

**ALASKA STATE LEGISLATURE  
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES  
STANDING COMMITTEE**

April 1, 2003  
3:02 p.m.

**MEMBERS PRESENT**

Representative Peggy Wilson, Chair  
Representative Carl Gatto, Vice Chair  
Representative John Coghill  
Representative Paul Seaton  
Representative Kelly Wolf  
Representative Sharon Cissna

**MEMBERS ABSENT**

Representative Mary Kapsner

**COMMITTEE CALENDAR**

HOUSE BILL NO. 142

"An Act relating to provider responsibility for ocular postoperative care; and providing for an effective date."

- MOVED HB 142 OUT OF COMMITTEE

HOUSE BILL NO. 171

"An Act repealing the charter school grant program; and providing for an effective date."

- MOVED HB 171 OUT OF COMMITTEE

**PREVIOUS ACTION**

BILL: HB 142

SHORT TITLE: RESPONSIBILITY FOR CARE AFTER EYE SURGERY

SPONSOR(S): REPRESENTATIVE(S) HEINZE

Jrn-Date	Jrn-Page		Action
03/03/03	0358	(H)	READ THE FIRST TIME - REFERRALS
03/03/03	0358	(H)	HES, FIN
04/01/03		(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 171

SHORT TITLE: REPEAL CHARTER SCHOOL GRANTS  
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/05/03	0445	(H)	READ THE FIRST TIME - REFERRALS
03/05/03	0445	(H)	EDU, HES, FIN
03/05/03	0445	(H)	FN1: (EED)
03/05/03	0445	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/11/03		(H)	EDU AT 11:00 AM CAPITOL 124
03/11/03		(H)	Heard & Held
03/11/03		(H)	MINUTE(EDU)
03/13/03		(H)	EDU AT 11:00 AM CAPITOL 124
03/13/03		(H)	Moved Out of Committee
03/13/03		(H)	MINUTE(EDU)
03/14/03	0539	(H)	EDU RPT 5DP 2DNP
03/14/03	0539	(H)	DP: WILSON, COGHILL, SEATON, WOLF,
03/14/03	0539	(H)	GATTO; DNP: KAPSNER, GARA
03/14/03	0539	(H)	FN1: (EED)
03/20/03		(H)	HES AT 3:00 PM CAPITOL 106
03/20/03		(H)	-- Meeting Canceled --
03/27/03		(H)	HES AT 3:00 PM CAPITOL 106
03/27/03		(H)	Scheduled But Not Heard
04/01/03		(H)	HES AT 3:00 PM CAPITOL 106

#### WITNESS REGISTER

REPRESENTATIVE CHERYLL HEINZE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As sponsor of HB 142, testified on the bill and answered questions from the members.

CARL ROSEN, M.D., President

Alaska Academy of Ophthalmology

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 142 and answered questions from the committee.

CARLOS BUZNEGO, M.D.

Center for Excellence in Eye Care;

American Academy of Ophthalmology

Miami, Florida

POSITION STATEMENT: Testified in support of HB 142 and answered questions from the committee.

GARY JACKSON

Anchorage, Alaska

POSITION STATEMENT: Testified via teleconference in support of HB 142.

KEVIN SWEENEY, Special Assistant

Office of the Commissioner

Department of Education and Early Development

Juneau, Alaska

POSITION STATEMENT: Testified on HB 171 and responded to questions from the committee.

### **ACTION NARRATIVE**

#### **TAPE 03-31, SIDE A**

Number 0001

**CHAIR PEGGY WILSON** called the House Health, Education and Social Services Standing Committee meeting to order at 3:02 p.m. Representatives Wilson, Gatto, Coghill, Seaton, and Cissna were present at the call to order. Representative Wolf arrived as the meeting was in progress.

#### HB 142-RESPONSIBILITY FOR CARE AFTER EYE SURGERY

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 142, "An Act relating to provider responsibility for ocular postoperative care; and providing for an effective date."

Number 0050

REPRESENTATIVE CHERYLL HEINZE, Alaska State Legislature, sponsor of HB 142, said the purpose of the bill is to ensure proper ocular postoperative care, primarily with respect to cataract surgery. The bill allows for postoperative care to be delegated by a surgeon only to another ophthalmologist and only under certain conditions. It requires that the physician be available to the patient for up to 120 hours after surgery. She explained that currently comanagement agreements exist between optometrists and ophthalmologists. Optometrists provide the patients to ophthalmologists who perform the surgery, but the ophthalmologist does not follow the patient postoperatively. Potential risks to patients exist with this arrangement. The bill is intended to protect the patient to ensure good postoperative care by a qualified physician, in this case an ophthalmologist.

Number 0243

REPRESENTATIVE GATTO told the committee he contacted Dr. Rosen this morning to talk about the bill. He asked if in the case of noncompliance, for instance, if the physician leaves town, who would investigate the case. Who funds the investigation?

Number 0320

CARL ROSEN, M.D., President, Alaska Academy of Ophthalmology, testified in support of HB 142 and answered questions from the committee. He told the committee that he is an ophthalmologist, is fellowship-trained, and board-certified; and is a neuro-ophthalmologist, orbital surgeon, and oculaplastic specialist. In response to Representative Gatto's question, he told the committee the Alaska State Medical Board has the authority to investigate physicians in cases of negligence or malpractice.

Number 0395

CARLOS BUZNEGO, M.D., Center for Excellence in Eye Care; and American Academy of Ophthalmology, testified via teleconference from Miami, Florida, in support of HB 142 and answered questions from the committee. He told the committee Congress has been talking about patient protection, and it is important that state legislators debate the merits and act upon state health policy to improve the system and quality of care. He said he is representing the American Academy of Ophthalmology, which has a membership of approximately 27,000 ophthalmologists. Dr. Buznego told the committee he serves as a volunteer on the academy's governing committee for state affairs and is a practicing ophthalmologist.

Number 0459

DR. BUZNEGO provided a brief overview of health policy issues with respect to HB 142. He said this bill addresses abuse of surgical practice of a surgeon. Ocular care is one of the rare areas where non-physicians inappropriately perform postoperative care after eye surgery. He explained that comanagement is the sharing of postoperative responsibilities between the operating surgeon and another health care provider. In theory, this arrangement is to be entered into only in cases when it is in the best interests of the patient, for example, when it is too far for the patient to safely travel. If this were the only kind of comanagement around, he said he would not be speaking

today. In practice, there is abuse, and there are times when this behavior is unethical.

Number 0542

DR. BUZNEGO said in the interest of patient safety he believes the enactment of HB 142 will eliminate the pressure that allied health professionals place on surgeons to enter into such unethical agreements. Blatant unethical behaviors in comanagement occur when a surgeon enters into a comanagement agreement with an allied health care provider for economic considerations, specifically, as an inducement for surgical referrals or as a result of coercion by the referring practitioner. This bill would eliminate the unethical behavior by carefully regulating when surgical referrals can include an agreement to comanage only when it will be in the patient's best interest. In such cases, the surgeon in consultation with the patient will use his/her judgment to determine the most appropriate postoperative care. The bill does not ban comanagement of patients, but it ensures that such arrangements are truly in the best interests of patients. It recognizes unique challenges of delivering health care services to the citizens of Alaska. In addition, the bill permits flexibility in cases of emergencies and unexpected circumstances. Dr. Buznego told the committee this bill would improve responsible surgical practice in Alaska. Finally, it would not raise costs to the patients, since all providers are reimbursed at the same rate for their services. He said this is a patient-friendly bill, and he urged the committee's support of this legislation.

Number 0616

CHAIR WILSON shared a concern about her mother, who will have cataract surgery tomorrow. She explained that there are no surgeons where she lives, so someone is driving her mother about an hour away from her home to have the procedure done. However, she has lung problems and she coughs a lot. Chair Wilson said she is concerned about who is doing the follow-up care because of the coughing. Chair Wilson asked if this might be the kind of special circumstances Dr. Buznego has been talking about.

Number 0679

DR. BUZNEGO responded that Chair Wilson is correct. One of the important issues of cataract surgery is not solely what happens during the surgery, although that is obviously critically important, but there are certain complications that can arise in

the first several weeks following cataract surgery. Often these complications have very subtle signs; in the situation of comanagement, oftentimes the practitioner seeing that patient on the first postoperative day may not recognize early signs of difficulty. For example, a significant amount of inflammation in the eye, which is often very subtle and can be one of the earliest signs of an eye infection after cataract surgery, is a potentially blinding complication. Dr. Buznego said that in cases like Chair Wilson's mother, where the patient is coughing a lot, the coughing could raise the pressure in the eye and cause the wound to open and the implant could be displaced. He said he is sure the surgeon who is taking care of her mother will provide some medications that will decrease coughing and make sure that the incision is nice and tight.

DR. BUZNEGO said it is critically important during those first several postoperative visits that the surgeon identifies complications and fixes them. Dr. Buznego said one of the current problems of postoperative care being provided by non-ophthalmologists is the possibility that they may not be able to recognize complications. He said in the case of Chair Wilson's mother, even if a problem is identified and she needs to be re-operated on or she might need intravenous medications, none of those things could be done by a comanaging optometrist. It would be hard to find someone to fix the problem.

Number 0790

REPRESENTATIVE GATTO asked if there is a Florida academy of ophthalmology.

DR. BUZNEGO replied there is the Florida Society of Ophthalmology.

REPRESENTATIVE GATTO responded that the president of the Alaska Academy of Ophthalmology provided information to the committee. That information said that HB 142 provides that unless a surgeon enters into a written comanagement agreement with the patient, the bill requires a surgeon to be physically available to a patient for postoperative care in the community in which the operation was performed for 120 hours after the surgery. Representative Gatto said that when most people go into surgery, they have a stack of papers that they sign before surgery. There usually is very small print and multiple pages, and the patient just signs the bottom. He pointed out that usually patients do not take an attorney with them to the doctor's office; it is usually a spouse or child. He said his guess is

that there is going to be a form in there that says the surgeon is associated with a licensed optometrist who will see the patient after surgery. People will look at that and say, "Okay, why not?" He said he is curious about what Florida's experience has been and what has been done when this kind of practice has been discovered.

Number 0872

DR. BUZNEGO replied that it is a critically important point. It is possible that kind of agreement could be slipped into the paperwork given to patients, since the surgeon would have to have consent. The spirit of the law is not just having a paper signed. When the surgeon talks to patients about cataract surgery and the risks, he/she should talk about complications and postoperative care. Theoretically, even if the patient signs something, if the doctor does not talk about it, the doctor could be held to a higher standard in court.

REPRESENTATIVE GATTO asked if in Florida there is a paper signed by patients that has dialog that says when a person signs this paper that person is giving up the right to insist upon his/her ophthalmologist's care. He asked if there is a form that Alaska could use as a guide.

DR. BUZNEGO responded that Florida nearly passed this kind of legislation. He said it passed the House and the Senate by a simple majority, but because of confusion in parliamentary procedure, it is not currently law. The bill is being brought up again this year. At this time, there is not a form he could provide. He pointed out that it is an important national issue and that both the American Academy of Ophthalmology, which is the largest association, and another organization that is just cataract surgeons provided national position papers on postoperative care because they felt it is that important.

Number 1036

REPRESENTATIVE SEATON asked if in Florida HMOs [health maintenance organizations] typically use a surgeon, but not for postoperative care [as in a comanagement agreement]. He asked if that is the reason this legislation was proposed in Florida.

Number 1076

DR. BUZNEGO responded that is not the reason. He said this legislation actually predates the time when HMOs actually became

popular. He said the reason that this is a significant issue is that many optometrists will talk to an ophthalmologist and say they will send the surgeon patients for cataract surgery if the surgeon will then send the patient back to them for comanagement [postoperative care]. For example, in Florida there is a doctor who will send his patients in Key West to Boca Raton because he gets comanagement rates. This doctor sends his patients on a four-hour drive, when he could send the patients across the street to a doctor who does not believe in comanagement and takes good care of his patients.

Number 1138

REPRESENTATIVE CISSNA said she recalls reading about "surgery mills" where there is an unusually aggressive person without the proper credentials doing surgery and where the emphasis is on making money. She asked if Dr. Rosen would comment on that issue.

Number 1183

DR. ROSEN said he knows of two good examples in Anchorage. There is a group from Washington state that comes up to Alaska and has a comanagement arrangement. Specifically, Pacific Cataract and Laser Institute has a surgeon come to Anchorage twice a month and operates on anywhere from 10 to 30 people per month. An optometrist follows the patients postoperatively. The surgeon leaves the state after the surgery. Not only does the surgeon leave, but he also has not accepted the responsibility that every other ophthalmologist in Alaska has accepted, which is to respond to calls. He said he does not like to get called into the hospital, but if Providence Hospital calls him at 3:00 a.m., he responds. This doctor has said that he is such an expert and so specialized and patients are so privileged that he does not have to do that. Another example is an outfit that not only does cataract surgery, but also is primarily a refractive surgery outfit, which is called Laser Vision of Canada. They had plenty of patients, and advertised \$1,000 for two eyes and 20-20 vision without glasses. Not only is that not true, but these guys are no longer around. They went out of business and now there are abandoned patients. He said he and his partners have to take care of these people. Dr. Rosen said these are two good examples of mills that have gone awry.

Number 1281

GARY JACKSON testified via teleconference in support of HB 142. He shared his experience when he was referred by his optometrist to the PCLI [Pacific Cataract and Laser Institute] for cataract surgery. Following the procedure, he was referred back to the optometrist for follow-up the next day. He said he did not see the actual surgeon for two weeks. An infection developed, which was treated by the optometrist. Finally, the surgeon saw him two weeks later when he returned to Alaska and additional laser repair was done. For this reason, he urged passage of HB 142 to ensure that proper follow-up by the surgeon is given to the patient.

Number 1444

CHAIR WILSON commented that Mr. Jackson ended up having two surgeries instead of one.

MR. JACKSON said that is correct. He said he does not know the reason for the infection, but he required laser repair to the original surgery. In response to Chair Wilson's question about further surgery, he responded that since that experience, he has had unrelated surgery done by Dr. Rosen. Mr. Jackson said he wanted to make one further point and that is that he never met the surgeon who did his cataract surgery. He said he was given a video to watch. In contrast, the surgery he had done with Dr. Rosen was preceded by a meeting; Dr. Rosen stayed with him after the surgery was finished, and called him at home that night to make sure everything was okay. Mr. Jackson said he had an appointment with him the following day when the bandage was taken off. Dr. Rosen has been totally accessible. It was a very different experience.

Number 1450

DR. ROSEN reiterated previous points made about HB 142. He said that while the option of comanagement was originally designed with good intentions, patients' safety has been compromised. He told the committee patients really entrust surgeons with their best interests. There is nothing more noble or coveted than this bond, and this is what medical schools teach budding surgeons and physicians. A surgeon must ensure that following surgery any problems and complications be recognized and dealt with in a timely fashion.

Number 1599

DR. ROSEN told the committee there are legitimate reasons for comanagement in distant or rural places, for example, where it is too inconvenient or inaccessible due to weather. He said it is important that an equally trained and competent surgeon be responsible for the patient's postoperative care. There are some wonderful optometrists who do their job brilliantly, but surgery is not part of the optometric training. He said it is not possible for someone to know all the complications, let alone the simple nuances that can occur after surgery. It takes an ophthalmology residency, which is a surgical residency for three years, an internship for one year, and a fellowship [in Dr. Rosen's case] for 14 months to understand what can happen from surgical manipulation and instrumentation of an eye or orbit. A weekend course, a book, or pictures simply do not do it. It is necessary to do surgery to understand what can happen.

DR. ROSEN pointed out an unscrupulous arrangement that can occur between an optometrist and an ophthalmologist as a result of financial gain. He said that his practice is not affected by this kind of arrangement because his patients come to him largely because the patient has been injured or has cancer and needs reconstruction of the patient's bone or eyelid tissue. However, as the president of the [Alaska Academy of] Ophthalmology, it is his job to point out this kind of unscrupulous arrangement. When financial gain is involved, it is really a kickback for every patient sent to a surgeon by an optometrist. There are some wonderful public relations and marketing deals that have come about and that have mesmerized some optometrists into bringing this about. When patients find out, they wonder why no one told them. Dr. Rosen said a patient does not have to go to a mill to get better care. He said he is a Harvard graduate and his colleague graduated from Yale. They will provide better postoperative care because they live in the community.

Number 1700

DR. ROSEN summarized that the crux of the problem is that when a surgeon leaves town, the patient is being left in the care of someone less qualified. If a complication occurs, the hope is that the optometrist can recognize it and deal with it so the patient does not end up in the emergency room late at night. In these instances, the patient and family are inconvenienced and the local ophthalmologist ends up being responsible for these problems and must take care of the patient. He asked the committee to pass the bill to protect unwitting patients for

five days [after surgery]. He noted that there are exclusions for emergencies. However, it is important that an equally qualified surgeon be available for the patient.

Number 1734

REPRESENTATIVE HEINZE summarized that this bill will send a message to physicians outside of Alaska that the state does not abide these kinds of practices. She said that Alaskans are proud of their ophthalmologists, and this is a dangerous practice that may affect something very precious to all people, their eyesight. Representative Heinze asked the committee to vote to move this bill out of committee.

Number 1765

CHAIR WILSON commented on her experience in assisting doctors in doing eye surgery, which is so delicate that it must be done using a microscope. The sutures used are so tiny that they float and are even finer than hair.

Number 1796

REPRESENTATIVE COGHILL questioned whether the bill would provide for more civil and criminal liability. He noted that there are a lot of exceptions. He suggested this will create a lot more room for litigation if not followed closely. He said he is wondering what the medical board sees as a way of enforcing complaints coming before them and what they might anticipate with respect to regulation. He asked if there has been any testimony from the state medical board on how they might implement this statute in regulation.

REPRESENTATIVE HEINZE responded that there has not been any testimony by the medical board on how they would regulate the law.

REPRESENTATIVE COGHILL said it appears that in Sections 5-7 the effective dates are awaiting the development of the regulations. He asked if Representative Heinze could explain how that might work. He said it looks as though Sections 1-4 take effect differently than Section 5. Is that to allow for regulations to be implemented?

Number 1912

REPRESENTATIVE HEINZE responded that she does not know.

Number 1919

REPRESENTATIVE CISSNA referred to the Legislative Legal and Research Services sectional analysis on Sections 5 and 7, where it says that it allows the state medical board to begin the regulations process before the rest of the bill takes effect. She said she believes that would take care of Representative Coghill's concerns.

REPRESENTATIVE COGHILL responded that he would like to know what the state medical board anticipates and what part the legislature plays in that discussion. He said he is not sure it is wise to pass the bill before knowing what that discussion will be.

Number 1946

DR. ROSEN responded that he does not see that as an issue. He said the medical board can easily take care of that question and it falls within the realm of their capability by looking at other examples of what they do now.

REPRESENTATIVE COGHILL said he believes the policy call is good and does not plan on holding up the bill. He expressed his concern about what may come from this legislation.

CHAIR WILSON told Representative Heinze that it would be wise to have the answers to these questions prior to hearings in the next committee of referral.

REPRESENTATIVE HEINZE said she would be providing the committee with any information requested.

Number 2013

REPRESENTATIVE COGHILL moved to report HB 142 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 142 was reported out of the House Health, Education and Social Services Standing Committee.

HB 171-REPEAL CHARTER SCHOOL GRANTS

Number 2053

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 171, "An Act repealing the charter school grant program; and providing for an effective date."

Number 2061

KEVIN SWEENEY, Special Assistant, Office of the Commissioner, Department of Education and Early Development, testified on HB 171 and responded to questions from the committee. Mr. Sweeney explained that this bill eliminates the state-funded grants for charter school startup. He explained that the Department of Education and Early Development has been working with the U.S. Department of Education to secure funds that will actually increase the level of startup grants provided by the federal government. He said the money that will be coming from the federal government exceeds the amount provided in the past by state and federal money combined. The new federal money that will be allocated to a new school, in the amount of \$150,000 for the first three years and \$45,000 for the fourth year, eliminates the need for the state's supplemental grant.

Number 2105

CHAIR WILSON asked Mr. Sweeney if he is sure no funds will be lost to new charter schools if this bill is passed.

MR. SWEENEY replied this is correct. He explained that what has happened in the past is that a new charter school was given a federal grant and then the state supplemented that grant for a total grant for startup purposes. For the charter schools that have come on board, the total amount of funding for a charter school has ranged anywhere from \$164,000 to \$478,000 for the state and federal combined funds. In comparison, charter schools coming on board in 2003 will get \$450,000 for the first three years and \$45,000 for the fourth year, for a total of \$495,000, so, in fact, the funds would be increased to new charter schools.

Number 2146

MR. SWEENEY asked the committee to note that this legislation does not take effect until next July. He said the delayed effective date in the bill is so the state can live up to its commitment to two charter schools that will be receiving funds from the department in their final year of funding. He also added the department believes that the delay will allow them the time to make certain the funding will come in and the state's

application will be approved hopefully by June or July of this year. Mr. Sweeney said the state is saving money and the charter schools are getting more money than in the past.

Number 2170

REPRESENTATIVE GATTO asked if any charter schools will be caught in the middle, for example, too late for state funding and too early for federal funding.

MR. SWEENEY said no schools will be caught in the middle. Only two schools are currently owed one more year in funding under the old regulations whereby they will get their state and federal funding combined.

REPRESENTATIVE GATTO asked the name of the two schools.

MR. SWEENEY said the schools are Soldotna Montessori and Chinook Montessori. He commented that four new schools that are proposed to start are Frontier, Highland Technical, Horizon, and Tongass, and their grants will fall under the new level of funding. The department expects that there will be 17 new schools in the near future, based on what the department has heard from school districts. That is the number of schools the state has applied for under the new funding by the federal government and for which the department expects to hear approval by this July.

REPRESENTATIVE GATTO commented that he had heard Horizon was trying to start up over a year ago. The school board told them they were a little premature; normally it takes a year, and now the year is over. He asked Mr. Sweeney if this means that Horizon will now have to wait another year.

MR. SWEENEY responded that he is not certain, but thinks Horizon will be starting in 2003. He explained that the way the process works is that a charter school goes through the local school district, and then the application comes to the Department of Education and Early Development for approval. The local school district is where a lot of the investigation and review of the charter school's plan is done. By the time the application comes to the state, the local district has already approved it. He commented that Horizon may have had some challenges at the local district that he would be unaware of.

Number 2228

REPRESENTATIVE GATTO responded that Mr. Sweeney had mentioned Horizon as one of the four schools that would be covered under the new federal money.

MR. SWEENEY replied that is correct. He believes Horizon opens next fall; however, he is not sure when it opens, but he knows that Horizon is identified as one of the new schools. In fact, he believes Horizon was just approved at the last state board meeting, so it will get the new funding through the federal government.

CHAIR WILSON asked in what school districts the charter schools are located.

MR. SWEENEY responded that he does not know.

REPRESENTATIVE GATTO asked Mr. Sweeney if the state can expect many more charter schools, to the point where charter schools would take a significant number of students from traditional public schools.

MR. SWEENEY replied that in the past, federal grant funding for 15 charter schools was \$2.5 million, and now the state is looking at getting \$10.5 million for upcoming charter schools. It is something the U.S. Department of Education is pushing, and the state anticipates that there will be a lot of applications statewide.

REPRESENTATIVE GATTO asked if he knows the failure rate of charter schools.

MR. SWEENEY responded that he does not know.

Number 2325

REPRESENTATIVE SEATON moved to report HB 171 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 171 was reported from the House Health, Education and Social Services Standing Committee.

**ADJOURNMENT**

**TAPE 03-31, SIDE B**

Number 2306

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 3:50 p.m.