

## ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

## ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
  - centerpoint360
  - UPS
  - Bayer Corporation
  - GlaxoSmithKline
  - Energy Future Holdings
  - Johnson & Johnson
  - Coca-Cola Company
  - PhRMA
  - Kraft Foods, Inc.
  - Coca-Cola Co.
  - Pfizer Inc.
  - Reed Elsevier, Inc.
  - DIAGEO
  - Peabody Energy
  - Intuit, Inc.
  - Koch Industries, Inc.
  - ExxonMobil
  - Verizon
  - Reynolds American Inc.
  - Wal-Mart Stores, Inc.
  - Salt River Project
  - Altria Client Services, Inc.
  - American Bail Coalition
  - State Farm Insurance
- For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

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### State Medical Licensing Board Act

Did you know that global pharmaceutical company Bayer Healthcare was the corporate co-chair in 2011?

#### Summary

The purpose of this Act is to give an authorized state Health Professional Licensing Board clear statutory authority to meaningfully sanction those guilty of consistent malpractice because of inadequate training, negligence, or practicing while mentally impaired because of alcohol or substance abuse. The bill seeks to create objective boards by nominating lay people to serve with physicians.

#### Model Legislation

{Title, enacting clause, etc.}

**Section 1.** This Act shall be known and may be cited as the State Medical Licensing Board Act.

**Section 2.** The purpose of this Act is to reform the membership and regulations of the State's Medical Licensing Board so that it may have clear statutory authority to meaningfully and sanction those guilty of consistent malpractice because of inadequate training negligence or practicing while mentally impaired because of alcohol or substance abuse.

**Section 3.** A License or Registration Board created by this article is the successor to the Licensure or Registration Board with the same or similar name created or continued by a statute repealed by this Act.

**Section 4. {Definitions}** "Public member" means a member of the general public who is not a license or registrant under this article, is a resident of this state, is not less than 18 years of age, and does not have a material financial interest in the provision of health services and has not had such an interest within the 12 months before appointment.

#### Section 5. {The Board}

(A) The Board shall equally represent licensed health care providers and public sector members. The Board members shall represent an equal geographic distribution of the state.

(B) The board shall consist of 15 (or insert appropriate number) voting members.

(1) eight (or insert appropriate number) of whom shall be persons licensed to practice medicine in this state. The physicians appointed to the board shall represent a broad geographical region of the state.

(2) Seven (or insert appropriate number) of whom shall be public members. Said public members shall not be or ever have been licensed in any health related field; shall not be a member of the immediate family of someone licensed in any health related field; shall not be employed by a company engaged in a directly health related business; and shall not have a material financial interest in the providing of goods and services to persons engaged in the practice of medicine. The public members appointed to the Board should be broadly representative of the geographic regions of the state.

(C) A member of the Board shall:

(1) be 18 or more years of age

(2) be a good moral character;

(3) be a resident of this state for not less than 6 months immediately before appointment and remain a resident of this state through the term of the appointment.

(D) The Governor shall appoint, by and with the advice and consent of the Senate, the members of the Board.

(E) Each term shall be for three years

(F) A member shall not serve for more than two terms.

(G) Any vacancies of the Board shall be filled by the Governor's appointment and such appointments shall be for a term of three years from the date of appointment.

(H) No member of the Board, while serving on the Board, shall be an officer of any professional medical society.

(I) The Governor shall seek nominations from a wide range of sources including professional including professional associations, educational institutions, consumer organizations, health planning agencies, other community health organizations, and the state society when making appointments under his article.

#### **Section 6. {Duties of the Board}**

(A) Meetings of the Board shall be public, and the Board shall maintain minutes of its meetings.

(B) The Board shall elect annually an Executive Director for the Board.

(C) The Board shall investigate through the Executive Director the character of each applicant for certificate to practice medicine to determine whether or not he or she has previously engaged in unprofessional conduct, and whether he or she is physically or mentally capable of engaging in the practice of medicine with safety to the public.

(D) The Board shall investigate through the Executive Director complaints and charges of unprofessional conduct respecting any holder of a certificate to practice medicine.

(E) The Board shall investigate through the Executive Director complaints and charges of the inability of a person to practice medicine with reasonable skill or safety to patients by reason of incompetence, or mental illness, or mental incompetence, or physical illness, including but not limited to deterioration through the aging process, or loss of motor skills, or excessive use of abuse of drugs, including alcohol.

(F) The Board shall investigate through the Executive Director complaints of unauthorized practice of medicine.

(G) The Board shall administer oaths and shall be authorized to compel the attendance of witnesses and the production of documents by the filing of a precipice for a subpoena. Failure to obey a subpoena shall be punishable according to the Rules of the Superior Court;

(H) The Board shall reprimand, ensure or take other appropriate disciplinary action with respect to any person authorized to practice medicine in this State.

#### **Section 7. {Duties of the Executive Director}**

(A) It shall be the duty of the Executive Director to investigate either by complaint or, whenever appropriate, upon his or her own or the Board's own motion, cases of unprofessional conduct or inability to practice medicine, unauthorized practice of medicine and medical malpractice; to formulate charges by means of bringing a formal complaint against any person to whom a certificate to practice medicine in this state has been issued if the circumstances warrant; to present all such formal complaints to the Board in accordance with the procedures set forth in this Act.

(B) The Executive Director shall appoint at least one public member of the Board to assist in investigation concerning charges of unprofessional conduct and medical malpractice. The Executive Director shall also appoint investigators from the Division of Professional Regulation (or appropriate department) to participate in said investigations. All such investigations shall be kept within the bounds of the charge being investigated, unless the Executive Director determines that the investigation itself provides good cause for additional investigation. The Executive Director shall report to the Board on investigations and make recommendations as to whether a formal complaint should be issued. The Board may then request that the Executive Director prepare a formal complaint against the person accused.

(C) The Executive Director shall appoint at least one public member of the Board to assist in investigations concerning charges on inability to practice medicine. The Executive Director shall also appoint investigators from the Division of Professional Regulation (or appropriate department) to participate in said investigations. All such investigations shall be kept within the bounds of the charge being investigated, unless the Executive Director determines that the investigation itself provides good cause for additional investigation. The Executive Director, or a designee, shall conduct an examination to determine whether the person to whom a certificate has been issued to practice medicine is fit to practice medicine with reasonable skill and safety to patients, either on a restricted or unrestricted basis. If the Executive Director deems a mental or physical examination necessary, the Executive Director shall order the person to submit to such examination to be conducted by a physician designated by the Executive Director. Any person to whom a certificate has been issued to practice medicine shall, by seeking certification, be deemed to have given consent to submit to mental or physical examination when so directed by the Executive Director, and, further, to have waived all objections to the admissibility of the examination report

to the Board on the grounds of privileged communication; the person who administers a diagnostic mental or physical examination as ordered by the Executive Director shall report to the Board and provide a recommendation as to whether a formal complaint should be issued. The Board may then direct the Executive Director to prepare a complaint against the person accused.

### **Section 8. {Complaints; Notice of Hearing}**

(A) Any member of the public, the Board, or the Executive Director may prefer any charge or complaint concerning any aspect of the practice of medicine against an individual to whom a certificate to practice medicine in this State has been issued. Any complaining party shall be entitled to legal representation at such party's expense at any and all stages of proceedings hereunder.

(B) The Executive Director shall investigate all such charges or complaints which appear to be valid and well-founded according to the procedures set forth in this Act.

(C) All complaints against persons to whom a certificate to practice medicine has been issued in this state shall be in writing, signed, and shall set forth the essential facts constituting the alleged unprofessional conduct, medical malpractice, or inability to practice medicine. The Executive Director may maintain the confidentiality of the complaint from the Board. The Executive Director may investigate specific oral charges or complaints at his or her discretion, provided the complaining party is identified.

(D) Each complaint shall describe in detail all allegations upon which it is based; shall inform the respondent of the date, time, and place that the hearing will be held; shall state the law(s) allegedly violated and the statutory or regulatory authority giving the Board authority to act; shall indicate that the respondent has a right to be represented by counsel at the hearing and to present evidence on his or her own behalf; and shall inform the respondent that the Board must base its decision solely upon the evidence receiving at the hearing. The respondent shall have the right to file a written response with the Board within 20 days of service of the complaint.

(E) The attorney General shall provide legal services to the Board, its committees, and the Executive Director.

### **Section 9. {Hearings}**

(A) After the Board accepts a complaint that has been investigated by the Executive Director in accordance with this Act, it shall appoint a hearing panel, composed of three members of the Board, who shall hear all evidence concerning charges of unprofessional conduct or inability to practice medicine alleged in the complaint. The hearing panel shall convene in executive session to hear the evidence no more than 90 days after the Board accepts a formal complaint unless it, in its discretion, grants a continuance of the hearing date. All evidence at the hearing shall be taken under sworn oath of affirmation, but technical rules of evidence shall make a written statement of its findings of fact and conclusions of law. Only such evidence as was presented at the hearing may be considered by the hearing panel in reaching its findings of fact and conclusions of law. The findings of fact made by the hearing panel shall be binding on the parties appearing before it and shall also be adopted by and binding upon the Board. If the hearing panel finds the allegations made in the complaint are not supported by the evidence, it shall so indicate to the Board together with its recommendation that no further action be taken and that the physician be exonerated of all charges. Should a majority of the members of the Board who consider the matter, excluding any members who participate in the investigation of the complaint or on the hearing panel, or who are otherwise biased, vote to accept the hearing panel's conclusions of law and recommendation, then no further proceeding shall be held before the Board. In such case, the hearing panel's findings of fact shall be binding upon the Board. However, should a majority of the members of the Board who consider the matter, excluding any members who participated in the investigation of the complaint, or on the hearing panel, or who are otherwise biased, vote to reject the hearing panel's conclusions of law and recommendation, then a formal hearing shall be held before the Board to enable the Board to make its own conclusions of law and to determine what discipline, if any, should be imposed.

(B) If the hearing panel finds that any or all of the factual allegations made in the complaint are supported by the evidence it has considered, the Board, excluding members who participated in the investigation, or on the hearing panel, or who are otherwise biased, will consider the statement of the findings of fact and conclusion of law made by the hearing panel at a formal hearing. Such formal hearing is to be held within 60 days after the issuance of the written statement of the hearing panel; provide, however, that if the hearing panel finds that the physician currently presents a clear and imminent danger to the public health by his continued practice of medicine, then the full Board may meet for such formal hearings as soon as possible upon three days written notice of such hearing being provided to the physician or his attorney. A majority but no less than seven Board members who consider the matter shall be necessary in order for any disciplinary action to be taken. Upon reaching its conclusion of law and determining the appropriate disciplinary action, if any, the Board shall issue a written decision.

### **Section 10. {Appeals Procedures}**

(A) Any person against whom a decision of the Board has been rendered may

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appeal such decision to the Superior Court in the county in which such person was practicing medicine of at the time of the offense.

(B) The appeal shall be filed within 30 days of the day the written decision and order of the Board is issued.

(C) Any Board action revoking, suspending, or otherwise curtailing an individual's authorization to practice shall not be stayed upon appeal unless so ordered by the Superior Court.

**Section 11. {Providing Information on Malpractice Suits to the Board}**  
*[Optional section]*

(A) Each insurer providing professional liability insurance to persons licensed by the Board of Medicine, the Board of Osteopathic Medicine and Surgery, the Board of Dentistry, and the hospitals licensed by the state department of public health in this state shall submit the data prescribed in this Section. All data shall be provided with respect to any complaint filed against such insured in any court, if the complaint seeks damages for personal injury claimed to have been caused by the negligence of the insured relating to the insurer's professional services or the performance for a medical result relating to the insured's professional services.

(B) The following data and information shall be furnished to the Board within 30 days of the filing of an answer on behalf of the insured:

- (1) the name and license number of such insured;
- (2) the date of the injury;
- (3) the date of the filing of the complaint;
- (4) the nature of the complaint;
- (5) the disposition of the complaint, including any settlement that has been made; and
- (6) any other information the Board may require.

**Section 12.** Nothing contained in this Act shall affect any pending investigation or disciplinary action which was commenced prior to its enactment into law.

**Section 13. {Severability Clause.}**

**Section 14. {Repealer Clause.}**

**Section 15. {Effective Date.}**

Were your laws repealed?

*1995 Sourcebook of American State Legislation. Ammended by the Health and Human Services Task Force and approved by the ALEC Board of Directors in 1997 and 2002.*

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