ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE
March 14, 2002
1:35 p.m.

MEMBERS PRESENT

Senator Ben Stevens, Chair
Senator Alan Austerman
Senator Loren Leman
Senator John Torgerson
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 220
"An Act relating to the scope of practice authorized under a license to practice hairdressing."

HEARD AND HELD

CS FOR HOUSE BILL NO. 276(L&C)
"An Act relating to temporary permits and licenses by endorsement issued by the Board of Nursing; and relating to the delegation of nursing duties."

MOVED SCSHB 276(L&C) OUT OF COMMITTEE

SENATE BILL NO. 283
"An Act relating to temporary permits and licenses by endorsement issued by the Board of Nursing; and relating to the delegation of nursing duties."

HEARD AND HELD

CS FOR SENATE BILL NO. 265(TRA) "An Act relating to physician assistants; providing that a physician assistant is a health care provider covered by certain laws relating to medical malpractice actions; adding physician assistants to the list of providers against whom unfair discrimination relating to health care insurance is prohibited and to the list of providers who can provide proof of disablement or handicap for the purpose of motor vehicle registration or for the purpose of obtaining a special

license plate or a special parking permit; and providing for an effective date."

MOVED CSSB 265(TRA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 274(L&C)
"An Act relating to the qualification of a physician used for an employer's independent medical examination and to the authority of the Alaska Workers' Compensation Board to provide an expedited hearing when an employee needs medical treatment; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 220 - No previous action to record.

SB 283 – See HESS minutes dated 2/27/02.

HB 276 - No previous action to record.

SB 265 – See Transportation minutes dated 2/19/02.

HB 274 - No previous action to record.

WITNESS REGISTER

Ms. Jeri McIntosh
Staff to Senator Lyda Green
State Capitol Bldg.
Juneau AK 99811
POSITION STATEMENT: Commented on SB 220 for sponsor.

Ms. Beatrice Caujolle
Owner and Aesthetician
A Certain Charm Institute of Skin Care
Merchants Wharf, Ste 209
Juneau AK 99801
POSITION STATEMENT: Supported SB 220.

Ms. Catherine Reardon, Director
Division of Occupational Licensing
Department of Community and Economic Development
PO Box 110806
Juneau AK 99811
POSITION STATEMENT: Commented on SB 220.

Representative Peggy Wilson

State Capitol Bldg.
Juneau AK 99811
POSITION STATEMENT: Sponsor of HB 276.

Ms. Lynn Hartz
Board of Nursing
3104 Brookside
Anchorage AK 99517
POSITION STATEMENT: Supported HB 276.

Ms. Nancy Davis, Chief
Public Health Nursing
Department of Health and Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Supported HB 276.

Ms. Patricia Senner, President
Alaska Nurses Association
2207 E. Tudor Rd.
Anchorage AK 99507
POSITION STATEMENT: Supported HB 276.

Senator Donald Olson
State Capitol Bldg.
Juneau AK 99801
POSITION STATEMENT: Sponsor of SB 265.

Mr. Ed Hall, Physician Assistant
Academy of Physician Assistants
13601 Windward Circle
Anchorage AK 99516
POSITION STATEMENT: Supported SB 265.

Ms. Susan Mason-Bontuse, Executive Director
Sunshine Community Health Center
PO Box 787
Talkeetna AK 99676
POSITION STATEMENT: Supported SB 265.

Mr. John Riley, Chairman
Alaska Primary Care Association
6411 Italy Circle
Anchorage AK 99516
POSITION STATEMENT: Supported SB 265.

Ms. Elizabeth Ripley, Director
Community Health Planning
Valley Hospital
PO Box 1687
Palmer AK 99645

POSITION STATEMENT: Supported SB 265.

Ms. Rynnieva Moss
Staff to Representative Coghill
State Capitol Bldg.
Juneau AK 99811
POSITION STATEMENT: Commented on HB 274 for the sponsor.

Ms. Barbara Williams
Alaska Injured Workers
PO Box 101093
Anchorage 99510
POSITION STATEMENT: Opposed HB 274.

Ms. Laura Jackson, Claims Manager
University of Alaska
3890 University Lake Dr.
Anchorage AK 99508
POSITION STATEMENT: Opposed section 2 of HB 274.

Mr. David Tweden
1403 W. 40th Ave.
Anchorage AK 99503
POSITION STATEMENT: Opposed HB 274.

Ms. Murlene Wilkes
Harbor Adjusting Service
236 W. 10th
Anchorage AK 99501
POSITION STATEMENT: Opposed section 2 of HB 274.

Ms. Susan Daniels
Northern Adjusters
800 E. Dimond #3-470
Anchorage AK 99507
POSITION STATEMENT: Opposed section 2 of HB 274.

Mr. Tim McKeever, Atty.
701 W. 8th Ave.
Anchorage AK 99502
POSITION STATEMENT: Opposed sections 1 and 2 of HB 274.

Ms. Kathy Collins, Claims Administrator
ARECA Insurance Exchange
703 W. Tudor #101
Anchorage AK 99503
POSITION STATEMENT: Opposed section 2 of HB 274.

Ms. Clarice Hiratsuka
Umialik Insurance Co.
4300 Boniface #201

Anchorage AK 99504
POSITION STATEMENT: Opposed section 2 of HB 274.

Mr. Mike Klawitter, Director
Risk Management
Anchorage School District
PO Box 196614
Anchorage AK 99516
POSITION STATEMENT: Opposed section 2 of HB 274.

Mr. Paul Grossi, Director
Division of Workers' Compensation
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Supported HB 274.

ACTION NARRATIVE

TAPE 02-11, SIDE A
Number 001

SB 220-SCOPE OF PRACTICE OF HAIRDRESSING

#SB220
CHAIRMAN BEN STEVENS called the Senate Labor & Commerce Committee meeting to order at 1:35 p.m. and announced SB 220 to be up for consideration.

Ms. Jeri McIntosh, Staff to Senator Lyda Green, sponsor of SB 220, said there was a proposed committee substitute that the sponsor wanted to be adopted for discussion purposes.

SENATOR AUSTERMAN moved to adopt the CS to SB 220. There were no objections and it was so ordered.

MS. MACINTOSH explained:

> CSSB 220 amends AS 08.13.170(f), which authorizes the Board of Barbers and Hairdressers to issue a hairdressing license that includes the temporary removal of superfluous hair on the face and neck and the application of basic make-up. These services are typically assumed to be available from a hairdresser.
>
> The removal of unwanted hair by means of hair waxing and the application of basic make-up are services that hairdressers should be allowed to practice.

Hairdressers are trained and tested in these areas and have always performed these services. Both waxing and basic make-up are a part of the curriculum required to graduate. By statute, current training required for a hairdressing license is 1650 hours. Included in the 1650 hours are fifteen practical operations of eyebrow arching and hair removal by means of waxing, tweezing and the use of depilatories and fifteen basic make-up applications including skin analysis, complete and corrective make-up and the application of false eyelashes (12 AAC 09.160). Although the curriculum requires that they perform these operations during the instructional phase, once they are licensed, Alaska state law prohibits them from performing either service for their clients.

I respectfully request your support of CSSB 220, allowing trained professionals to continue a practice that they are fully qualified to do.

MS. BEATRICE CAUJOLLE, Owner and Aesthetician of A Certain Charm Institute of Skin Care, said:

Mr. Chairman, this regards the committee substitute for SB 220. I'm writing to comment on the proposed amendments to the statutes governing occupational licensing contained in CSSB 220. I've been an aesthetician and an instructor for 13 years and have received substantial supplementary training in Europe and the United States to stay current with the rapid new developments in my field and to acquire the skills to be able to safely make these advances available to my clients.

Many skin problems and conditions can now be successfully treated by a well-trained aesthetician, but previously would have had to be treated by a physician at a much greater cost. For example, we now have in cosmoceuticals collagen applications, elastin applications, chemical exfoliations, such as glycolic acids, enzyme peels, light chemical peels. We also have creams and lotions with higher levels of active ingredients that are available over the counter. In addition, there are numerous electrical devices such as lymphatic drainage assisting pumps, high frequency stimulators, facial toners, microdermabrasion, steamer and ozone procedures, electric brushes and exfoliating aids.

The field of aesthetics is one which is growing increasingly technical and increasingly effective as new technologies are brought to bear. Several developing technologies that have promise of great benefits for clients are on the horizon. For example, new technologies include safe low-level laser hair removal devices that until now only the powerful and expensive lasers that are required by physicians were available. The cost of the machines alone kept small towns like Juneau from being able to have such services. Another device, the Lam Probe, is for safe removal of surface capillaries and minor imperfections. Because of this, the direction of licensure of the field of esthetics should be in the direction of further defining this growing and changing field so that the public is both protected and has available at reasonable cost the advantages of the many advances in the esthetics field.

The proposed amendment to increase the licensed practice of a hairdresser to include limited esthetics is a move in the opposite direction of the field's movement. The main activity - training and experience of the hairdresser - is as a hairdresser. The training needed for the most basic tasks of an aesthetician is probably provided in a hairdresser's training so a hairdresser could safely perform them. However, that's not true of many, if not most, procedures beyond the most basic, which requires specific training to be used safely and/or effectively. For that reason I feel the licensure of an aesthetician should be entirely separate from the hairdressers. This would also permit the periodic review of each field as it develops and allow amendments appropriate and needed for each field.

MS. CATHERINE REARDON, Director, Division of Occupational Licensing, said her division staffs the Board of Barbers and Hairdressers, which regulates aestheticians and hairdressers and a number of other professions. She understands that the Board supports hairdressers being permitted to do eyebrow waxing and tweezing and make-up application, not the fuller range of aesthetician services.

SENATOR AUSTERMAN asked if aestheticians are covered at all under current law.

MS. REARDON replied that they are. There is a definition of what the practice of esthetics is and an individual must have that

license in order to perform those functions. She thought the issue was whether hairdressers should be permitted to do a segment of the aesthetician's scope of practice. This bill permits the hairdressers to perform limited esthetics as defined. Possibly the definition of the limited aesthetician functions a hairdresser could perform was too broad.

CHAIRMAN STEVENS said that aestheticians in Senator Green's office and the Board had been trying to find a solution to some of these issues and had proposed amendment #1. He asked if she had seen the amendment.

MS. REARDON replied that she had.

CHAIRMAN TORGERSON asked her if the Board didn't favor the CS.

MS. REARDON replied that they hadn't seen the work draft, so they took their position on the broader issue.

CHAIRMAN TORGERSON asked if she said they were in favor of removing something, but that this goes farther than that.

MS. REARDON replied that she was concerned that the (b) section went farther.

CHAIRMAN STEVENS noted that the amendment would bring it back.

SENTOR TORGERSON asked which Board regulated the people who do this now.

MS. REARDON replied the Board of Barbers and Hairdressers. It's a different license, but the same board. They license hairdressers, barbers, aestheticians, manicurists and tatooists and body piercers.

CHAIRMAN TORGERSON asked if they should repeal all of Title 8 that deals with barbers and hairdressers.

SENATOR AUSTERMAN asked if they need to be licensed.

MS. REARDON replied that industry and consumers seemed to think so.

SENATOR TORGERSON moved to adopt amendment #1.

SENATOR AUSTERMAN wanted to know the difference between the amendment and the existing CS language. They are deleting "manual" and "electric tweezers".

MS. CAUJOLLE explained that they just simplified the explanation. She said further:

Regarding the original bill with limited esthetics - In 13 we have (a) the removal - eyebrow arching by use of wax. What is taken out is "manual or electric tweezers or depilatories." Electric tweezers are essentially electrolysis. So we really don't want that to occur without another license actually. Depilatories - those deal with skin again because of the skin irritations that you can receive. So it would be best to not have it in there. Then we have also the application of makeup - we've taken out in (b) skin analysis. With fifteen preparatory applications of makeup, there's no way that a hairdresser can know skin. You need hours of education to understand and analyze skin. So, we took that out - to make it simple makeup application as if an individual was going to get married and they want to have the service done within the salon, not having to go to different places. Everything is in one place. That's why we went ahead and simplified it. So that it's a simple application of makeup and false eyelashes, if necessary. That's essentially the difference.

CHAIRMAN STEVENS asked if there was objection to amendment #1 being adopted. There were no objections and it was adopted.

CHAIRMAN STEVENS asked where the amendment came from.

MS. CAUJOLLE added that it came from the Board.

CHAIRMAN STEVENS asked if everyone was in agreement.

MS. CAUJOLLE replied, "Yes, sir."

CHAIRMAN STEVENS said they would hold the bill to allow Senator Green to look at it.
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#SB283
#HB276

HB 276-REGULATION OF NURSING
SB 283-REGULATION OF NURSING

CHAIRMAN STEVENS announced HB 276 and SB 283, companion bills, to be up for consideration. He said they would use the working draft of HB 276 for discussion.

REPRESENTATIVE PEGGY WILSON, sponsor of HB 276, said:

> HB 276 is essentially a cleanup bill that brings the nursing statutes up to date with current nursing practice in three different ways. One, it gives licensed nurses the authority to delegate duties to other unlicensed personnel. Two, it increases the length of time available for a temporary nursing license from four to six months just for the criminal justice background checks. It takes a little longer now than it used to because of that. And three, it changes the wording regarding licensure by endorsement and brings the wording in statute into compliance with what's already being done in the division. I have the whole nursing board behind me, so…

SENATOR TORGERSON asked if there was a definition of "assistive personnel" in section 5 where it says they can delegate to unlicensed assistive personnel.

REPRESENTATIVE WILSON replied that meant unlicensed assistive personnel, like nurses aides or someone else that would be working with a patient or a client.

SENATOR TORGERSON asked if that was defined in statute. He had no objection to the way it was written in the sponsor statement - unlicensed assistive personnel (UAPs) such as aides and technicians -

MS. LYNN HARTZ, a nurse practitioner and member of the Board of Nursing, responded:

> Whether there is a definition in statute that determines who is an unlicensed assistive personnel - no, because by definition unlicensed assistive personnel is someone who doesn't have a certificate or a license to practice and has been historically and currently. Perhaps I could back up a little bit, if I may. I had some testimony that might help explain this as far as giving licensed nurses the authority to delegate nursing duties to other personnel. This came about when the Board of Nursing was drafting regulations on delegation last year and we were told at that time that nurses did not have the authority to delegate to assistive personnel whom in general we call UAPs (someone without a license or certificate in this state). Therefore, the Board could not write regulations about delegation. The Board had always assumed that nurses had this authority to delegate to unlicensed assistants and it even published a position statement on that with our statutes and regs in 1993.

So that's why we view it as a cleanup section because it's giving the Board of Nursing and nurses the authority we thought we already had.

An example of delegation might be a nurse asking a nurses aide to run a urine test on a patient. The nurse's aide has no legal scope of practice. Hence the term unlicensed assistive personnel. The legal source of the authority to do the nursing task, in this case a urine test, is the licensed nurse, because the nurse does have a legal scope of practice in the state. So the nurse transfers or delegates that authority to the unlicensed person, in this case to do a urine specimen. Without the ability for the nurse to delegate nursing tasks, the unlicensed assistants have no authority to act. Therefore, without this legislation the UAPs who are called patient care technicians at Providence Hospital have no legal basis to continue to perform nursing tasks that are delegated.

At the municipality of Anchorage, UAPs are called family service aides. It seems to be that since they are unlicensed and certificated, different employment agencies give them different terminology. So, at Anchorage Health Department, they are called family service aides. They would not be able to perform nursing tasks delegated by public health nurses. We do have unlicensed assistive personnel defined, but it's a part of the position statement written in 1993, which the Board of Nursing was told it didn't have the authority to write, because we didn't have statutory authority to delegate to unlicensed assistive personnel.

SENATOR TORGERSON said he would feel better if somewhere it said "supervised". "Right now you can go out and get somebody off the street and give them a job. That's the part that I don't like."

MS. HARTZ said the safety component is under the regulations promulgated by the Board. There would be supervision by registered and licensed nurses.

SENATOR AUSTERMAN said he understood that those regulations hadn't been adopted yet.

MS. HARTZ replied, "Just because we don’t have the statutory authority to write regulations."

CHAIRMAN STEVENS said, "But you have the regulations."

MS. HARTZ responded, "We have some proposed regulations that we've been working on, yes, that deal with supervision, yes."

CHAIRMAN STEVENS asked, "Are they ready to be adopted as regulations now, then?"

MS. HARTZ replied, "No. I would say we still want to work on them some more."

SENATOR TORGERSON said he didn't care what they had, he thought it should be in the bill. "Supervised delegation" would be one fix for defining the level of personnel you can do this to. "Right now it's wide open."

CHAIRMAN STEVENS asked about the concept of section 5 going into affect once the regulations are promulgated.

REPRESENTATIVE WILSON replied that's the main reason for the bill. The nurses have the regulations, but there is nothing in statute saying they could adopt them.

SENATOR AUSTERMAN said the Board currently has the authority to write regulations.

MS. HARTZ replied, "Not regarding delegation of authority and yet it's being done daily currently in public health hospitals, clinics."

SENATOR DAVIS asked if the unlicensed personnel were certified to work in a hospital. Someone indicated they aren't. She asked if they could cover the issue by limiting the authority to people who are employed by the facility.

SENATOR AUSTERMAN said that a hospital could use a janitor in that instance.

MS. HARTZ responded that it was professionally inappropriate for an RN to delegate in an inappropriate or unsafe manner. They have been telling people while they are in this gray area of practice to please go by appendix D in the back of the statutes, which deals completely with delegation and licenses to personnel. They would like to refine that and that is what she meant when she said they didn't have those regulations ready to go.

CHAIRMAN STEVENS asked if this practice has already been going on, why do they need it in statute.

MS. HARTZ replied that was a good question and the Nursing Board was under the misapprehension that nurses had that authority all along and that's why that appendix was written in 1993. The Board

submitted regulations to the Department of Law and were advised them and the Attorney General that that needed to be in statute.

CHAIRMAN STEVENS asked if there's liability involved with administering any sort of tests, does the liability trail follow the delegation of authority and has anyone ever sued an institution for having an adverse reaction to a drug.

MS. HARTZ replied that it is the nurse's responsibility. Her license would be at stake if something like that happened. The three categories of unlicensed assistive personnel are identified as follows:

> Those who nurses supervise and to whom they delegate some activities to, those who nurses teach, but do not supervise to those who are not directly or indirectly supervised or taught by nurses.

SENATOR TORGERSON said he thought they should adopt the suggested language and that would clarify the whole thing. He suggested replacing section 5 with some of the language.

SENATOR TORGERSON moved a conceptual amendment on page 60 where the unlicensed assisted personnel is defined. There were no objections and that amendment was adopted.

MS. NANCY DAVIS, Chief, Public Health Nursing, supported HB 276, because it brings a number of protections to the public. The language is good in terms of licensure and it makes a lot of sense for them to look carefully at endorsement licensure and making sure that there are current competencies. They are also supportive of the delegation of nursing functions, because it's a critical element of nursing practice already. It's essential to rural health care, especially in this state, in that there aren't licensed practitioners in all the villages and there are a lot of health care that needs to occur through delegation.

MS. PATRICIA SENNER, President, Alaska Nurses Association, supported SB 283. She said over the past 10 years there has been an increase in the number and type of ancillary unlicensed health care workers that RNs and LPNs delegate duties to and have oversite over the work they perform.

> It is imperative that we have regulations from the Board of Nursing covering delegation of nursing tasks. Nurses rarely hire or train the unlicensed personnel they are required to work with, yet their employers require them to make sure these persons perform the tasks delegated to them in a safe and accurate manner. Because these individuals are unlicensed, there is no

> regulatory body overseeing their training and competency.

In terms of the definition of unlicensed assistive personnel, she said, there are family members who are hired under the Choice program who take care of the patient and in those cases, they would come under the authority of a registered nurse. It would be different than a family member doing this out of the goodness of their heart. She didn't know if there was wording saying the caregiver had to be employed.

SENATOR TORGERSON was looking at the statute and said that it was silent on that issue. Maybe they needed to think about that.

REPRESENTATIVE WILSON said the fact that it's not mentioned means that it would mean anyone, whether they were employed or not.

SENATOR TORGERSON said:

> That's not what this says. Not to belabor it. It says, 'The term also includes, but is not limited to orderlies, assistants, attendants and technicians. For the purposes of this delegation criteria, unlicensed and assistive personnel do not include family members of the client immediate family or guardians. So we have to change that to say "may include" if we want to be inclusive.

MS. REARDON asked why they need to go any further than the first sentence of that definition, which says:

> Unlicensed assistive personnel are individuals who are not authorized to perform nursing acts or tasks that are regulated by the Board of Nursing except pursuant to legal delegation by a nurse.

SENATOR TORGERSON proposed amendment #2 to delete "do not" and insert "may".

> The Board is going to have to define it anyway because those regulations were wrong for what they were doing for delegation to people who were home and were family members. If they're delegating that now, that can't happen because they would be under the same law.

CHAIRMAN STEVENS asked why the regulations do not include members of the client's immediate family.

MS. REARDON replied that this language never became regulation, so it didn't go through the legal review process. "These are just

an advisory opinion of the Board of Nursing."

She said the reason it didn't include family members is because of the last sentence, which says:

> Family members and guardians have performed and continue to perform these activities without specific delegation.
>
> I suspect they were trying not to constrict what family members could do, since the rest of this advisory opinion puts constraints and guidelines and rules about the delegation.

She thought they were trying to say for family members it could be a more flexible system.

CHAIRMAN TORGERSON said they don't write laws or regulations by saying historically this is what happens. His conceptual amendment left the last sentence out.

CHAIRMAN STEVENS asked if there were any objections to the conceptual amendment.

TAPE 11, SIDE B

SENATOR DAVIS said they shouldn't put family members in there, because they could come back on the nurses. "How can they supervise them if they're doing it at home. The nurses are in the hospitals working…"

SENATOR TORGERSON said he thought the family members were being paid, which is a big difference and he didn't think they were performing procedures.

MS. SENNER said that was the point she was making.

> Family members are trained by nurses and other health care professionals to do all kinds of advanced care, giving I.V.s or someone comes home on a respirator and the family member takes care of the respirator. The issue only comes into play when they are hired, such as under the Choice program and then they do come under the authority of a nurse.

She thought they should say: "Unlicensed assistive personnel or individuals who are hired to perform health care services."

You would have the employment part in there, too.

SENATOR TORGERSON said they could do that by regulation. His objective was to define the personnel and he thought they had done that by adopting the definitions. There is still clearly a role for the Board of Nursing to play and the regulatory process to implement this law.

CHAIRMAN STEVENS said there were no further objections to amendment #2 and it was adopted.

REPRESENTATIVE WILSON supported the amendments.

SENATOR TORGERSON moved to pass SCSHB 276(L&C) from committee with individual recommendations. There were no objections and it was so ordered.
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#SB265

SB 265-PHYSICIAN ASSISTANTS/NURSE PRACTITIONERS

CHAIRMAN STEVENS announced SB 265 to be up for consideration.

SENATOR DONALD OLSON, sponsor of SB 265, said it names physicians' assistants as bonafide health care providers. He said:

> As a physician, I have used physician assistants many times, especially those that are experienced - are very good resources to be depending on especially out in rural Alaska where many of them are by themselves. The reason I presented this is because I feel in order for them to be recognized by the health insurance industry, the health maintenance organizations and other health care delivery entities out there - that they need to be equivalent to other providers there so they can be paid and continue on unencumbered by other aspects of the health care delivery system. That is why I have submitted this bill.
>
> Section 1 amends AS 09.55.560(1) to add "physician assistant" to the definitional clause for medical liability statutes. Section 2 similarly amends AS 21.36.090(d) to include "physician assistant" as a provider that may not be unfairly discriminated against by a health insurance company, health maintenance organization or other health delivery organization. Section 3 responds to a third request of the academy. It is to allow physician assistants to provide proof of eligibility for a special, disabled veterans license plate and for issuance of a parking permit for a

handicapped or disabled person. Eligibility is currently provided by only physicians and advanced nurse practitioners.

MR. ED HALL, Physician Assistant representing the Alaska Academy of Physician Assistants, supported Senator Olson's comments on the resolution. He said the question was raised whether this was an attempt by physician assistants to become independent from physicians and said:

> I wanted to assure the committee that that's absolutely and in no way accurate. All this is is a request for recognition as a licensed provider in the state to be included in the statute…. We don't feel as if we've been excluded for anything vindictive or anything, but I think these statutes were actually written years ago before physician assistants were a recognizable treating provider within the state. So I think this is more of a housecleaning type of thing and bringing the current statutes up to date…

MS. SUSAN MASON-BONTUSE, Executive Director, Sunshine Community Health Center, supported SB 265. They are a mid-level clinic with four physician assistants providing primary care in a rural setting. They are working under a collaborative agreement with a doctor in Wasilla.

> These providers are critical to the on-going health care of residents in the communities that we serve as well as to the on-going functioning of our health center. Because our current statutes do not include physician assistants in the listing of health care providers, we periodically have our billing for medical services by these medical providers denied by third party payers…This can represent a significant barrier to health care. This can represent a barrier for individuals with health insurance as well as to clinics in terms of being able to maximize our potential remedies - particularly for small rural health clinics…

MR. JOHN RILEY, Chairman, Alaska Primary Care Association, supported SB 265. They exist to provide support to clinicians who serve patients regardless of their ability to pay.

> P.A.s provide a significant share of health care services in small communities in rural Alaska and there are several rural clinics that are staffed exclusively by P.A.s. There are many examples of insurance companies who are refusing to reimburse services

provided by the P.A.s because of not being on this list. This may require insured patients to travel outside their communities to obtain needed health care. So ironically this creates a barrier to access for insured patients. We urge the committee to approve this legislation and remedy this oversight…

MS. ELIZABETH RIPLEY, Director, Community Health Planning, Valley Hospital, fully supported SB 265 and explained that P.A.s staff local physician offices in Wasilla and Palmer. They also staff rural clinics such as Sunshine Community Health Center in the Upper Susitna Valley.

Especially in our rural areas, these P.A.s work out of sense of mission and they provide services where most doctors would not choose to set up a practice due to [indisc] and volume of patients. So, the mid-levels in terms of the P.A.s are a critical piece of our mid-level providers. This is especially important in light of the health care workforce shortage.

SENATOR LEMAN moved to pass CSSB 265(TRA) from committee with individual recommendations. There were no objections and it was so ordered.
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#HB274

HB 274- WORKERS' COMP: HEARING/MEDICAL EXAM

CHAIRMAN STEVENS announced HB 274 to be up for consideration.

MS. RENIEVA MOSS, Staff to Representative Coghill, said that HB 274 does two basic things.

It changes a statute that currently requires a physician who performs an IME to reside in the state that he is licensed in. HB 274 changes it so that he would be required to be licensed in the state that he performs the examination in. The second thing it does is provides that if an injured worker has a medical condition that is not receiving medical treatment, that injured worker can request an expedited hearing from the Workers Comp Board. At the point of that request, it would be up to the staff of Workers' Compensation to determine if there is a need for medical attention and if they make that determination, they may schedule an expedited hearing. Under the existing system, an average hearing takes about 138 days to be heard. If there is a medical condition that needs medical

attention, 138 days can make a lot of difference in whether or not that injured worker will recover. It just gives the Workers' Comp. Board a mechanism to prioritize Workers' Comp. cases and to expedite hearings if medical attention is not being received.

MS. BARBARA WILLIAMS, Alaska Injured Workers Association, urged them to reconsider the amendments they have requested.

The offerings that you have made to workers are very inadequate. I would like offer you some information so that you can make some informed changes that will benefit workers and not insurers. Workers understand the need the insured employers have to have the right to examine workers by their own doctors. We understand insurers and employers want and need a second opinion. This would be an excellent check and balance if the language were adjusted to indicate more protection for workers. What that would look like is a licensed physician licensed in the state of Alaska. Licensing held in Alaska [indisc] for Workers' Compensation. When we leave the state and we use physicians outside the state, they do not know the requirements for Workers' Compensation under the state. This would mean that physicians flying to Alaska must be licensed to practice in this state. Additionally, physicians not licensed outside the state would provide [indisc] proof of license and bond in the state in which the examination occurs. Any sanctions must be noted and the workers informed before the examination commences. A panel of physicians must be approved by the Alaska Workers' Compensation Board before an employee would have to submit to this examination. Right now in their second independent medical process they have over 40 doctors. That's the most doctors they have ever had in a panel since I've been working with workers informally for four years and over the fifteen years I have actively been doing this.

Most workers are subject to panels of physicians with many different specialties. Currently, workers do not have the ability to appoint panels of doctors. In the mean time, the workers are subject to [indisc] mental psychiatric examinations and have no idea that they're being seen for these types of mental diagnosis. There's also no legal requirement for anybody to produce or read our medical records for injured workers. Often insurers hire nurse case managers to summarize the

medical records or pass the information along to the independent medical examiner. We have found through independent research that workers have questioned these doctors and discovered the independent medical evaluators had never looked at their records in some cases. The legal requirement is only attached for the Board to have to arrange for the second opinion that the employer pays for.

A little known fact about this is that the fees and services are under the reasonable and customary fees schedule and an opinion only has a billable rate of $350. Any other fee must be approved by the Board. If, in fact, the insurers [indisc] fees that begin at $1,200 and are moving up into the tens of thousands of dollars.

Ensurers are able to manipulate the medical care the injured workers receive. There is currently no protection for workers in this area.

There needs to also be a legal requirement that all the records that will be relative the client be reviewed by the independent medical evaluator. There is currently no such regulation for independent medical evaluators. If an employee refuses an examination, a hearing should be held to conclude if the employee had a good reason for not submitting to the examination. In some cases that I'm very familiar with, employees have to struggle to fight to get childcare if they don't have someone to take care of their children while they must leave the state for these independent medical evaluations.

MS. WILLIAMS also explained that people with little cognitive brain injuries could experience barriers such as reading, language and cultural barriers absolutely have no protection and they have found that Alaska has the lowest paid attorneys representing employees.

CHAIRMAN STEVENS informed her that she was addressing issues outside of the bill that was before the committee.

MS. WILLIAMS concluded that she didn't support the legislation because it doesn't offer adequate protection for workers.

2:50 p.m.

MS. LAURA JACKSON, Claims Manager, University of Alaska, said that HB 274 proposed two changes to the Workers Compensation Act.

The first is that all physicians performing an examination requested by the employer or the board be licensed to practice medicine in the jurisdiction in which the examination occurs. Although this requirement does not impose that same requirement on the employee, I could think of no adjuster or board member who would object to this requirement. On the contrary, it is in the best interests of all [indisc]…

The problematic area of the proposed amendment is section 2 regarding the expedited hearings. It has been noted that the Board does not have a member with medical expertise. I believe it would be extremely difficult to find a competent medical expert willing to volunteer this significant amount of time for the work this amendment would generate.

During public testimony, Paul Grossi, the Director of the Alaska Workers Compensation Board, advised the Board it relies on a lot of medical expertise involved [indisc]. "Doctors' testimony and doctors' reports and doctors' depositions." I would like to point out the expedient time frame would preclude the development and provision of such information for the board's use and consideration. In other words, they would only have the information from the employee's doctor with no independent inputs - not even from the boards own independent examination.

According to statistics generated by the Alaska Workers Compensation Board, the vast majority of work comp claims are handled quickly by adjusters. There is only a very small percent, possibly about 1%, where a concern arises regarding coverage. I might note in the Act it requires clear evidence in the possession of the adjuster in order to controvert a claim. If the coverage is clearly questionable, how can the employer now be denied their due process? For that is exactly what is being proposed in this amendment. This will increase litigation by denying the adjuster the opportunity to have an independent medical evaluation that can clear up the issue and allow continued coverage without litigation and by encouraging countless more cases to have expedited hearings

followed by inevitable appeals. The cost of this amendment is incalculable.

First, the Board will have a greatly increased workload to handle these hearings and the litigation, which will follow. Second, the employer will be forced into what may have been the unnecessary litigation of a hearing and possible appeal. This would have a devastating impact on the cost and availability of Workers' Compensation Insurance in the state of Alaska.

I have been here during a number of ups and downs in the insurance market. Post [indisc] Workers' Compensation Insurance has become so expensive that it's nearly unavailable already, especially to small employers. I am convinced the increased cost of claims caused by the amendment will have a devastating affect on the availability of insurance and the ability to do business and employ workers in the state of Alaska.

Finally, may I ask you to imagine for a moment that you go home tonight and hear a knock on your door. You open the door to find a person there wearing a neck brace and with their arm in a sling. They hand you some papers and tell you, 'I fell in your driveway on Tuesday. No one was home at the time. I wanted to let you know that I'm injured and by the way there will be a trial regarding it in two weeks.' Do you think you would be ready? Do you think you would have due process? Thank you.

MS. JACKSON concluded that she was speaking against the expedited hearings in section 2.

MR. DAVID TWEDEN said he is an injured worker and wanted to comment on the independent medical evaluations. In his case there was a big difference in opinions on his percentage of impairment and he thought there should be some sort of checks and balance to see if the injured worker was favored or the insurance adjuster. "The fees should be customary and usual, not the insurance adjuster paying these independent doctors a huge amount of money."

CHAIRMAN STEVENS said he appreciated his comments about the independent evaluators.

MR. TWEDEN added that he knows from his first independent medical evaluation that the doctor was from Oregon and flies to Alaska all the time to do the independent medical evaluations. He didn't

know if he was licensed to practice in the state and that should concern everybody.

MS. MURLENE WILKES said she has been a licensed Alaska adjuster since 1965 and has grave concerns over section 2. She said that Mr. Grossi has assured everyone that this section would be applied in a very limited fashion and carefully. She didn't see any reason to add that section and objected to the broad based language, which appears to circumvent the intent of AAC 45.070. She understands it was recommended because in some cases failure to authorize medical treatment has caused physical harm to an employee. She reminded them:

> The ability to deny a controversial work place incident injury has become just next to impossible and to controvert a claim requires "substantial evidence supporting the position of the controversion.

MS. WILKES said that even though the definition of injury under AS 23.30.395 does not include mental injury or mental stress, now because of the Harris Eastlake versus State of Alaska case, they just simply cannot deny mental claims without going through extremely costly investigation and medical testing. While that is going on, they have to pay.

She said that most employees have decent health coverage, but those who don't often have VA benefits or qualify for Medicaid. If the claim is controverted, these other systems will kick in once they receive a copy of the controversion notice. If the controversion is overturned, those payments are reimbursed.

> I feel the amendments along with recently passed regulations on hearings is simply a matter to create work for a second and new panel of board positions in Southcentral.

She noted that a number of big decisions came down from the board in 2000 and 2001 - Gary Richardson v. University of Alaska Fairbanks, Devita Gray v. State of Alaska, Laurie Walters v. State, to name a few.

MS. WILKES said that the board members are not medical professionals and, "To assume that they could make a determination of physical harm seems in credulous to me."

She urged them to not pass the bill, but if they did, to make it absolutely clear.

MS. SUSAN DANIELS, Northern Adjusters, said that they are concerned on behalf of their insurers with the conflicts that exist with section 2 and the existing provisions of Workers Comp.

Act and regulations in terms of the discovery. They are concerned about the cost to employers and the board to add staff and to be such a broad presentation. She urged that the legislature oppose this section and at least reconsider specifying a much narrower focus. Once a claim is disputed, there needs to be enough testimony and research for the board members to make an educated decision of what's at stake.

MR. TIM MCKEEVER said he is an attorney who works with a law firm who works with a lot of employers and Workers' Compensation cases. He was concerned about section 1 because it is superfluous and opposed section 2.

> The Medical Board in this state already believes that an IME doctor who does an independent medical examination in the state has to be licensed in this state and I believe they have communicated that fact to the Workers' Compensation Board. I would encourage the committee to enquire of the State Medical Board if they believe the doctors who do I.V.s for the state have to be licensed. I think you find that they do and the first section is therefore unnecessary.

MR. MCKEEVER thought:

> The second section denies due process to employers because an expedited hearing would be held in a fashion that does not permit employers to have or take advantage of procedures that the legislature has previously enacted which would allow for example the employer to get medical records, to obtain a release from the employee, to obtain an independent medical evaluation or if there's a dispute between the employee's doctor and the employer's doctor, to obtain a second independent medical examination. It is virtually impossible for an employer to defend a claim on very short notice without having due process to be able to conduct appropriate investigation. The standards in the act are also very low. It would simply require a statement from a physician that a person needs medical treatment or they will suffer physical harm and that is all it would take under this bill for them to have an expedited hearing.

MR. MCKEEVER said that if an expedited hearing results in a payment of medical treatment, under the current version of the Act, the only remedy an employer has to recover overpayment of improperly paid Workers' Compensation benefits is to recover them from future payments that are paid to the same claimant. If that

claimant is not entitled to those future benefits, there's no way to get back the cost of the care that's been provided. "The employer could be paying $50 or $60,000 for a surgical procedure and never be able to get that money back. I think that's a concern."

MR. MCKEEVER continued:

> HB 274 upsets the balance that the legislature has reached over years of tweaking the Workers' Compensation Act. It tilts that balance unfairly in favor of the injured worker and deprives employers of the right of due process and the right to effectively defend themselves. Let me conclude by saying I think there may be cases, and I'm not familiar with any even though I've been doing this for 20 years, where an injured worker has been denied medical care that has resulted in permanent physical harm to that injured worker. But if the legislature, after deliberate consideration, determines that is a problem, that there are people who have been deprived of medical care that they really need to have, then I think there are alternatives to this legislation that would protect the rights of employers and protect the rights of employees. Those alternatives include, as has been mentioned, to explore other options for payment, such as private health insurance, V.A., I.H.S. benefits - all of which have the right to get repaid if the Comp carriers are determined to be responsible. So alternative forms of payment should be explored.
>
> Another alternate may be the Second Injury Fund, which is a fund that exists under the jurisdiction of the Department of Labor, which is paid for by contributions, donations, taxes perhaps on benefits that are being paid. It is very possible to set up a system by which the Second Injury Fund would be required to advance the cost of emergency and urgently needed medical care and then to have the insurance carriers pay the Second Injury Fund back if it's determined that the claim is compensible.
>
> Fundamentally, the standard needs to be higher. It shouldn't just require an injured worker to come in and say or have a doctor say that there's a risk of physical harm. It should be a risk of significant permanent physical harm rather than relatively miner risk, given the lack of due process that an employer would have under this section if it's enacted. I think

> the standard for getting emergency hearings needs to be substantial. This bill would change the economics of Workers' Compensation….

TAPE 02-12, SIDE A

3:12 p.m.

MR. MCKEEVER concluded by urging them not to enact section 2 of HB 274, but encouraged them to explore options.

MS. KATHY COLLINS, Claims Administrator, ARECA Insurance Exchange, said they are an insurance company for electrical and telephone utilities through the state of Alaska and has 22 members. She said the ARECA is also concerned with section 2 for all the previously stated reasons. Based on her 18 years of experience as a claims adjuster, she could not think of any cases where physical harm resulted to an injured worker because she had denied medical treatment.

> My experience is that in cases where there's serious physical harm that's imminent, those cases are clear-cut because they are usually tied to traumatic injury and it's obvious the injury is work related.
>
> The issue of authorization for medical care often times arises in cases where the relationship to the condition or injury is not clear and by their very nature, these cases require expert medical review often by the injured worker's physician, the independent medical evaluators who have to buy the insurance carrying the employee and often by the [indisc] process.
>
> Calling the Board to schedule an expedited hearing when the injured worker is requesting medical care doesn't allow the employer due process…

She summarized:

> It's my experience that the situation for which this amendment was formulated happens very rarely and in complicated cases, which need time for preparation. Furthermore, the amendment is ambiguous and wordy as to what constitutes physical harm to the injured worker.

MS. CLAIRE HIRATSUKA, Claim Manager, Umialik Insurance Co., a small company owned by the North Slope Native Corporation, said she couldn't think of a case where an employee suffered because they were denied medical treatment, but several times she has scheduled a second opinion. She has been thanked by employee who

has had another treatment suggested during an IME and has benefited from it. She didn't know how a board of non-medical people would have the competence to decide on medical treatment.

MR. MIKE KLAWITTER, Director, Risk Management, Anchorage School District, said they have about 5800 employees which they self-insure Workers' Comp for. "I believe HB 274 substantially impacts the Anchorage School District in a negative way."

He echoed previous comments regarding the section 2 expedited hearings. It negatively impacts the school district and gains very little for an employee. The physician licensing is also redundant and unnecessary.

MR. PAUL GROSSI, Director, Division of Workers' Compensation, said they support this bill, which is just minor changes.

SENATOR TORGERSON asked him to comment on section 2 not providing a fair opportunity for one of the other parties have their own doctors look at them or prepare themselves for a hearing.

MR. GROSSI replied that occasionally a claim is filed for an injury that occurred a while back and there is need for discovery, but in the vast majority of cases, the employer files a controversion on a claim denying a particular treatment.

> For a controversion to be valid, they have to have medical evidence or some legal basis for that. I don't understand completely the denial of due process since the employer wouldn't have denied the benefits in the first place, unless they had done some basic discovery on medical treatment in order to deny the treatment in the first place. There may be some instances, but a relatively small number of those cases.

MR. GROSSI explained:

> Basically, the employee gets injured, they file an injury report, they go to a doctor and gets treated, the employer can pay or not pay it and if they are questioning the claim, they'll have the person examined by a doctor of their choice. Choice is what we've heard some testimony on and then they can either pay or deny the claim or the treatment or the various benefits that would surround that. That is they way the vast majority of the cases are dealt with.

He pointed out that the law doesn't say that you have to have an examination.

SENATOR TORGERSON asked if this only applied to disputed claims.

MR. GROSSI replied yes and that in the vast majority of cases controversions are not filed. A small portion of claims are denied and those denials have to be based on evidence or a legal basis.

SENATOR TORGERSON asked if they have expedited hearings now and if they do, what criteria would it fall under as far as notification. "What does expedited hearing actually mean?"

MR. GROSSI replied that he didn't think the board would rely on its own prognosis or diagnosis, but would rely on medical evidence and reports before they set a hearing. The hearing would have some preferential treatment over other standard types of cases.

SENATOR TORGERSON asked if that should be explained in the bill. "Should we put a timeline in here to make sure that all that's covered?"

MR. GROSSI replied that the designee would only be determining whether the expedited hearing should be scheduled, not determining the underlying decision as to whether these medical benefits should be allowed or not.

SENATOR TORGERSON asked what would happen if they deleted "upon request by a party" and inserted "on request by both parties".

MR. GROSSI replied, "If both parties are requesting it, then the payment could be made."

SENATOR TORGERSON asked if this was a disputed claim and the Board is helping to negotiate liability.

MR. GROSSI replied that mostly there would be a dispute or denial, so one side would want a hearing.

SENATOR TORGERSON asked what putting "serious physical harm" would do instead of just "physical harm".

CHAIRMAN STEVENS pointed out that someone mentioned "permanent harm".

MR. GROSSI said that would indicate what level of harm they should be looking for. He said that all cases are important to the individuals, but sometimes some cases need to be heard sooner than others for many different reasons. This gives the Board a tool of being able to make those kinds of distinctions between cases.

MS. MOSS commented that this bill was heard in the House Labor and Commerce Committee where approximately 15 people testified in favor of the bill. It passed the House unanimously.

> When an employer files a controversion, they do have the medical information to base that controversion on. So, the medical information is available for an expedited hearing. All this intended for is to give Workers' Comp a vehicle to address, and I don't think Representative Coghill would have a problem with adding the word "serious" to address injuries that are not getting medical attention.
>
> As far as the Medical Board is concerned, they may think this is redundant, but the fact of the matter is that the law does state that the physician only has to be licensed in the state in which he resides.

CHAIRMAN STEVENS said that the bill needed more work before it could pass for committee. He thought both parties agreeing to an expedited hearing had merit.
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CHAIRMAN STEVENS adjourned the meeting at 3:30 p.m.