**

**IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on January 7<sup>th</sup> 2015.**



A handwritten signature in dark ink, appearing to read "Byron Mallott", is written over a horizontal dotted line.

**BYRON MALLOTT  
LIEUTENANT GOVERNOR**

**Chapter 40. State Medical Board.**

12 AAC 40.967(26) is amended to read:

(26) failing to report to the board, no later than 30 days after

(A) the effective date of the action, any criminal charges by a law enforcement agency, or any disciplinary action against the licensee taken by another licensing jurisdiction, health care entity, or regulatory [LAW ENFORCEMENT] agency;

(B) the date of conviction, any conviction of a crime referred to in

AS 08.64.326(a)(4);

(Eff. 3/16/2000, Register 153; am 9/5/2002, Register 163; am 4/2/2004, Register 169; am 10/14/2006, Register 180; am 7/25/2008, Register 187; am 9/9/2010, Register 195; am 5/8/2013, Register 206; am 8/24/2016, Register 219)

**Authority:** AS 08.01.070 AS 08.64.100 AS 08.64.326

12 AAC 40 is amended by adding a new section to read:

**12 AAC 40.981. Federal licensure exemptions for persons who practice in an Alaska**

*in hold the period*  
**tribal health program.** (a) A person who practices medicine, podiatry, or osteopathy, or who

practices as a physician assistant or mobile intensive care paramedic, in <sup>a</sup>an Alaska tribal health

<sup>in this state</sup> program must be licensed by the board unless they notify the board that they are practicing under

another license in accordance with ~~section 221 of 25 U.S.C. § 1621t~~ <sup>(sec. 221, Indian Health Care</sup> ~~(Patient Protection and~~

<sup>Improvement</sup> ~~Affordable Care Act, 2010~~). Notice required under this section must be received <sup>no later than</sup> within 14 days

<sup>after</sup> of employment at <sup>a</sup>an Alaska tribal health program, and must include <sup>in this state</sup>

(1) proof of a current active license in another state;



(2) proof of employment by a tribal health program that is operating under an

~~Indian Self-Determination and Education Assistance Act~~ agreement with the federal Indian  
(under 25 U.S.C. 450 - 458 ddd-2 (Indian Self-Determination and Education Assistance Act)  
Health Service.

Disapproved  
7/22/2016.  
XCDT  
SRP

(b) A person practicing under the exemption ~~may not practice elsewhere in the state,~~  
~~however infrequently,~~ and may not practice beyond the scope of the other state license.

Disapproved 7/22/2016.. XCDT  
SRP

(c) ~~The board shall notify the licensing board or authority of the other state license, and~~  
~~any other appropriate state and federal authorities, of any complaints, investigations, violations,~~  
~~sanctions, or other adverse actions.~~ (Eff. 8/24/2016, Register 219)


Authority: AS 08.64.107 AS 08.64.170 AS 08.64.313

Withdrawn,  
7/22/2016  
XCDT  
SRP

# MEMORANDUM

## State of Alaska Department of Law


**To:** The Honorable Byron Mallott  
Lieutenant Governor

**From:** Steven C. Weaver   
Sr. Assistant Attorney General  
and Assistant Regulations Attorney  
Legislation and Regulations Section

**Date:** July 22, 2016

**File No.:** JU2015200833

**Tel. No.:** 465-3600

**Thru:** Susan R. Pollard   
Chief Assistant Attorney General  
and Regulations Attorney  
Legislation and Regulations Section

**Re:** Regulations re: reporting of criminal charges by licensees and federal exemptions for persons who practice in a tribal health program in this state (12 AAC 40.967(26); 12 AAC 40.981)

We have reviewed the attached regulations from the State Medical Board against the statutory standards of the Administrative Procedure Act. The regulations update disciplinary requirements regarding the reporting of disciplinary actions or criminal charges; and adopt requirements for notification to the board that a person is practicing under another state's license in accordance with the exemption under 25 U.S.C. 1621t (sec. 221, Indian Health Care Improvement Act) from licensure in this state, for employment by a tribal health program in this state.

We find no legal problems with the board's amendments to 12 AAC 40.967(26), regarding the reporting of disciplinary actions or criminal charges. Also, we find no legal problems with material adopted as 12 AAC 40.981(a), with the technical edits shown on the attached copy, or with text in 12 AAC 40.981(b) regarding practice outside the scope of the other state's license. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

Regarding 12 AAC 40.981(a), we note that under 25 U.S.C. 1621t (sec. 221, Indian Health Care Improvement Act)--informally, the "Section 221 exemption"--a health professional employed by a tribal health program is not required to obtain licensure in this state if the health professional is validly licensed in another state; the federal statute expressly preempts state licensing requirements for the health professionals that the federal statute covers. *See* 2012 Op. Alaska Att'y Gen. at 3 and 11 - 12 (Apr. 17; AN2009102500), 2012 WL 1515178. To the extent that 12 AAC 40.981(a) adopts a notification requirement rather than a licensing requirement, the State Medical Board may require a professional listed in that subsection to provide proof of a current active license in another state and proof of employment by a tribal health program under

the Section 221 exemption. The regulation is based on the board's residual authority: that is the authority that 25 U.S.C 1621t does not specifically preempt and that the board therefore retains. *See* 2012 Op. Alaska Att'y Gen., *supra*, at 15. Otherwise, short of making an independent and possibly more invasive investigation of a professional's out-of-state licensure, the board could not reasonably determine who is engaged in unlicensed practice and who is practicing under a valid Section 221 exemption.

However, we are uncertain how the board envisions enforcing 12 AAC 40.981(a). For example, 12 AAC 40.981(a) sets a time period for the State Medical Board to receive the required notice. If the board receives that notice outside the time period, what would the board do, particularly if the person is practicing under a valid Section 221 exemption? Regarding enforcement of 12 AAC 40.981(a), we have advised that the board and its support staff consult the assistant attorneys general who directly advise the board and the Department of Commerce, Community, and Economic Development on professional licensing.

Next, we have disapproved text in 12 AAC 40.981(b) that would have prohibited practice "elsewhere in the state, however infrequently" by a person practicing under a valid Section 221 exemption. The principal difficulty is uncertainty as to what the broad phrase "elsewhere in the state" means. The breadth of this language invites a reading that the exemption under 25 U.S.C. 1621t is tied to one physical site, whereas we understand that practitioners employed by a tribal health program are sometimes required to work at multiple sites.

Proposed 12 AAC 40.981(b) perhaps looks to a specific phrase in the executive summary of the 2012 attorney general opinion: "The licensing exemption only applies during time spent working for the tribal health program--if a [health professional] wishes to 'moonlight' working elsewhere, an Alaska license is required." 2012 Op. Alaska Att'y Gen., *supra*, at 2. But in the legal analysis that follows, the touchstones for federal preemption under 25 U.S.C. 1621t are not necessarily the physical location where the practitioner works, but rather [1] the practitioner's employment status while working; and [2] the scope of the agreement between the tribal health program and the United States Indian Health Service (IHS) under 25 U.S.C. 450 - 458ddd-2 (Indian Self-Determination and Education Assistance Act) (ISDEAA):

For example, is a health professional who works for a tribal health program covered by the Section 221 exemption while "moonlighting" *for a non-tribal employer*? The considerations outlined [in the attorney general opinion] suggest that she is not. An IHS employee who moonlights is not exempt from state licensing requirements when performing a non-federal job, *because the federal exemption is tied to the federal job*. Similarly, the Section 221 exemption should be considered tied to the tribal health program and its ISDEAA agreement. This conclusion is also supported by the fact that [Federal Tort Claims Act] coverage does not extend to work performed outside the scope of an ISDEAA agreement. Thus, if a tribal health professional wishes to provide services outside the scope of an ISDEAA agreement, she must obtain an Alaska license.

*Id.* at 14. [Emphasis added; footnote omitted.] As phrased, proposed 12 AAC 40.981(b) does not explicitly address these details. Rather, the text says without specifics that a "person practicing under the exemption may not practice elsewhere in the state." If an exempt practitioner practiced at multiple physical sites but as an employee of the tribal health program, the broad text proposed in 12 AAC 40.981(b) could make the board vulnerable to overreach into areas where 25 U.S.C. 1621t preempts state professional licensure requirements.

Accordingly, we have disapproved that part of proposed 12 AAC 40.981(b) that would have would have prohibited practice "elsewhere in the state, however infrequently" by a person practicing under a valid Section 221 exemption. For that text, a "disapproved" notation appears on the attached copy of the regulations. We note that the disapproval would not prevent an individual from asking the other state's licensing entity to investigate possible acts or omissions that could trigger discipline in the other state. Furthermore, the State Medical Board may discipline a professional who has an Alaska license, regardless of whether a tribal health program employs that professional. *See* 2012 Op. Alaska Att'y Gen., *supra*, at 16.

The last clause of proposed 12 AAC 40.981(b), stating that the person "may not practice beyond the scope of the other state license," is self-evident; but as with 12 AAC 40.981(a), we are uncertain how the board envisions enforcing the provision. Whether the person was practicing outside the scope of the person's license would be a matter for the other state's licensing entity. The only practical way for a licensing board in this state to apply the prohibition would be to report the prohibited practice to the other state's licensing entity, and the board as a whole could make that report only by voting as a body. We note that nothing in our opinion would prevent an individual from asking the other state's licensing entity to investigate possible acts or omissions that could trigger discipline in the other state. Regarding enforcement of the last clause of 12 AAC 40.981(b), we have advised that the board and its support staff consult the assistant attorneys general who directly advise the board and the Department of Commerce, Community, and Economic Development on professional licensing.

We have received informal board and staff confirmation that proposed 12 AAC 40.981(c) will be withdrawn from this project. For that provision, a "withdrawn" notation appears on the attached copy of the regulations.

The October 1, 2015 public notice and the November 5, 2015 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.



Hon. Byron Mallott, Lieutenant Governor  
Our file: JU2015200833

July 22, 2016  
Page 4

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc w/enc: (via email)

Janey Hovenden, Director  
Division of Corporations, Business, and Professional Licensing  
Department of Commerce, Community, and Economic Development

# MEMORANDUM

## State of Alaska Department of Law

**To:** Grant Roderer, M.D., President  
State Medical Board  
(via email through Jun Maiquis)

**From:** Steven C. Weaver *SCW*  
Sr. Assistant Attorney General  
and Assistant Regulations Attorney  
Legislation and Regulations Section

**Date:** July 22, 2016

**File No.:** JU2015200833

**Tel. No.:** 465-3600

**Thru:** Susan R. Pollard *SRP*  
Chief Assistant Attorney General  
and Regulations Attorney  
Legislation and Regulations Section

**Re:** Regulations re: reporting of criminal charges by licensees and federal exemptions for persons who practice in a tribal health program in this state (12 AAC 40.967(26); 12 AAC 40.981)

Under AS 44.62.060, we have reviewed the attached changes by the State Medical Board. Except as we explain regarding proposed 12 AAC 40.981(b) and (c), we approve the changes for filing by the lieutenant governor.

You might wish to contact the lieutenant governor's office to confirm the filing date and effective date of the attached regulations changes.

We approve the board's amendments to 12 AAC 40.967(26).

Material adopted as 12 AAC 40.981(a) is approved with the technical edits shown on the attached copy. Under 25 U.S.C. 1621t (sec. 221, Indian Health Care Improvement Act)--informally, the "Section 221 exemption"--a health professional employed by a tribal health program is not required to obtain licensure in this state if the health professional is validly licensed in another state; the federal statute expressly preempts state licensing requirements for the health professionals that the federal statute covers. *See* 2012 Op. Alaska Att'y Gen. at 3 and 11 - 12 (Apr. 17; AN2009102500), 2012 WL 1515178. To the extent that 12 AAC 40.981(a) adopts a notification requirement rather than a licensing requirement, the State Medical Board may require a professional listed in that subsection to provide proof of a current active license in another state and proof of employment by a tribal health program under the Section 221 exemption. Otherwise, short of making an independent and possibly more invasive investigation of a professional's out-of-state licensure, the board could not reasonably determine who is engaged in unlicensed practice and who is practicing under a valid Section 221 exemption.

However, we are uncertain how the board envisions enforcing 12 AAC 40.981(a). For example, 12 AAC 40.981(a) sets a time period for the State Medical Board to receive the required notice. If the board receives that notice outside the time period, what would the board do, particularly if the person is practicing under a valid Section 221 exemption? If questions arise regarding enforcement of 12 AAC 40.981(a), we request that the board and the board's support staff consult the assistant attorneys general who directly advise the board and the Department of Commerce, Community, and Economic Development on professional licensing.

Next, we have disapproved text in 12 AAC 40.981(b) that would have prohibited practice "elsewhere in the state, however infrequently" by a person practicing under a valid Section 221 exemption. The principal difficulty is uncertainty as to what the broad phrase "elsewhere in the state" means. The breadth of this language invites a reading that the exemption under 25 U.S.C. 1621t is tied to one physical site, but the board has been informed that that practitioners employed by a tribal health program are sometimes required to work at multiple sites.

Proposed 12 AAC 40.981(b) perhaps looks to a specific phrase in the executive summary of the 2012 attorney general opinion: "The licensing exemption only applies during time spent working for the tribal health program--if a [health professional] wishes to 'moonlight' working elsewhere, an Alaska license is required." 2012 Op. Alaska Att'y Gen., *supra*, at 2. But in the legal analysis that follows, the touchstones for federal preemption under 25 U.S.C. 1621t are not necessarily the physical location where the practitioner works, but rather [1] the practitioner's employment status while working; and [2] the scope of the agreement between the tribal health program and the United States Indian Health Service (IHS) under 25 U.S.C. 450 - 458ddd-2 (Indian Self-Determination and Education Assistance Act) (ISDEAA):

For example, is a health professional who works for a tribal health program covered by the Section 221 exemption while "moonlighting" *for a non-tribal employer*? The considerations outlined [in the attorney general opinion] suggest that she is not. An IHS employee who moonlights is not exempt from state licensing requirements when performing a non-federal job, *because the federal exemption is tied to the federal job*. Similarly, the Section 221 exemption should be considered tied to the tribal health program and its ISDEAA agreement. This conclusion is also supported by the fact that [Federal Tort Claims Act] coverage does not extend to work performed outside the scope of an ISDEAA agreement. Thus, if a tribal health professional wishes to provide services outside the scope of an ISDEAA agreement, she must obtain an Alaska license.

*Id.* at 14. [Emphasis added; footnote omitted.] As phrased, proposed 12 AAC 40.981(b) does not explicitly address these details. Rather, the text says without specifics that a "person practicing under the exemption may not practice elsewhere in the state." If an exempt practitioner practiced at multiple physical sites but as an employee of the tribal health program, the broad text

proposed in 12 AAC 40.981(b) could make the board vulnerable to overreach into areas where 25 U.S.C. 1621t preempts state professional licensure requirements.

Accordingly, we have disapproved that part of proposed 12 AAC 40.981(b) that would have would have prohibited practice "elsewhere in the state, however infrequently" by a person practicing under a valid Section 221 exemption. For that text, a "disapproved" notation appears on the attached copy of the regulations. We note that the disapproval would not prevent an individual from asking the other state's licensing entity to investigate possible acts or omissions that could trigger discipline in the other state. Furthermore, the State Medical Board may discipline a professional who has an Alaska license, regardless of whether a tribal health program employs that professional. *See* 2012 Op. Alaska Att'y Gen., *supra*, at 16.

The last clause of proposed 12 AAC 40.981(b), stating that the person "may not practice beyond the scope of the other state license," is self-evident; but as with 12 AAC 40.981(a), we are uncertain how the board envisions enforcing the provision. Whether the person was practicing outside the scope of the person's license would be a matter for the other state's licensing entity. The only practical way for our licensing board to apply the prohibition would be to report the prohibited practice to the other state's licensing entity, and the board as a whole could make that report only by voting as a body. We note that nothing in our opinion would prevent an individual from asking the other state's licensing entity to investigate possible acts or omissions that could trigger discipline in the other state. Regarding enforcement of the last clause of 12 AAC 40.981(b), we request that that the board and its support staff consult the assistant attorneys general who directly advise the board and the Department of Commerce, Community, and Economic Development on professional licensing.

We have received informal board and staff confirmation that proposed 12 AAC 40.981(c) will be withdrawn from this project. For that provision, a "withdrawn" notation appears on the attached copy of the regulations.

The October 1, 2015 public notice and the November 5, 2015 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.



Grant Roderer, M.D., President  
State Medical Board  
Our file: JU2015200833

July 22, 2016  
Page 4

We have made some technical corrections to the regulations in accordance with AS 44.62.125, as shown on the attached copy.

SCW

cc w/enc: (via email)

Micaela Fowler, Regulations Contact  
Department of Commerce, Community, and Economic Development

Janey Hovenden, Director  
Division of Corporations, Business, and Professional Licensing  
Department of Commerce, Community, and Economic Development

Sara Chambers, Operations Manager  
Division of Corporations, Business, and Professional Licensing  
Department of Commerce, Community, and Economic Development

Jun Maiquis, Regulations Specialist  
Division of Corporations, Business, and Professional Licensing  
Department of Commerce, Community, and Economic Development

Debora Stovern, Executive Administrator  
Division of Corporations, Business, and Professional Licensing  
Department of Commerce, Community, and Economic Development

Harriet Dinegar Milks, Assistant Attorney General  
Commercial and Fair Business Section

Cori Mills, Assistant Attorney General  
Legislation and Regulations Section

**Chapter 40. State Medical Board.**

12 AAC 40.967(26) is amended to read:

(26) failing to report to the board, no later than 30 days after

(A) the effective date of the action, any criminal charges by a law enforcement agency, or any disciplinary action against the licensee taken by another licensing jurisdiction, health care entity, or regulatory [LAW ENFORCEMENT] agency;

(B) the date of conviction, any conviction of a crime referred to in

AS 08.64.326(a)(4);

(Eff. 3/16/2000, Register 153; am 9/5/2002, Register 163; am 4/2/2004, Register 169; am 10/14/2006, Register 180; am 7/25/2008, Register 187; am 9/9/2010, Register 195; am 5/8/2013, Register 206; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 08.01.070 AS 08.64.100 AS 08.64.326

12 AAC 40 is amended by adding a new section to read:

**12 AAC 40.981. Federal licensure exemptions for persons who practice in an Alaska tribal health program.** (a) A person who practices medicine, podiatry, or osteopathy, or who practices as a physician assistant or mobile intensive care paramedic, in an Alaska tribal health program must be licensed by the board unless they notify the board that they are practicing under another license in accordance with section 221 of 25 U.S.C. § 1621t (Patient Protection and Affordable Care Act, 2010). Notice required under this section must be received within 14 days of employment at an Alaska tribal health program, and must include:

(1) proof of a current active license in another state;

(2) proof of employment by a tribal health program that is operating under an Indian Self-Determination and Education Assistance Act agreement with the federal Indian Health Service.

(b) A person practicing under the exemption may not practice elsewhere in the state, however infrequently, and may not practice beyond the scope of the other state license.

(c) The board shall notify the licensing board or authority of the other state license, and any other appropriate state and federal authorities, of any complaints, investigations, violations, sanctions, or other adverse actions. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 08.64.107 AS 08.64.170 AS 08.64.313

**STATE OF ALASKA**

### THIRD JUDICIAL DISTRICT

**SS.**

## AFFIDAVIT OF BOARD ACTION

I, Debora Stovern, Executive Administrator for the State Medical Board, being duly sworn, state the following:

The attached motion dealing with unprofessional conduct and federal licensure exemptions for persons who practice in an Alaska tribal health program was passed by the State Medical Board during its November 5-6, 2015 meeting.

Date: NOV 19, 2015  
Anchorage, Alaska

  
Debora Stovern, Executive Administrator

SUBSCRIBED AND SWORN TO before me this 19 day of November, 2015.



Debra A. Smith  
Notary Public in and for the  
State of Alaska  
My commission expires: with office



Excerpt from Draft Minutes of the  
November 5-6, 2015 Meeting  
of the Alaska State Medical Board

Adoption of Proposed Regulations

Board had previously approved regulations changes regarding reporting requirements and tribal health program exemptions. The regulations were public noticed on September 30, 2015, and the public comment period ended on October 30, 2015.

The Board reviewed the comments that were received by the Division during the comment period. It was noted that several of the comments were related to a misunderstanding of the regulations based on a federal licensing exemption.

The Board clarified that the federal government has authorized the licensing exemption under the Affordable Care Act, and the Alaska State Medical Board has no jurisdiction or authority to impact that exemption. In order to practice in a tribal health facility, a practitioner must either be licensed in the State of Alaska, or must qualify to practice under another state license in accordance with the federal exemption. The Board regulations simply require that practitioners notify the Board that they are practicing legally under the federal exemption.

The Board noted that they are sensitive to the concerns expressed in the public comments, and that they have no desire to overstep their authority or to diminish the availability of practitioners in rural areas.

In considering public comments, the Board paid special attention to the cost to private persons, and does not expect there to be an additional cost as a result of the regulatory action being taken.

**Upon a motion duly made by Dr. Powers, seconded by Mrs. Carlson, and approved by roll call vote, the Board adopted the proposed regulation I2 AAC 40.067(26) regarding reporting requirements.**

Roll Call Vote:

Dr. Powers-Yea  
Dr. Roderer-Yea  
Mrs. Carlson-Yea  
Dr. Humphreys-Yea  
Dr. Liu-Yea  
Mr. Luppen-Yea  
Ms. Millar-Yea  
Dr. Miller-Yea

**Upon a motion duly made by Dr. Humphreys, seconded by Dr. Powers, and approved by roll call vote, the Board adopted the proposed regulation I2 AAC 40.981 regarding reporting requirements.**

Roll Call Vote:

Dr. Roderer-Yea  
Mrs. Carlson-Yea  
Dr. Humphreys-Yea  
Dr. Liu-Yea  
Mr. Luppen-Yea  
Ms. Millar-Yea  
Dr. Powers-Yea  
Dr. Miller-Yea

The adoption order was signed by the Chair.

STATE OF ALASKA                                }  
FIRST JUDICIAL DISTRICT                    } ss.

**AFFIDAVIT OF NOTICE OF PROPOSED ADOPTION OF REGULATIONS  
AND FURNISHING OF ADDITIONAL INFORMATION**

I, Jun Maiquis, Regulations Specialist, of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 12 AAC 40.967 and 12 AAC 40.981, dealing with unprofessional conduct and federal licensure exemptions for persons who practice in an Alaska tribal health program, has been given by being:

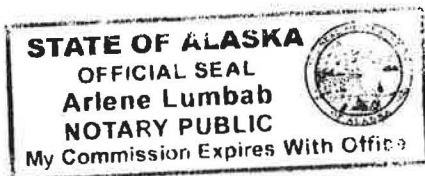
1. published in a newspaper or trade publication;
2. furnished to interested persons;
3. furnished to appropriate state officials;
4. furnished to the Department of Law, along with a copy of the proposed regulations;
5. electronically transmitted to incumbent State of Alaska legislators;
6. furnished to the Legislative Affairs Agency, Legislative Legal and Research Services;
7. posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
8. furnished electronically, along with a copy of the proposed regulations, to the Legislative Affairs Agency, the chair of the Labor and Commerce Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.


As required by AS 44.62.190(d), additional regulations notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulations notice information also has been posted on the Alaska Online Public Notice System.

DATE: 12/17/15  
Juneau, Alaska

  
Jun Maiquis, Regulations Specialist

SUBSCRIBED AND SWORN TO before me this 17 day of December, 2015.



  
Notary Public in and for the  
State of Alaska  
My commission expires: With office

## FIRST JUDICIAL DISTRICT

## AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

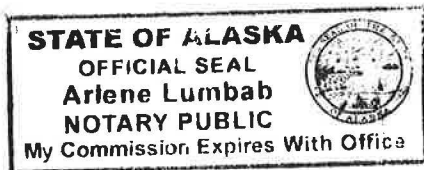
I, Jun Maiquis, Regulations Specialist for the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, being duly sworn, state the following:

In compliance with AS 44.62.215, the State Medical Board has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the State Medical Board regulations on dealing with unprofessional conduct and federal licensure exemptions for persons who practice in an Alaska tribal health program.

DATE: 12/17/15  
Juneau, Alaska

  
Jun Maiquis, Regulations Specialist

SUBSCRIBED AND SWORN TO before me this 17 day of December, 2015.



Notary Public in and for the  
State of Alaska  
My commission expires: with office

**NOTICE OF PROPOSED CHANGES ON UNPROFESSIONAL CONDUCT AND FEDERAL  
LICENSURE EXEMPTIONS FOR PERSONS WHO PRACTICE IN AN ALASKA TRIBAL  
HEALTH PROGRAM IN THE REGULATIONS OF THE STATE MEDICAL BOARD**

**BRIEF DESCRIPTION:** The State Medical Board proposes to update provisions related to unprofessional conduct, and to establish standards for board recognition of federally mandated license exemptions for practitioners working in tribal health programs.

The State Medical Board (Board) proposes to adopt regulation changes in Title 12, Chapter 40 of the Alaska Administrative Code, dealing with unprofessional conduct and federal licensure exemptions for persons who practice in an Alaska tribal health program, including the following:

1. **12 AAC 40.967, Unprofessional conduct**, is proposed to be changed to alter the provisions related to unprofessional conduct.
2. **12 AAC 40.981, Federal licensure exemptions for persons who practice in an Alaska tribal health program**, is a proposed new section that establishes standards for board recognition of a federal licensing exemption for practitioners working in tribal health programs.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Jun Maiquis, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806 Juneau, AK 99811-0806. Additionally, the Board will accept comments by facsimile at (907) 465-2974 and by electronic mail at [jun.maiquis@alaska.gov](mailto:jun.maiquis@alaska.gov). Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system at <http://notice.alaska.gov/178447>, and using the comment link. **The comments must be received not later than 4:30 p.m. on October 30, 2015.**

You may submit written questions relevant to the proposed action to Jun Maiquis, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806 Juneau, AK 99811-0806 or by e-mail at [jun.maiquis@alaska.gov](mailto:jun.maiquis@alaska.gov). **The questions must be received at least 10 days before the end of the public comment period.** The Board will aggregate its response to substantially similar questions and make the questions and responses available on the Board's website at <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/StateMedicalBoard.aspx> or on the Alaska Online Public Notice System. The Board may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jun Maiquis at (907) 465-2537 or [jun.maiquis@alaska.gov](mailto:jun.maiquis@alaska.gov) not later than October 23, 2015, to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Jun Maiquis at the address or phone number above, or go to <https://www.commerce.alaska.gov/web/portals/5/pub/MED-0715.pdf>

After the public comment period ends, the Board will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. **You should comment during the time allowed if your interests could be affected.** Written comments and questions received are public records and are subject to public inspection.

**Statutory Authority:** AS 08.01.070; AS 08.64.100; AS 08.64.107; AS 08.64.170; AS 08.64.313; AS 08.64.326

**Statutes Being Implemented, Interpreted, or Made Specific:** AS 08.01.070; AS 08.64.100; AS



08.64.107; AS 08.64.170; AS 08.64.313; AS 08.64.326

**Fiscal Information:** The proposed regulation changes are not expected to require an increased appropriation.

DATE: 9/30/15

  
\_\_\_\_\_  
Jun Maiquis, Regulations Specialist  
Division of Corporations, Business and  
Professional Licensing

**ADDITIONAL REGULATION NOTICE INFORMATION**  
**(AS 44.62.190(d))**

1. **Adopting agency:** State Medical Board – Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing.
2. **General subject of regulation:** Unprofessional conduct and federal licensure exemptions for persons who practice in an Alaska tribal health program.
3. **Citation of regulation:** 12 AAC 40.967 and 12 AAC 40.981.
4. **Department of Law file number:** To be assigned.
5. **Reason for the proposed action:** Compliance with federal law and clarification of current regulations.
6. **Appropriation/Allocation:** Corporations, Business and Professional Licensing – #2360.
7. **Estimated annual cost to comply with the proposed action to:**  
A private person: None.  
Another state agency: None.  
A municipality: None.
8. **Cost of implementation to the state agency and available funding (in thousands of dollars):**  
No costs are expected in FY 2016 or in subsequent years.
9. **The name of the contact person for the regulation:**  
Debora Stovern, Executive Administrator  
Alaska State Medical Board  
Division of Corporations, Business and Professional Licensing  
Department of Commerce, Community, and Economic Development  
Telephone: (907) 269-8163  
E-mail: debora.stovern@alaska.gov
10. **The origin of the proposed action:** State Medical Board.
11. **Date:** 9/30/15      **Prepared by:**   
\_\_\_\_\_  
Jun Maiquis  
Regulations Specialist  
(907) 465-2537

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Juneau

OCT 07 2015

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# AFFIDAVIT OF PUBLICATION

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

EMMA DUNLAP

being first duly sworn on oath deposes and says that he/she is a representative of the Alaska Dispatch News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

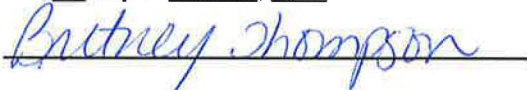
October 01, 2015

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed



Subscribed and sworn to before me  
this 1st day of October, 2015



Notary Public in and for  
The State of Alaska.  
Third Division  
Anchorage, Alaska  
MY COMMISSION EXPIRES

2/23/2019

Notary Public  
BRITNEY L. THOMPSON  
State of Alaska  
My Commission Expires Feb 23, 2019

## NOTICE OF PROPOSED CHANGES ON UNPROFESSIONAL CONDUCT AND FEDERAL LICENSURE EXEMPTIONS FOR PERSONS WHO PRACTICE IN AN ALASKA TRIBAL HEALTH PROGRAM IN THE REGULATIONS OF THE STATE MEDICAL BOARD

The State Medical Board (Board) proposes to adopt regulation changes in Title 12, Chapter 40 of the Alaska Administrative Code, dealing with unprofessional conduct and federal licensure exemptions for persons who practice in an Alaska tribal health program, including the following:

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Statutes Being Implemented, Interpreted, or Made Specific: AS 08.01.070; AS 08.64.100; AS 08.64.107; AS 08.64.170; AS 08.64.313; AS 08.64.326

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: 9/30/15

/s/

Jun Maiquis, Regulations Specialist  
Division of Corporations, Business and  
Professional Licensing

Published: October 1, 2015