ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 21, 2005
1:29 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 67(JUD)(efd fld)
"An Act relating to claims for personal injury or wrongful death against health care providers."

- MOVED HCS CSSB 67(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 67
SHORT TITLE: CLAIMS AGAINST HEALTH CARE PROVIDERS
SPONSOR(S): SENATOR(S) SEEKINS

01/21/05	(S)	READ THE FIRST TIME - REFERRALS
01/21/05	(S)	L&C, JUD
02/08/05	(S)	L&C AT 1:30 PM BELTZ 211
02/08/05	(S)	Heard & Held
02/08/05	(S)	MINUTE(L&C)
03/01/05	(S)	L&C AT 1:30 PM BELTZ 211
03/01/05	(S)	Moved SB 67 Out of Committee
03/01/05	(S)	MINUTE(L&C)
03/02/05	(S)	L&C RPT 3DP 1DNP
03/02/05	(S)	DP: BUNDE, SEEKINS, STEVENS B
03/02/05	(S)	DNP: ELLIS
03/08/05	(S)	JUD AT 8:30 AM BUTROVICH 205
03/08/05	(S)	Heard & Held
03/08/05	(S)	MINUTE(JUD)

03/17/05	(S)	JUD AT 8:30 AM BUTROVICH 205
03/17/05	(S)	Heard & Held
03/17/05	(S)	MINUTE(JUD)
03/22/05	(S)	JUD AT 8:30 AM BUTROVICH 205
03/22/05	(S)	Heard & Held
03/22/05	(S)	MINUTE(JUD)
03/29/05	(S)	JUD AT 10:30 AM BUTROVICH 205
03/29/05	(S)	Moved CSSB 67(JUD) Out of Committee
03/29/05	(S)	MINUTE(JUD)
03/29/05	(S)	JUD RPT 2DP 1DNP 1NR 1AM
03/29/05	(S)	DP: SEEKINS, HUGGINS
03/29/05	(S)	DNP: FRENCH
03/29/05	(S)	NR: THERRIAULT
03/29/05	(S)	AM: GUESS
03/30/05	(S)	CORRECTED JUD RPT W/CS SAME TITLE
04/13/05	(S)	TRANSMITTED TO (H)
04/13/05	(S)	VERSION: CSSB 67(JUD)(EFD FLD)
04/14/05	(H)	READ THE FIRST TIME - REFERRALS
04/14/05	(H)	JUD, FIN
04/19/05	(H)	JUD AT 1:00 PM CAPITOL 120
04/19/05	(H)	Heard & Held
04/19/05	(H)	MINUTE(JUD)
04/20/05	(H)	JUD AT 1:00 PM CAPITOL 120
04/20/05	(H)	Meeting Postponed to 4/21
04/21/05	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR RALPH SEEKINS
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 67.

THOMAS O'BRIEN
North Pole, Alaska
POSITION STATEMENT: Testified in opposition to SB 67.

GAIL VOIGTLANDER, Chief Assistant Attorney General - Statewide Section Supervisor
Torts and Worker's Compensation Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Provided comments regarding a proposed amendment to SB 67, and responded to questions.

JAMES JORDAN, Executive Director

Alaska State Medical Association (ASMA)
Anchorage, Alaska
POSITION STATEMENT: During discussion of SB 67, relayed that the ASMA urges the committee to support the bill, and responded to questions.

BRENDA ARNEY (ph)
(Address not provided)
POSITION STATEMENT: During discussion of SB 67, provided comments regarding her personal experience and responded to questions.

TERRY SMITH (ph)
(Address not provided)
POSITION STATEMENT: Provided comments during discussion of SB 67.

DENISE MORRIS, President and Chief Executive Officer (CEO)
Alaska Native Justice Center, Inc. (ANJC)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of SB 67.

RICHARD LOUIE
Anchorage, Alaska
POSITION STATEMENT: During discussion of SB 67, provided comments regarding his personal experience, and asked the committee to vote "No" on the bill.

MARGARET LOUIE
Anchorage, Alaska
POSITION STATEMENT: During discussion of SB 67, provided comments regarding her and her husband's personal experience, and asked the committee to vote "No" on the bill.

LESTER K. SYREN, Attorney at Law
Syren Law Offices
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to SB 67.

TIM DOOLEY
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of SB 67.

RAY RICHARD BROWN, Attorney at Law
Dillon & Findley, PC

Anchorage, Alaska
POSITION STATEMENT: During discussion of SB 67, provided comments, urged the committee not to pass the bill, suggested other possible alternatives, and responded to questions.

BRIAN SLOCUM, Administrator
Tanana Valley Clinic
Fairbanks, Alaska
POSITION STATEMENT: Provided comments during discussion of SB 67 and responded to questions.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:29:12 PM. Representatives McGuire, Coghill, Kott, Dahlstrom, Gruenberg, and Gara were present at the call to order. Representative Anderson arrived as the meeting was in progress.

SB 67 - CLAIMS AGAINST HEALTH CARE PROVIDERS

1:29:25 PM

CHAIR McGUIRE announced that the only order of business would be CS FOR SENATE BILL NO. 67(JUD)(efd fld), "An Act relating to claims for personal injury or wrongful death against health care providers."

1:29:59 PM

SENATOR RALPH SEEKINS, Alaska State Legislature, sponsor of SB 67, suggested that the committee amend the bill such that it would apply to health care services provided by state or municipal agencies, and that the committee also consider instituting a two-tier system such that in addition to the proposed cap of $250,000 for non-economic damages in medical liability cases, there would also be a cap of $400,000 when such cases involve wrongful death or severe permanent physical impairment that is more than 70 percent disabling. He opined that the latter suggested change would result in adequate coverage for plaintiffs involved in more egregious cases, and indicated that such a change would be acceptable to members of the Senate. With regard to the former suggested change, he relayed that adoption of the amendment labeled 24-LS0393\FA.1, Crawford, 4/20/05, [which later become known as Amendment 1] would effect such a change; this amendment read:

Page 2, following line 18:
Insert "(2) "health care provider" has the meaning given in AS 09.55.560 and includes a state agency or municipality the health care services of which are the subject of an action that is subject to this section;"

Renumber the following paragraph accordingly.

1:34:43 PM

REPRESENTATIVE GARA asked whether any analysis has been done regarding whether changing the cap will make insurance more affordable or available.

SENATOR SEEKINS offered his understanding that when Texas instituted a $250,000 cap on non-economic damages, insurance rates in that state went down by 16-18 percent. He then remarked:

> No insurance company, no actuary, is going to say, "I guarantee that if you do this, you'll get that result." But the model is very clear, and so I would expect that if there was not a reduction, we may have the second best effect, which would be a freezing of those rates for a reasonable period of time. ...

1:36:13 PM

REPRESENTATIVE GARA pointed out, however, that the Texas example is quite disputed; additionally, Texas went from having astronomical jury verdicts with no cap to having a cap. This is much different than the situation in Alaska, he opined, because Alaska already has a cap, so he is not sure how relevant the Texas example really is. Furthermore, he noted, for a person with an 80-year lifespan, an award of $400,000 works out to be about $18 per day. Why would such an award be fair to someone who's "brain injured" or unable to walk or unable to hold his/her child?

SENATOR SEEKINS pointed out that there will always be examples of cases wherein such an award could be called "unfair." The alternative to instituting what he termed a reasonable cap, he predicted, is that of not being able to obtain reasonable healthcare; instituting a cap will allow insurance companies to know the limit of their risk.

REPRESENTATIVE ANDERSON remarked that although there is no guarantee that insurance rates will go down as a result of the passage of SB 67, it is his belief that passage of the bill will result in more physicians setting up practice in Alaska.

SENATOR SEEKINS concurred, adding that he believes instituting a cap will also decrease litigation costs. He then offered his understanding that the information regarding awards in Alaska during previous years indicates that most awards fall within the proposed $250,000 cap anyway. Statutorily setting a $250,000 cap will allow insurance companies to predict their exposure.

1:41:29 PM

REPRESENTATIVE GARA again pointed out, however, that there are already caps and so insurance companies can already predict their exposure. He suggested that instead of lowering the exiting cap as is proposed via SB 67, the legislature could simply remove the stipulation that an award of up to $2 million is available under certain circumstances; such a change would retain the current caps of $400,000 or $1 million if the case involved death or serious injury, and might satisfy is his concern that the bill's proposed caps are too low.

SENATOR SEEKINS said it is important to remember that SB 67 only addresses non-economic damage awards.

1:44:30 PM

THOMAS O'BRIEN said that as an alleged victim of malpractice, as an Alaskan citizen, and as a professional, he is opposed to SB 67. He said that as an anthropologist specializing in Alaska Native culture, he cannot see how the bill can be of benefit to, or in the best interest of, Alaska Natives. In mixed economies, those with a subsistence lifestyle or those with sporadic, seasonal sources of income will never qualify for economic damage awards, and so would be at a distinct disadvantage in medical liability cases. He went on to say:

> How in the world can we always place the interests of big business and special interest groups seemingly over that of just regular citizens such as myself and others who feel that we are in a void of fear and uncertainty. We have financial loss [and] our families are suffering; I have three children and a wife, [and] I don't know what my future will be. But I know that having legislation, callous and, I feel,

reckless legislation such as this - that's looking at the bottom line of a net profit statement at an insurance company - ... doesn't set well with me as an Alaskan.

And Alaskan to Alaskan, I'm asking you to please look in your hearts and place yourself in the position of people such as myself and others much actually worse off than myself, and realize that it will be very difficult to get representation with a cap such as is suggested in this bill. I can assure you, having been two and a half years into an injury [and] going out and seeking good representation, there are not the unscrupulous, ambulance-chasing attorneys our there. There is a hardcore set of professionals that will grill you, specifically, and they will ... play the devil's advocate about just what are the ramifications of trying to pursue a malpractice suit. And they will tell you in the hear and now, in this day, right now, how difficult it is in the state of Alaska to make that [case have] ... a positive outcome ... [for] a plaintiff. ...

1:48:19 PM

GAIL VOIGTLANDER, Chief Assistant Attorney General - Statewide Section Supervisor, Torts and Worker's Compensation Section, Civil Division (Anchorage), Department of Law (DOL), [referring to what later became known as Amendment 1,] said that this proposed amendment, which inserts a definition of healthcare provider, is necessary because the state has many lawsuits filed by correctional facility inmates who allege medical malpractice; therefore, adoption of the amendment would ensure that the bill's proposed caps also apply to any health care services provided by state or municipal agencies.

MS. VOIGTLANDER, in response to questions, noted that the language [in Amendment 1] is not confined to just the Department of Corrections (DOC); that AS 09.55.560, which is referenced in [Amendment 1], already includes hospitals and other organizations whose primary purpose is the delivery of health care; that children in state custody are not taken to state facilities for treatment and so their health care services are already covered under the bill; and that she could not comment regarding whether the bill would allow recovery from the state for its having chosen a particular health care provider to provide services to children in state custody.

MS. VOIGTLANDER, in response to further questions, said she has been with the Torts and Worker's Compensation Section of the DOL since 1987 or 1988, and that she would not be comfortable agreeing with the statement that the average award for medical malpractice claims against the state has been less than $100,000, particularly given that she can think of individual cases wherein the plaintiff was awarded more than that amount.

1:58:29 PM

JAMES JORDAN, Executive Director, Alaska State Medical Association (ASMA), relayed that the ASMA has already provided the committee with written testimony, and mentioned that USA Today recently reported on the projected national shortage of physicians, a shortage which, according to an alert issued by the Association of American Medical Colleges, appears to be particularly acute in the western states, states with which Alaska competes in recruiting physicians. In conclusion, he said that the ASMA urges the committee to support SB 67.

REPRESENTATIVE ANDERSON asked how many states have a cap comparable to what SB 67 is proposing.

MR. JORDAN offered his understanding that there are five or six; additionally, there are six states with a fewer number of doctors per capita than Alaska, the lowest of them being Idaho, which recently instituted a non-economic damages cap of $250,000. He noted that two of the insurance companies that stopped doing business in Alaska are still doing business in Idaho.

2:01:13 PM

REPRESENTATIVE GRUENBERG offered his recollection that Ohio had created a commission to come up with a solution to the health care crisis, that various groups were represented on that commission, and that the solution the commission came up with resulted in lower insurance premiums and more affordable medical care.

MR. JORDAN said his understanding is that the commission's solution did not result in lower insurance premiums but did result in increasing the availability of insurance, that it enticed more insurance companies to underwrite insurance in Ohio. In response to a further question, he opined that it would be a very good idea to establish a similar commission in

Alaska, though the goal at present should be to first stabilize the current situation and then look into what might be done towards effecting a long-term solution, for example, overall repair of the civil justice system.

2:03:38 PM

MR. JORDAN, in response to still further questions, said he's not received any assurances from the insurance industry that premium rates will be reduced if the bill passes, and has not received any indication that NORCAL Mutual Insurance Company ("NORCAL") is intending to stop providing insurance in Alaska.

REPRESENTATIVE GARA asked Mr. Jordan whether his organization is part of the advertisement campaign that is telling people that "we risk losing doctors in the state if we don't pass this bill."

MR. JORDAN said yes.

2:05:04 PM

REPRESENTATIVE GARA pointed out, though, that a report written by Legislative Legal and Research Services, based on information from the State Medical Board, indicates that the number of active doctors per capita in Alaska has roughly doubled in the last 15 years. That being the case, what is the basis for the advertisements that claim doctors are leaving the state, he asked.

MR. JORDAN suggested that perhaps the State Medical Board's information only reflects licensed physicians - not practicing physicians - whereas the database maintained by the ASMA reflects the number of physicians who are actually practicing in Alaska and does not include physicians who practice in other states but happen to have an Alaska state license. Remarking that it is common for physicians to obtain licensure in more than one state to practice, he also said that the ASMA has no motivation to underreport the number of physicians in its database.

2:09:11 PM

REPRESENTATIVE GARA explained that the State Medical Board has assured him that the information in its database reflects the number of physicians who are actually practicing in Alaska, and that, yes, that number has increased.

MR. JORDAN acknowledged that the number of physician who are practicing has been growing, but pointed out that according to the ASMA's database, there are 37 fewer practicing physicians this year than last year, though that decrease could simply reflect that the military physicians in the ASMA's database have been deployed out of state.

REPRESENTATIVE GARA asked Mr. Jordan if he would be willing to swear under oath, under penalty of perjury, that there are fewer physicians practicing in Alaska today than there were 10 years ago.

MR. JORDAN acknowledged that there are more physicians practicing now than there were 10 years ago, but pointed out that currently, not only is there is a shortage of physicians in Alaska, but there has not been a material improvement in the number of practicing physicians per capita.

REPRESENTATIVE GARA asked that the ASMA pull its support of the advertisements claiming that doctors are leaving Alaska, since, as has been acknowledged by Mr. Jordan, that is not actually happening.

2:12:03 PM

BRENDA ARNEY (ph) relayed her personal experience regarding her husband, who, mid-summer of 2003, was diagnosed as having a tumor in his lung. Her husband had surgery the following August at a local hospital in Anchorage, and they were told that all of the tumor had been removed and that her husband had a good chance of recovery. However, the hospital staff who were responsible for monitoring her husband after his surgery neglected to do so, and so while in a disoriented state, he left the hospital and was found wandering around the neighborhood. Her husband died three days later, she said, due to the hospital's negligence as well as the negligence of the health care providers.

MS. ARNEY said that although the hospital apologized, waived its bill, and changed its policy, she wants a jury - not the legislature, the hospital, the doctors, or the insurance company - to know the facts of her case and judge her loss. Because her husband was retired, his economic damages award in a medical malpractice lawsuit would be quite small. She went on to say:

> My pain and suffering since the loss of Bob really cannot be valued by anyone but me. Bob's agony, before his death, was horrendous. I trust to the judgment of a jury of mine and Bob's peers more than the legislature's, the insurance company's, or the doctors' valuing his life at $250,000. Bob was my best friend, he was my soul mate, and he was priceless to me. Having my non-economic damages limited at $250,000 is a slap in the face. The distress that I have experienced since losing Bob, especially in such a senseless and completely avoidable way, ... is something that will never leave me.

2:15:55 PM

REPRESENTATIVE GARA asked Ms. Arney whether she has filed a lawsuit or made a settlement demand to the hospital.

MS. ARNEY said she has retained attorneys but nothing have been settled yet.

REPRESENTATIVE GARA asked Ms. Arney whether she has yet received a settlement offer that she considers fair.

MS. ARNEY said her case has not progressed that far, adding that she is not seeking something of monetary value but rather is seeking answers from the medical professionals in her case, answers that include being more responsible for their actions. She said she has provided the committee with articles regarding this issue, and asked that the committee take the time to review those articles before making its decision on the bill. It is not just doctors, she noted, but hospitals as well that need to be more responsible for their actions.

MS. ARNEY, too, noted that none of the testimony thus far has indicated that passage of a cap such as SB 67 is proposing to institute will make a difference in insurance premiums, in whether more companies offer to underwrite medical malpractice insurance in Alaska, or in whether the number of doctors practicing in Alaska will increase. Passage of a cap on non-economic damages in medical malpractice cases could even make the current situation worse, she suggested, especially when that amount must be spread amongst all of the [plaintiff's attorneys and medical experts hired] in any given case.

2:18:12 PM

TERRY SMITH (ph) relayed that he has written Representative Coghill a letter expressing his concern regarding SB 67. He said he was injured on the job, and his employer's insurance company sent him to a doctor supposedly specializing in ailments of the hand and wrist even though his injuries involved his lower lumbar region. The doctor misdiagnosed his condition and left him in excruciating pain, he said, and as a result of that misdiagnosis, he now has taro (ph) cyst disease, wherein the now-present cysts on his lumbar discs fill up with spinal fluid and cause him pain when he walks.

MR. SMITH offered to send the doctor's curriculum vitae (CV) to the committee. He stated that it was unfair for the insurance company to send him to a doctor specializing in ailments of the wrist when he had an injury to his back, adding that he not been able to work since March 29, 2001, and can't get any help for his current condition. He characterized the bill as a bad bill and as a butchery; doctors will not be at all dissuaded from doing harm if the proposed cap is in place. He asked the committee to give serious consideration to the bill's ramifications. In conclusion, he mentioned that he is filing a lawsuit against the doctor, the insurance company, and the employer, all of whom, he indicated, are responsible for his current condition.

2:21:28 PM

DENISE MORRIS, President and Chief Executive Officer (CEO), Alaska Native Justice Center, Inc. (ANJC), said that the unintended but real effect of SB 67 is that it creates two classes of citizens: wage earners with quantifiable, earned income; and non-wage earners, which, as a group, can include homemakers who chose to stay home and take care of their families, minors who are pursuing their education, and many Alaska Natives who live a subsistence lifestyle. The societal contributions of these citizens will be undervalued. Alaska Natives residing in rural Alaska communities, which adhere to a traditional subsistence lifestyle, do not have traditional wages reported on a W-2 form. A whaling captain from Barrow or Point Hope or Little Diomede who supports an entire community but who has no economic factor will not be able to recover; therefore, that person's contribution is valued much lower because of an inability to demonstrate hard economic losses.

MS. MORRIS said that in sum, it makes little sense to carve out an exception in general state law to benefit a relatively small group of affluent tortfeasors - a group uniquely situated to

fully compensate those they injure, a group which has tremendous opportunity to cause harm. She said she strongly believes that SB 67 will adversely affect Alaska Natives across the state, and will provide little appreciable assistance to physicians. Most Alaska Natives receive medical service through the federal government, via the Indian Health Service. In essence, the Federal Tort Claims Act creates a David-versus-Goliath scenario; the plaintiff must find an attorney who is willing to take on a medical malpractice claim against a physician who is tendered defense by the United States government through the United States attorney general's office and all of the resources available to the federal government. These physicians do not pay for nor carry medical malpractice insurance.

MS. MORRIS pointed out that many citizens may not realize how difficult and expensive it is to bring a medical malpractice claim against a health care provider for negligence and breach of his/her duty of care to the patient. For many Alaskan Natives, if SB 67 passes, there will be no remedy available for them. Attorneys will not take a case against the United States government when [non-economic] damages are limited to $250,000 - it just will not happen. Alaska already has a cap on damages, which the Alaska legislature passed in 1997. And in this debate, she remarked, on one side there are trial lawyers, and on the other side there are physicians and health care providers, and in the middle there are citizens who have been injured. Those citizens have done nothing wrong; all they're looking for is a remedy. Everyone is concerned about the rising cost of health care; however, she added, she doesn't believe that limiting non-economic damages to $250,000 - via SB 67 - is the only solution that the state of Alaska can come up with.

2:25:33 PM

RICHARD LOUIE said he worked for 20 years at BP as a computer scientist and auditor. He asked his doctor about the risk [of an upcoming operation] but was not told [what those risks were]. Now he cannot work. He asked the committee to remember him and vote "No" on SB 67.

MARGARET LOUIE said her husband suffered extensive, permanent brain damage and is now paralyzed on his right side due to medical negligence. He husband can no longer read, write, or speak fluently, she relayed, and the lives she and her husband worked so hard to build are so dramatically changed as to be unrecognizable compared to the lives they were leading before the injury. She went on to say:

There is not a day that passes that Richard does not struggle, from the time he wakes up until he goes to bed. It's a labor for him to communicate, he struggles with curbs and steps; worse, he is now treated as slow and mentally defective. Non-economic losses and pain and suffering are terms that are cavalierly tossed around. You cannot imagine the loss of self esteem from not working at your lifelong career; at the loss of your education - wiped out due to a brain injury; the loss of your communication skills - vocabulary acquired over a lifetime; [and] the social isolation, including the loss of your friends, now reluctant to visit, because they miss their old friend and they can't bear to see what has happened to you.

How many of you think $250,000 is adequate for the suffering you will endure for even one of the many disabilities that Richard has suffered. Is this enough to make your life better over [the] ... course of a lifetime? Which, in our case, may be another 30 years. And what became of our legal battle for accountability? It was a steep uphill fight, for five years, and we never did get our day in court. Every attorney we spoke to, even the attorney who eventually tried to help us, ultimately all stopped due to the extraordinarily high cost of expert medical testimony - estimated to be $150,000. We were told every medical malpractice case must meet high burdens of proof; causation and a breach of the standard of care must be proven.

We have discovered that "standard of care" is quite broad and [that a breach of it is] tough to prove, especially in a small community. We have learned doctors are reluctant to testify against each other - [that] meaning, expert testimony is hard to secure and for us in Alaska, doctors have to come up from the Lower 48. Doctors charge from $1,500 to $15,000 per day for their expert testimony, excluding first class airfare, hotel, food, and rental car. We have nothing to gain by speaking before you today. I hope you will remember [that] the majority of your electorate ... [are] not wealthy doctors or insurance executives looking for ever higher profits, but ordinary, real people like us who look to you to protect us. Do you

> represent us and care about the true suffering of victims of medical malpractice? Please vote "No" on Senate Bill 67.

2:29:56 PM

LESTER K. SYREN, Attorney at Law, Syren Law Offices, after noting that he is a member in good standing of the Republican Party of Alaska, said that he is against SB 67, relayed that as an attorney, he has taken on a couple of medical malpractice cases, and reminded members that he'd testified on this same issue before during a previous legislature and provided a couple of examples, one wherein the patient had had a sponge left in her abdominal region, and another wherein the doctor removed a woman's uterus without realizing that his patient's problem stemmed from the fact that she was pregnant. Mr. Syren then offered the following as a quote from a Washington state newspaper article, written by republican Representative Gary Alexander, who in turn is purportedly relaying the thoughts of a friend of his:

> That Alaska, which has made major changes in its medical malpractice laws, is more appealing, and indicated seven other South Puget Sound doctors will leave our state as well.

MR. SYREN surmised that the author of the article is bemoaning the fact that doctors are leaving the state of Washington in favor of going to Alaska. He suggested that this means that republicans in other states are holding Alaska's current law up as an example of tort reform. Notwithstanding the argument that since most lawsuits result in a non-economic damages award in an amount less than the proposed $250,000 cap and so passage of it will not cause harm, he pointed out that since most non-economic awards are under the amount of the cap, the cap won't actually fix anything and doesn't have to anyway. Additionally, Mr. Syren indicated, since Mr. Jordan and the ASMA are lying about doctors leaving the state, perhaps the ASMA's claims about what the bill will accomplish are not credible either. In conclusion, Mr. Syren suggested that the bill be buried in a deep well someplace.

2:32:21 PM

TIM DOOLEY offered his understanding that SB 67 was originally brought forth as a means of reducing frivolous lawsuits, and so he doesn't understand how putting a cap on non-frivolous, non-

economic damage awards will further that goal, particularly given that the bill will institute a cap on the most important cases of all, those of the nun or elderly person, for example, who won't have the economic loss that an insurance executive or medical doctor would have. He suggested instead that a cap be placed on physicians' incomes or insurance executives' incomes, or that a cap be placed on the amount of time one must spend in the waiting room before being able to see a physician for two minutes.

MR. DOOLEY said that although he has heard that there is a shortage of doctors, while researching possible medical schools for his daughter, he has discovered that the American Medical Association (AMA) actually limits the number of people who can enter into medical school in order to keep incomes high for the doctors in existing practices. He offered his belief that insurance companies routinely "go in and out of" Alaska as well as every other state, adding that is seems that when either the insurance companies or the oil industry wants something from the state, they simply threaten to leave the state, and "somebody actually buys their baloney." He pointed out that if a doctor were to cut up Mark McGuire's baseball, which he said sold for over $3 million, the owner of that baseball would be able to recover more money for the damage of that baseball than Mr. Louie could recover under SB 67. That isn't right, he concluded.

RAY RICHARD BROWN, Attorney at Law, Dillon & Findley, PC, shared his belief that he has probably litigated, to completion, more medical malpractice cases than any other sitting attorney in Alaska, and therefore has a better perspective on the realities of what happens in a medical malpractice lawsuit than does Senator Seekins. Mr. Brown went on to say:

> We screen ... between 150 and 200 cases a year - we take between 5 and 7. We spend tens of thousands of dollars out of our own pocket to save [doctors] ... from getting sued. I have many friends that are doctors, we have a very high caliber of health care delivery in this state, but good doctors, even great doctors, like lawyers, make mistakes. This bill does absolutely nothing to curb insurance rates, to encourage doctors to come to this state, or to reduce ... health care delivery costs.
>
> Instead - let me be really clear about this, this isn't anecdotal, this isn't something I'm relying upon

from reading a book or a textbook or some self-serving publication - if this bill is passed, there will be people in this state - single, stay-at-home parents, or stay at home parents that are married for that matter; [and] children, who I represent, and I'll give you some examples in a minute, not one or two but several - ... that die, that are mangled, that are disfigured, that will have no recourse. And I don't care if it's [$250,000] or $400,000 - these magical numbers that people are pulling out - these are ... [real] people, and these are people that will suffer because of a bill that will, absolutely, do nothing.

MR. BROWN continued:

I have a lot of suggestions for health care improvement, if you'd like to hear them - I can't provide them in three minutes - but I think they would be supported by the health care community. But this bill does nothing but punish people that have done nothing wrong. You want to go after lawyers, go after lawyers, and we will sit here; if you want to have us testify under oath, I'll testify under oath, [and] if I can bring billing records here to show how expensive it is to bring one of these cases and the scrutiny that we go through to bring one of these cases, I'll do it.

But you need to listen to cases like [Jennifer's], who was a [12-year-old girl from Tok]...: for the lack of $25, because her parents didn't have the money, she died of ... acute myelocytic leukemia - $25 and two stages of malpractice, this child died. With this cap - [$250,000] or $400,000 - we couldn't bring a claim for that child or her parents. Mike, another child in Fairbanks, died of entirely survivable burns through a calamity of errors in a health care facility - the child was medevaced to Seattle in [a] coma and he died after suffering two or three weeks. We couldn't have brought this case [under the proposed cap] - it would have been impossible. ... I'll give you one other example: a woman, ... [sexually] dysfunctional at ... 38 years old, that means no feeling from the waist to her mid thighs. [We] couldn't have brought this case. She can still work, so she doesn't have economic damages. ... Think ... how many ... males would give up their sexuality for $250,000; I don't know of any.

> Finally, [with regard to the argument] ... that this might reduce litigation because people are shooting for the stars, it's not true. Since 1993, when I first started doing these cases, I can tell you there's been less than five cases where health care providers have stepped up to the plate in the clearest and most gross of negligent circumstances and said, "I want to settle this case." To the contrary. The leukemia child, we spent over $200,000 in out-of-pocket costs in a case of clear-cut negligence before the case settled, and that's a fact. And lowering these caps will not do anything to help anybody - it will hurt some people who are the most vulnerable in our society. And I really urge you not to pass this out.

REPRESENTATIVE COGHILL asked Mr. Brown to describe other possible solutions.

MR. BROWN said Representative Gara's suggestion of retaining the current caps of $400,000 and $1 million would probably make cases such as those he used as examples litigable. He added:

> It's really difficult for me because these are real people, and so ... when a case comes in, I don't want to ... [pick] a number and say, "This is what I think your child's life was worth," but I do know the realities of the cost of the litigation, and ... [Representative Gara's suggested bifurcated cap] would probably make this bill palatable, and it would probably allow people to bring claims that would be economically feasible for the family.

MR. BROWN, in response to another question, offered the following:

> If you're a 5-year-old or a 7-year-old child, or a baby, or a 12-year-old without any work history, here's the way it works in our system. ... The child's been killed ... - and I don't mean "killed" in a pejorative way; again, the doctors who committed this negligence were very good doctors and they were very sorry it happened - so they didn't "kill" this child, they were just negligent. But you start out with a projection, ... with a proposition that this child may and probably will graduate with a four-year degree,

and then you try to come up with a parameter of what that child would have made in their lifetime and then you subtract from that what they would have consumed.

There are lawyers that come up with experts that suggest that that can be [$300,000] or $400,000, [but] most credible economists that I've worked with - and I work with conservative, reputable economists - value that at somewhere between [$250,000] and $300,000. Again, it depends on the child ... [but the economic loss] is a very small amount if you can establish that amount. [For] stay-at-home mothers there's no projection for their wages because they don't work, and you can't value their services as a mom. Retirees, who have no income ..., they have no economic loss and they don't have any other special damages. ...

[So in the Arney case, he had] no economic loss, so ... under this bill, $250,000 would be it, and that is in a case where the allegation is very egregious negligence against a health care provider. To bring that case, unfortunately, would cost between [$80,000] and $125,000 in out-of-pocket costs. Then you take [attorney] fees off of that. Even if [attorney] fees are negotiated - which we do, on a regular basis, sometimes to make [a] case settle - you can't bring the case, and you can't expose that person to Rule 82 and Rule 79 [of the Alaska Rules of Civil Procedure] with the chance that you would loose.

And it's a very real cost for retirees that have been able to put aside $100,000 in a [retirement account], and then if they lose this case they lose [that money] to NORCAL or [Medical Insurance Exchange of California (MIEC)] or to "Providence Alaska." Those are things that you have to consider, and they are very real - they are not anecdotal - they are things that I deal with every single day.

2:42:44 PM

CHAIR McGUIRE asked Mr. Brown how often he has seen Rule 82 enforced against his clients in medical malpractice cases.

MR. BROWN said such has occurred on two occasions, attributing that low number to his firm's rigorous screening procedures, and

suggested that Rule 82 and Rule 79 ensure that only meritorious medical malpractice cases are brought forth. In response to a further question, he relayed that 95 percent of the cases he brings forth have resulted in a favorable disposition for the plaintiffs.

CHAIR McGUIRE offered her understanding that Rule 82 and Rule 79 are not applied very much.

MR. BROWN opined that SB 67 will do nothing to alter how often those rules are applied, and offered his belief that the low number of cases in which such rules are applied is attributable to the fact that clients are warned about those rules and have then chosen not to go forward with their case.

2:46:25 PM

MR. BROWN, in response to another question, relayed that his firm generally charges a contingency fee of 33.3 percent and advances all costs. So if a client never receives an award or a settlement, his firm receives nothing and is simply out those costs. He mentioned, though, that his firm sometimes charges a contingency fee of 40 percent, or a contingency fee that is bifurcated, or a reduced contingency fee, adding that he does not know of any lawyers or law firms that don't do that. His firm's main goal, he remarked, is [to help] the client.

MR. BROWN, in response to a further question, said that in catastrophic injury cases or death cases, he could not take the risk [of bringing forth a case] under the proposed cap, and nor could his client. He elaborated:

> Again, if I'm spending $200,000, which I've done several times, in these catastrophic cases, if you have a $400,000 cap or $250,000 cap, I would be advancing $200,000 out my own money, my firm's own money, with the chance of possibly getting a fee in the future. ... Let's say we reduced our fee to ... 25 percent of a $400,000 cap and we advance $200,000. That would be a $100,000 fee and, believe me, to get that case to that point, we would have multiple hundreds of hours if not well over 1,000 hours of attorney time and paralegal time to get it to that point. ...
>
> The client, then, after taking that risk, the firm, after taking that risk and after spending that money,

would get $100,000 for the loss of their child, to become sexually dysfunctional, to be crippled, to be blind. [We've] got a case right now where a woman's blind. That's not fair. So at some point it's got to be economically feasible.

If you want to talk about capping [attorney] fees, we should talk about that some day. I don't think it's a good idea for any number of reasons, but I would certainly entertain it. But you also would have to do the other side of the equations: [you've] got a cap the defense attorney's fees, [you've] got to cap their cost, you've got to make it a fair playing field. And I would be interested [in that], and I have a lot of respect for my colleagues on the defense bar.

The medical malpractice litigation [field] ... [for both] plaintiffs and defense [attorneys] is a very high caliber of practice. My colleagues that I defend cases against, I have the utmost respect for. And ... I haven't heard many of them coming in here to testify, but I suspect it's because they wouldn't want to testify about a bill that could affect their economic viability in terms of testifying against a malpractice carrier. But it's a high practice of law; you don't get into medical malpractice unless you have a lot of experience and you're willing to litigate at a very high level. ...

2:51:24 PM

REPRESENTATIVE ANDERSON suggested that perhaps they could also cap physicians' salaries.

REPRESENTATIVE GRUENBERG asked whether, in cases wherein the judgment goes against the plaintiff, the defendants have sought costs and attorney fees.

MR. BROWN indicated that the defendants in the cases his plaintiffs lost have done so two or three times but only once at trial. More common, however, is for a plaintiff to forgo his/her case due to exposure to Rule 82 and Rule 79.

REPRESENTATIVE GRUENBERG asked whether, in cases wherein the judgment goes against the plaintiff, the defendants have not sought costs and attorney fees.

MR. BROWN said not that he is aware of.

2:54:45 PM

REPRESENTATIVE GARA asked what standard of negligence must be proven in order to [win] a medical malpractice case.

MR. BROWN said that the standard is ordinary negligence. He went on to say:

> But what we look for is more than ordinary negligence because of the difficulty in litigating these case. ... Basically we have to show, by a preponderance of the evidence, that [the behavior of] the health care provider - doctor, nurse, hospital, whoever was involved in the treatment - fell below the standard of care of a physician or health care provider trained in a similar ... or identical manner, and in a way that would fall outside the parameters of acceptable medical behavior under the circumstances. It's a very difficult standard. Of the 150 to 200 cases we screen a year, I can tell you, fortunately for the state of Alaska, over 95 or 96 percent are bad outcomes but good medicine, and unfortunately that's what happens - in the best of care there's bad outcomes.
>
> And [of] the other 5 percent, I would say 3 percent of those are bad medicine and a bad outcome but no damages. We don't take cases, for instance, if the damage threshold is under a certain amount. I don't bring those cases for two different reasons: ... economically, it's not feasible; philosophically, if ... a person has not been ... damaged or injured in a way that affects their life or in a way that they have really serious non-economic or economic losses, I won't bring those cases against a health care provider. And frankly, I don't [know] of any of my other colleagues that do. I'm sure there are examples that people could point to where it's happened, but, as a rule, we have a much higher threshold.
>
> Of those remaining 2 or 3 percent that have met our rigorous screening, and we do hours and hours of medical research on our own - we've done this long enough that I have a good idea of most parts of the body, enough to be neurotic at night when I go to bed - ... we then send them to an outside expert and pay

> that expert $1,500 [or] $2,500 [or] sometimes $4,000, and sometimes they disagree with us, and they call me and they say ..., "Mr. Brown, I've read this and I think it's a close call but I just can't support your theory" - we eat the money and we walk away. So it's ... very high scrutiny and it's a very high standard; even though ordinary negligence may be what it says, it's usually not enough to get you to a jury verdict.

REPRESENTATIVE GARA asked how much it costs to get medical experts to testify in medical malpractice cases.

MR. BROWN listed amounts of between $5,000 and $15,000 per day.

2:59:04 PM

REPRESENTATIVE GARA noted that the division of insurance has provided the committee with a report which shows that neither rates nor the availability of insurance have been affected since the last time the legislature adopted tort reform measures. He asked Mr. Brown to comment.

MR. BROWN pointed out that when those measures were being debated, representatives from the insurance industry did not promise that rates would go down; instead, they merely offered their belief that rates might go down. In response to another question, he said:

> There's a lot of medical malpractice insurance companies that have left [the state], and I'd be more than happy to explain to you and provide you, not anecdotal, but actual documentary evidence why they left the state of Alaska, but that really isn't in serious dispute. ... Get NORCAL and MIEC to explain why these carriers left the state: they left the state because they came here to try to make a bunch of money, the stock market was booming, they made terrible underwriting mistakes and tried to undercut MIEC and NORCAL, and they wrote bad policies - they left the state because of the stock market, not because of what they were paying out to victims of plaintiffs' awards.
>
> And so we've got two, very well-run, stable companies here today - NORCAL and MIEC. If you want insurance here, let's go back to [having a Medical Indemnity Corporation of Alaska (MICA)], let's get Roger Holms

(ph) back in here to run MICA, let's let the state fund it. And they made a lot of money, and it was because it was run right, it was run by somebody that knew what they were doing, and it was a good plan. You threaten to put MICA in here and let the state fund MICA, we won't hear a peep out of any malpractice insurance carrier. They will be asking you, as they did - as I understand it historically - to get MICA out of the way so that they can make money, as they're doing hand over fist right today. ... I'm obviously biased, [so] get the ... Division of Insurance in here [and] ask them what these companies are making.

MR. BROWN added that he would love to see MICA come into the state, that he thinks it would be a great idea, and that he would give it 100 percent of his support.

REPRESENTATIVE ANDERSON asked why hospitals and physicians are saying that passage of the bill will help the current situation.

MR. BROWN said he would like to hear what their reasoning is himself, that he would like them to show him unbiased, empirical evidence that passage of the bill will, indeed, help the current situation. When he is given such evidence, he remarked, he will analyze it and attempt to determine whether it is accurate evidence. He pointed out that he has already looked at all the data, that he has already compiled all the statistical information available from the insurance companies, and has already performed an empirical analysis of that information; his conclusion is that passage of the bill won't bring down insurance rates or increase the availability of insurance.

REPRESENTATIVE ANDERSON asked why, then, have six states adopted a similar cap.

MR. BROWN suggested to Representative Anderson that he pose that question to the governing bodies of those states, and posited that part of the reply will be that the cap did not help. In response to a question, he said he was surprised to hear the sponsor's testimony regarding Texas, and relayed that he would be researching the statistics that were offered further because he does not believe that they can be true. He again opined that passage of the bill will not impact insurance rates in Alaska and will thus have no impact on whether more doctors are attracted to the state.

3:05:20 PM

BRIAN SLOCUM, Administrator, Tanana Valley Clinic, relayed that the cost of medical malpractice insurance for their group rose from $258,000 in 2004, to $648,000 in 2005 - an increase of $390,000 in one year, or an increase of 251 percent. This is not a cost increase that anyone can hope to sustain in the long term, he pointed out, and relayed that in the six years he has been with the Tanana Valley Clinic, they have only had two minor malpractice settlements out of court. Now this higher malpractice cost is added to other rising costs and decreasing reimbursement when it comes to making decisions about coming to Alaska. He mentioned that the Tanana Valley Clinic has successfully recruited one physician each in the fields of internal medicine and obstetrics in the past five years.

[Chair McGuire turned the gavel over to Representative Anderson.]

MR. SLOCUM offered an example of an obstetrician in Wisconsin who refused an interview offer with the Tanana Valley Clinic when she found out that her medical malpractice insurance rates would increase by $20,000 if she were to accept a job in Alaska. Such an increase over a 10-year span amounts to a loss of $200,000 for the doctor. He concluded by characterizing the current situation as a crisis, adding his belief that although passage of the bill may not solve all of the current problems, it is a step in the right direction.

3:09:37 PM

REPRESENTATIVE COGHILL asked Mr. Slocum whether any doctors at the Tanana Valley Clinic have recently left because of medical malpractice insurance rate increases.

[Representative Anderson returned the gavel to Chair McGuire.]

MR. SLOCUM said that the Tanana Valley Clinic does experience a certain amount of turnover every year, but he cannot say whether physicians have left simply because of insurance rate increases.

REPRESENTATIVE GARA asked how many doctors are currently practicing at the Tanana Valley Clinic.

MR. SLOCUM said 26 physicians and 15 "other midlevel providers."

REPRESENTATIVE GARA pointed out that the insurance rates that the Tanana Valley Clinic is currently paying averages about

$20,000 per doctor. Therefore, he asked, how could the insurance rates of the Wisconsin obstetrician who refused an interview with the Tanana Valley Clinic increase by $20,000 were she to accept a job in Alaska. Wouldn't that require the Wisconsin obstetrician to be currently getting her medical malpractice insurance for free?

MR. SLOCUM pointed out that the insurance rates being paid by the Tanana Valley Clinic are not split evenly among all of its physicians; rather, those with certain specialties pay more to begin with.

3:11:25 PM

REPRESENTATIVE GARA asked Mr. Slocum to explain why he believes that passage of the proposed cap will cause insurance premiums to go down, particularly since the Tanana Valley Clinic's insurance premiums have gone up even though there haven't been any malpractice verdicts against its doctors.

MR. SLOCUM surmised that the Tanana Valley Clinic's premiums have gone up because they are not based solely upon the performance of its doctors; rather, those rates are based upon the performance of doctors across the state and the insurance company's estimated losses.

3:13:03 PM

REPRESENTATIVE GARA asked Mr. Slocum whether he would be amenable to having a provision in the bill which said that if insurance rates do not decrease after passage of the proposed cap, then the proposed cap will sunset.

MR. SLOCUM opined that such a provision would not be practicable.

3:13:57 PM

REPRESENTATIVE KOTT noted that the AMA maintains a list of those states that are "in crisis," and that Alaska is not on that list. He asked for an explanation.

MR. SLOCUM said he wasn't sure why that is the case, but went on to suggest that perhaps when the state is looked at as a whole and compared with the rest of the nation, there isn't a crisis, even though there is a crisis in certain areas of Alaska.

3:15:04 PM
REPRESENTATIVE GARA referred to an article he'd read that indicated that one doctor was moving to Alaska because not only were malpractice insurance rates lower than where he currently resides but Alaska doesn't have a state tax on personal income.

MR. SLOCUM said the Tanana Valley Clinic would welcome any such doctors.

3:16:40 PM

CHAIR McGUIRE closed public testimony.

REPRESENTATIVE ANDERSON made a motion to adopt Amendment 1, which was labeled 24-LS0393\FA.1, Crawford, 4/20/05 [text provided previously].

REPRESENTATIVE GRUENBERG objected, saying he sees no reason to immunize the government in this matter.

REPRESENTATIVE ANDERSON opined that Amendment 1 would make the bill consistent and provide parity.

REPRESENTATIVE GARA said he doesn't want to be in the habit taking people's rights away for no good reason.

CHAIR McGUIRE offered her belief that Amendment 1 provides parity for correctional facilities.

REPRESENTATIVE GRUENBERG pointed out, however, that governmental health care providers haven't any difficulty obtaining or affording insurance and thus there is no reason to include such providers in the bill.

3:20:27 PM

A roll call vote was taken. Representatives McGuire, Anderson, Coghill, Kott, and Dahlstrom voted in favor of Amendment 1. Representatives Gruenberg and Gara voted against it. Therefore, Amendment 1 was adopted by a vote of 5-2.

REPRESENTATIVE ANDERSON made a motion to adopt Amendment 2, which read [original punctuation provided though some formatting changes were made]:

AS 09.55.549 is amended as follows.

(d) Except as provided in (e) of this section, the damages awarded by a court or a jury under (c) of this section for all claims including a loss of consortium claim or other derivative claim arising out of a single injury or death may not exceed $250,000 regardless of the number of health care providers against whom the claim is asserted or the number of separate claims or causes of action brought with respect to the injury or death.

(e) The damages awarded by a court or jury under (c) of this section for all claims including a loss of consortium claim or other derivative claim arising out of a single injury or death may not exceed $400,000 regardless of the number of health care providers against whom the claim is asserted or the number of separate claims or causes of action brought with respect to the injury or death when damages are awarded for wrongful death or severe permanent physical impairment which is more than (70%) disabling.

Existing paragraphs (e) and (f) are renumbered to (f) and (g).

REPRESENTATIVE GRUENBERG objected.

REPRESENTATIVE KOTT indicated that he is unable to find information in his packet indicating that any other state has established a similar two-tiered system.

SENATOR SEEKINS offered his belief that West Virginia at least has a similar system in place.

REPRESENTATIVE KOTT pointed out, though, that in order to qualify for such a cap, physicians in West Virginia are required to carry medical malpractice insurance in the amount of $1 million.

SENATOR SEEKINS offered his belief that very few physicians in Alaska don't carry medical malpractice insurance.

REPRESENTATIVE ANDERSON indicated that he not willing to go higher than a $400,000 cap.

REPRESENTATIVE GARA asked whether, if the information in members' packets indicates that 22 states currently have a cap

on non-economic damage awards in medical malpractice litigation, that mean that 28 states currently let victims recover full damages.

SENATOR SEEKINS said he is unable to answer that question. In response to a further question, he outlined, from information in members' packets, the caps that some other states currently have, and noted that still other states are looking at whether to institute a cap similar to what is being proposed via SB 67.

REPRESENTATIVE GARA mentioned that they have not yet done a study to determine what physicians in Alaska would consider to be an acceptable cost for malpractice insurance, and asked Senator Seekins about the possibility of having the proposed caps apply only to cases involving doctors whose insurance companies do not charge them above that to-be-determined acceptable amount.

SENATOR SEEKINS pointed out, however, that both of the insurance companies that underwrite medical malpractice insurance in Alaska are "mutual" companies and are not gouging their own members.

3:28:18 PM

A roll call vote was taken. Representatives McGuire, Anderson, Coghill, Kott, Dahlstrom, and Gara voted in favor of Amendment 2. Representative Gruenberg voted against it. Therefore, Amendment 2 was adopted by a vote of 6-1.

3:28:55 PM

REPRESENTATIVE KOTT made a motion to adopt Conceptual Amendment 3, to [annually] adjust the amounts of the proposed caps to reflect the rate of inflation.

REPRESENTATIVE ANDERSON objected.

SENATOR SEEKINS said he would prefer a hard cap.

CHAIR McGUIRE said that philosophically she opposes [Consumer Price Index (CPI) clauses. Instead, she prefers that the legislature periodically review any monetary amounts listed in statute in order to determine their impact.

3:31:00 PM

REPRESENTATIVE GARA said he disagrees that California did the right thing in instituting a $250,000 cap in the late '70s or early '80s, and believes that the claims that doing so reduced medical malpractice insurance rates are unsupportable. Rather, those rates did not go down until California voters passed an initiative giving the commissioner of insurance the authority to reduce the amounts that insurance companies could charge for premiums. He indicated that were $250,000 in early '80s dollars to be adjusted for inflation, it would amount to over a $1 million in today's dollars. Therefore, any cap that is adopted in Alaska should be adjusted for inflation instead of simply telling people that they are worth less and less every year.

3:32:30 PM

A roll call vote was taken. Representatives Kott and Gara voted in favor of Conceptual Amendment 3. Representatives McGuire, Anderson, Coghill, Dahlstrom, and Gruenberg voted against it. Therefore, Conceptual Amendment 3 failed by a vote of 2-5.

REPRESENTATIVE GARA said he objects to the premise of the bill, that being that it will have an impact on insurance availability, adding, "I can't see how we can ... let this thing go through without having the ... director [of] the Division of Insurance here - at least Linda Hall can tell us how much money these insurance companies are making in Alaska."

CHAIR McGUIRE clarified that at her request, Ms. Hall, the director of the Division of Insurance, submitted a large packet of information to the committee and had been available earlier for questions.

REPRESENTATIVE GARA indicated a preference for having Ms. Hall speak directly to the committee, as well as a preference for hearing testimony from the State Medical Board.

REPRESENTATIVE ANDERSON moved to report [CSSB 67(JUD)(efd fld)], as amended, out of committee with individual recommendations and the accompanying zero fiscal notes.

REPRESENTATIVE GARA objected, and [made a motion to adopt] a further conceptual amendment.

CHAIR McGUIRE ruled that motion out of order.

REPRESENTATIVE GARA reiterated that he objected to the motion to report the bill from committee.

3:34:54 PM

A roll call vote was taken. Representatives McGuire, Anderson, Coghill, and Kott voted in favor of reporting [CSSB 67(JUD)(efd fld)], as amended, out of committee. Representatives Dahlstrom, Gruenberg, and Gara voted against it. Therefore, HCS CSSB 67(JUD) was reported from the House Judiciary Standing Committee by a vote of 4-3.

ADJOURNMENT

3:35:20 PM

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:35 p.m.