

# Alaska State Medical Association

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March 8, 2020

The Honorable David Wilson  
Alaska State Senate  
State Capitol Room 115  
Juneau, AK 99801

RE: Senate Bill 229 "An Act relating to immunity for consulting physicians, podiatrists, and osteopaths."

Dear Senator Wilson:

The Alaska State Medical Association (ASMA) represents physicians statewide and is primarily concerned with the health of all Alaskans.

ASMA would like to express our support for Senate Bill 229 and its recognition of the importance of maintaining "curb side consults". That said, ASMA believes it is critical that the legislation be expanded to cover all health care professionals.

Because of Alaska's vast expanse and unique health care delivery system, health care practitioners with a higher level of expertise are often contacted for a "curb side consult" on matters perplexing to and often above the knowledge and/or skill level of the inquirer. Alaska's vast distances and lack of health care specialties in general and in varied locations in particular make obtaining the consultation often a matter of life and death for the patient.

Alaska's history is that this information is freely dispensed, without charge. However, the fact that the person consulted has no access to records, no contact with the patient, no way to physically examine the patient, and no "chart" within which to enter any advice dispensed; leaves the consulting provider vulnerable and exposed if a lawsuit is filed. This vulnerability is causing questions to be asked about the viability of a practice which leaves the practitioner exposed to suit.

SB 229 is an excellent start. But, as it is included in AS 09.55, it should apply to all health care providers as defined in AS 09.55.560. The consulting provider may be a physician, podiatrist or osteopath. But, depending upon the situation, the person providing the advice could be a dentist, an oral surgeon, a nurse, a physician's assistant, etc. Many of the specialists routinely consulted have medical assistants with advanced specialty training who might respond if, for instance, the specialist were in surgery or otherwise unavailable.

Additionally, AS 09.55.552 (C) states that only requests for a consult from a physician, podiatrist or osteopath receive liability protection. In Alaska, often the request is coming because there is no such professional available. Especially in rural or small communities it is often a nurse, health aide or other licensed health care provider that needs to consult for advice. This would severely limit current practice and likely result in reduced assistance to licensed health care providers with the least experience and the greatest need for such consults.

AS 09.55.552(a)(6) is too broad. As an example MD's at a cardiologist clinic are often on call for a group, taking calls (not EMTALA situation) from all over the state about people who are not patients of the clinic or any of its physicians/PA's etc.— that is exactly when there needs to be some protection. The institute would designate someone to be “on call” to field those calls and give some advice over phone based on the description they are given by the caller, possibly save the cost of the patient having to be flown to the nearest town for expensive studies etc. and do not receive any compensation for the “consult”. These are exactly like consults received during office hours except they are funneled to one person designated to be on after hours call. Perhaps rewriting (6) to say “the consulting health care provider is on call at a hospital or has, prior to the requested consult, assumed responsibility to be on call for the specific patient about whom the consult is requested;

Current practice in Alaska is to provide “curb side” consults to assist health care providers in making decisions for their patients. ASMA believes this is the right policy for Alaska and Alaskans. Due to the increased potential liability associated with these uncompensated consults between providers Alaska needs to make a policy decision. Does the State want to protect and thus promote the continued use of uncompensated consults by providing liability protection or is the State better off with a reduction in such consults and an increase in patients travelling to a provider for an appointment and an in-person examination?

Please amend SB 229 to include all health care providers, adjust the definition of “on call” and pass this important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Haugen", with a stylized flourish at the end.

Michael Haugen  
Executive Director  
Alaska State Medical Association

cc: Senator Jesse Kiehl