

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 27, 2006

2:03 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Peggy Wilson

COMMITTEE CALENDAR

HOUSE BILL NO. 439

"An Act relating to authorizing the state to join with other states entering into the Interstate Insurance Product Regulation Compact and authorizing the compact to supersede existing statutes by approving standards, rules, or other action under the terms of the compact."

- MOVED CSHB 439(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 442

"An Act relating to the validity of advance health care directives, individual health care instructions, and do not resuscitate orders; relating to the revocation of advance health care directives; relating to do not resuscitate orders; relating to resuscitative measures; relating to the liability of health care providers and institutions; relating to an individual's capacity for making health care decisions; and providing for an effective date."

- MOVED CSHB 442(JUD) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 32

Proposing an amendment to the section of the Constitution of the State of Alaska relating to marriage.

- BILL HEARING POSTPONED 3/29/06

HOUSE BILL NO. 325

"An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules of Criminal Procedure."

- BILL HEARING POSTPONED 3/29/06

PREVIOUS COMMITTEE ACTION

BILL: HB 439

SHORT TITLE: INSURANCE PRODUCT REGULATION COMPACT

SPONSOR(S): REPRESENTATIVE(S) COGHILL

02/10/06	(H)	READ THE FIRST TIME - REFERRALS
02/10/06	(H)	L&C, JUD
03/01/06	(H)	L&C AT 3:15 PM CAPITOL 17
03/01/06	(H)	Moved CSHB 439(L&C) Out of Committee
03/01/06	(H)	MINUTE(L&C)
03/03/06	(H)	L&C RPT CS(L&C) NT 3DP 3NR
03/03/06	(H)	DP: LYNN, ROKEBERG, KOTT;
03/03/06	(H)	NR: CRAWFORD, LEDOUX, GUTTENBERG
03/22/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/22/06	(H)	<Bill Hearing Postponed to 03/24/06>
03/24/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/24/06	(H)	Scheduled But Not Heard
03/27/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 442

SHORT TITLE: HEALTH CARE DECISIONS

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

02/10/06	(H)	READ THE FIRST TIME - REFERRALS
02/10/06	(H)	HES, JUD
02/21/06	(H)	HES AT 3:00 PM CAPITOL 106
02/21/06	(H)	Scheduled But Not Heard
02/23/06	(H)	HES AT 3:00 PM CAPITOL 106
02/23/06	(H)	Heard & Held
02/23/06	(H)	MINUTE(HES)
02/28/06	(H)	HES AT 3:00 PM CAPITOL 106
02/28/06	(H)	Moved CSHB 442(HES) Out of Committee
02/28/06	(H)	MINUTE(HES)
03/03/06	(H)	HES RPT CS(HES) NT 4DP 1NR
03/03/06	(H)	DP: SEATON, GARDNER, KOHRING, WILSON;
03/03/06	(H)	NR: CISSNA
03/24/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/24/06	(H)	Scheduled But Not Heard
03/27/06	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

LINDA HALL, Director
Division of Insurance
Department of Commerce, Community, & Economic Development
(DCCED)
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 439,
and responded to questions.

JOHN GEORGE, Lobbyist
for the American Council of Life Insurers (ACLI)
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 439,
and responded to questions.

JACQUELINE TUPOU, Staff
to Representative Bruce Weyhrauch
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 442 on behalf of the sponsor,
Representative Weyhrauch.

SHELLEY OWENS, Health Program Manager
Section of Injury Prevention & Emergency Medical Services
Division of Public Health
Department of Health and Social Services (DHSS)
POSITION STATEMENT: During discussion of HB 442, expressed
concerns about Section 5 and support for a proposed amendment.

JON S. DAWSON, Attorney at Law
Davis Wright Tremaine, LLP
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of
HB 442 on behalf of Providence Anchorage Anesthesia Medical
Group, P.C., and responded to questions.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing
Committee meeting to order at 2:03:17 PM. Representatives
McGuire, Kott, Gara, Gruenberg, Anderson, and Coghill were
present at the call to order. Representative Wilson was
excused.

HB 439 - INSURANCE PRODUCT REGULATION COMPACT

2:03:49 PM

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 439, "An Act relating to authorizing the state to join with other states entering into the Interstate Insurance Product Regulation Compact and authorizing the compact to supersede existing statutes by approving standards, rules, or other action under the terms of the compact." [Before the committee was CSHB 439(L&C).]

REPRESENTATIVE COGHILL, speaking as the sponsor, explained that this legislation allows Alaska to enter into a compact in which states come together for the purposes of aligning some of the application procedures for life insurance annuities, disability income, and long-term care products. He related his understanding from a National Conference of Insurance Legislators (NCOIL) meeting that if states don't address this, the federal government will. Twenty-some states, he remarked, have already joined, but 26 states must come together before [the compact] becomes effective. The legislation creates a single point of filing for the states involved in the compact, which would benefit Alaska because it would merely have to be aware of and supportive of those standards. From the consumer's perspective, annuities and life insurance policies would be more portable across state lines. This legislation would give the compact some authority to [establish] the uniform standards with which the state would have to comply. He specified that the [compact] would define the products and the state would follow suit with those products.

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LINDA HALL, Director, Division of Insurance, Department of Commerce, Community, & Economic Development (DCCED), clarified that 21 states have passed the proposed interstate compact. She referred to the "Speed to Market" initiative, which attempts to encourage [states] to find better ways to get products to the consumer. She pointed out that the model compact was developed by the National Association of Insurance Commissioners (NAIC) and was vetted for about four years with attorneys general around the country and insurance regulators. This vetting process was meant to ensure that the compact meets the laws of the various states entering the compact. Ms. Hall highlighted that entering into the proposed compact will hopefully fend off attempts at federal regulation of insurance. She opined that insurance should be regulated by the states, particularly when a state is the size of Alaska. She noted that consumers are able

to call her office daily with various complaints, and this wouldn't occur if the federal government were in charge of regulating insurance.

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MS. HALL then turned to the basic structure of the compact, which proposes to create a commission with a representative from each state in the compact; typically that representative would be a state's chief regulator. She explained that insurance products would have to be vetted by this commission and approved by two-thirds of the members of the commission to be adopted. The commission will also establish standards. She informed the committee that states can opt out of the standards in two ways: through legislative action or through regulation by the insurance regulator. She pointed out that the insurance regulator only has 10 days after the adoption of a standard to file notice that the state isn't going to adopt the particular standard. Ms. Hall reminded the committee that the commission becomes operational only if at least 26 states or 40 percent of the premium volume in the country join the compact. She explained that products covered are both individual and group life insurance, annuities, disability income [insurance], and long-term care [insurance].

MS. HALL explained that were the state to be part of the compact, filings could still be made to the Alaska Division of Insurance or through the commission. This attempts to streamline the process while maintaining standards. The standards the compact proposes to adopt appear to be more protective than the standards Alaska currently has. For example, for all products, there will be a minimum 10-day right to examine, and Alaska law doesn't require this. Also, although Alaska law specifies that [language pertaining to] products must not be ambiguous or misleading, the state doesn't have "readability" standards, nor does Alaska require a "no lapse" guarantee or have premium disclosure standards. In other words, the commission is attempting to provide stronger consumer protections than what Alaska has. Generally speaking, products filed in Alaska are fairly common across the country because it's more expensive for an insurance company to develop separate products for each state. She relayed that [the division] will accept higher standards than [current] statute requires, and the compact provides a mechanism for approval that is more streamlined; furthermore, the NCOIL and the National Conference of State Legislatures (NCSL) have adopted a motion to accept [the compact].

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REPRESENTATIVE GARA inquired as to what would prevent the commission from reducing an individual's rights regarding insurance contracts. He recalled that when he represented those who purchased disability policies, the insurance companies would find amazing ways not to pay on the disability.

MS. HALL opined that it would be difficult to pass weak standards, given that the commission will consist of regulators whose primary mission is consumer protection. She pointed out that the enforcement of the standards remains with each state's division of insurance, and the compact is merely a filing mechanism through which to obtain approval for particular products.

REPRESENTATIVE GARA inquired as to what would happen if language was included specifying that the division won't agree to standards that provide for a lesser level of protection and rights for policyholders than Alaska law would.

MS. HALL said that she didn't believe such additional language would result in anything negative. She then pointed out that the legislature has the opportunity to opt out of a particular standard, but that assumes that the legislature knows that the standard exists.

REPRESENTATIVE GRUENBERG asked whether there is an official interpretation of each section of the compact.

MS. HALL said that she hasn't seen any official commentary at this point, although she offered to provide Representative Gruenberg with the position papers and analysis by NAIC.

REPRESENTATIVE GRUENBERG offered his understanding that an interstate compact is a contract between states, which has a priority below federal law but above state law. He relayed his further understanding that these contracts can't be amended or withdrawn from except as specified in the contract.

2:20:39 PM

MS. HALL offered her understanding that HB 439 includes provisions allowing both for withdrawal from the compact and for non-participation in a particular standard.

REPRESENTATIVE GRUENBERG asked whether the compact can be amended.

REPRESENTATIVE COGHILL pointed out that the amendments to HB 439 thus far have not been to the text of the compact. He then relayed his belief that the state can make laws that it will enforce outside of this compact, and that the state won't give up that much sovereignty. Representative Coghill said he shares the [concern] that the state might wish to go in a different direction than the compact with regard to consumer protection.

MS. HALL, in response to a question, reiterated that the state regulatory agency has the ability to opt out of a standard proposed by the commission by giving notice within 10 days of the notice of the adoption of the standard. She also explained that [the commission] has been meeting and reviewing products for almost two years, and that once the commission is in force and operational, those proposed standards would have to be adopted by two-thirds of the directors on the commission. Ms. Hall pointed out that the standards being discussed will pertain to product filings.

REPRESENTATIVE GRUENBERG asked how notification will occur.

MS. HALL said she wasn't sure that the commission has adopted operating rules yet.

[2:26:41 PM](#)

REPRESENTATIVE GRUENBERG asked whether the notification by a state opting out has to be mailed within 10 days or received within 10 days.

MS. HALL pointed out that given that the state sits on the commission, the state representative would vote on the standard and thus would be aware of the situation and the upcoming vote. In response to questions, she reiterated that two-thirds of the members of the commission must approve [the standards]; that the number of members of the commission is dependent upon the number of states that join; and that at least 26 states must join for the commission to be operational. She went on to clarify that if 40 percent of the premium volume in the country joins the compact, the commission would be operational.

REPRESENTATIVE ANDERSON, speaking as the chair of the Labor & Workforce Development Committee of the NCSL, informed the committee that the NCSL endorsed this [compact]. He then turned

attention to page 13, line 20, which outlines the opt out provision. The provision includes language indicating that a compacting state can opt out when it determines that the standard "does not provide reasonable protections to the citizens of the State, given the conditions in the State". Therefore, Representative Anderson opined, Alaska isn't locked into anything, and HB 439 is a good step for Alaska.

REPRESENTATIVE COGHILL said that he didn't want to surrender the state's right to take care of its consumers. He posed a situation in a which an insurance agent/company saw a problem with the commission, and inquired as to how the legislature would come to know about it. He further inquired as to how the legislature would come to know if a consumer had a problem. The aforementioned will impact the language of the proposed conceptual amendment included in the committee packet; the proposed conceptual amendment read as follows:

The state shall not agree to rules promulgated by the commission that provide for a materially lower level of protection, or materially lesser rights than provided to Alaska policyholders and policy applicants than otherwise provided by Alaska law.

[2:34:08 PM](#)

JOHN GEORGE, Lobbyist for the American Council of Life Insurers (ACLI), said that essentially all of the life insurance companies in the U.S. are members of the ACLI. He informed the committee that the ACLI requested that this legislation be introduced because it's important consumer legislation and it makes it much easier for life insurance companies to do business and bring new products to market. As mentioned earlier, it makes sense for life insurance to be practically the same across the nation. This [compact] would allow life insurance companies to respond nationally and get new products to the market. Mr. George noted that the "escape clauses" were carefully written such that a state can opt out of a specific [standard]. He further noted that the life insurance industry will be policing [the commission] because it wants a uniformly high quality standard. Given that all the states vote on [the standards], he assured the committee that there will be good standards.

REPRESENTATIVE GRUENBERG posed a hypothetical situation in which [compact commissioners] from around the country meet and are "wined and dined and lobbied to death" by a particular company that wants product "X." He asked if it would make it somewhat

more difficult for consumers to protect themselves if product "X" wasn't good for consumers.

MR. GEORGE opined that it would probably be easier today to wine and dine individual state insurance regulators today and obtain low standards in each state individually than it would to get low standards passed through the compact.

REPRESENTATIVE GARA offered his understanding that Ms. Hall has no objections to the proposed conceptual amendment as long as Legislative Legal and Research Services makes it work within the context of the legislation.

MR. GEORGE, in response to a question, said that he doesn't have a problem with the proposed conceptual amendment so long as it doesn't void the compact. He acknowledged that everyone wants good protection for the public.

[2:38:34 PM](#)

REPRESENTATIVE COGHILL mentioned that he doesn't want lesser standards or less consumer protection, and opined that it's probably good policy if the language in the proposed conceptual amendment makes "them" come back to the legislature. He suggested his understanding that as it won't void the compact and proposes a high hurdle, he wouldn't object to the proposed conceptual amendment, because he agrees with the concept of it.

REPRESENTATIVE ANDERSON objected to the proposed conceptual amendment, and stated that the matter could be addressed on the House floor. He opined that there could be a loophole in the proposed conceptual amendment wherein someone could continually challenge and make the compact ineffective. He relayed his preference to have Legislative Legal and Research Services research the matter and provide a memorandum, and that they leave any [necessary] amendment for the House floor.

REPRESENTATIVE COGHILL concurred and offered to work with Representative Gara on that issue.

CHAIR MCGUIRE posited that typically there's standard pro forma language included in a compact. She expressed concern that the proposed conceptual amendment is a bit vague, and questioned whether any difference in its language from the compact's language would [void] the compact.

MR. GEORGE suggested that rather than modifying the compact, the regulator could simply be given instructions to specify when the state should opt out of a standard.

REPRESENTATIVE GARA clarified that is what he meant to accomplish with the proposed conceptual amendment.

REPRESENTATIVE ANDERSON inquired as to whether it would be possible to get a memorandum from Legislative Legal and Research Services regarding the appeal process.

REPRESENTATIVE COGHILL said he would rather have any amending language drafted by Legislative Legal and Research Services.

REPRESENTATIVE GARA announced that he wouldn't offer the proposed conceptual amendment, and will work with Representative Coghill on the legislation. He suggested that perhaps [the commission] could be required to send the legislature notification that a particular standard has been adopted so that the legislature would know that it would have to introduce legislation to address the situation.

CHAIR McGUIRE and REPRESENTATIVE COGHILL indicated agreement with that suggestion.

[2:44:57 PM](#)

CHAIR McGUIRE, upon determining no one else wished to testify, closed public testimony on HB 439.

REPRESENTATIVE ANDERSON announced that committee staff will contact Legislative Legal and Research Services to assess the state and legislature's liability and the state's attachment to the compact.

REPRESENTATIVE ANDERSON moved to report CSHB 439(L&C) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 439(L&C) was reported from the House Judiciary Standing Committee.

HB 442 - HEALTH CARE DECISIONS

[2:46:18 PM](#)

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 442, "An Act relating to the validity of advance health care directives, individual health care

instructions, and do not resuscitate orders; relating to the revocation of advance health care directives; relating to do not resuscitate orders; relating to resuscitative measures; relating to the liability of health care providers and institutions; relating to an individual's capacity for making health care decisions; and providing for an effective date." [Before the committee was CSHB 442(HES).]

[2:46:39 PM](#)

JACQUELINE TUPOU, Staff to Representative Bruce Weyhrauch, Alaska State Legislature, sponsor, explained on behalf of Representative Weyhrauch that HB 442 makes minor changes to Alaska's Health Care Decisions Act, which was passed in 2004 with the goal of modernizing and improving Alaska's health care laws. Current law imposes a duty of investigation upon physicians who are carrying out the health care [directives of their patients], and HB 442 would conform the language in Alaska's Act to the language in the Uniform Health-Care Decisions Act, providing for the more appropriate standard of acting [with a good faith belief].

MS. TUPOU relayed that the bill also replaces the term "attending physician" with the term "physician" because according to the doctors that the sponsor contacted, the former term is not used much any more; this will clarify the sponsor's intent that all of a patient's physicians should honor the patient's healthcare directives. Furthermore, the bill clarifies when cardiopulmonary resuscitation (CPR) can be used, addresses the issue of the validity of orders from other jurisdictions, and indicates under what circumstances a "do not resuscitate" (DNR) order may be revoked. In conclusion, she characterized Alaska's Health Care Decisions Act as being immensely beneficial in helping terminally ill patients and their families and loved ones, and HB 442 as attempting to very narrowly address certain issues.

REPRESENTATIVE GARA referred to the language on page 4, lines 25-26, and asked what the addition of that language will do; that language read:

(C) because the patient is a woman of childbearing age and AS 13.52.055 applies;

MS. TUPOU offered her understanding that if there is a reasonable belief that a woman could be pregnant, under that language a physician could perform resuscitative measures on the

woman; this provision essentially addresses the issue of liability for a physician who undertakes such measures.

REPRESENTATIVE GARA said he is supportive of the bill, but is concerned about where the line is drawn between having a DNR order and withdrawing nutrition and other services, and going to the next step, which many call euthanasia. He asked for clarification regarding what a medical professional may do if a patient asks for help dying.

MS. TUPOU offered her understanding that in order to be granted a DNR order, one must have a qualifying terminal condition, and current law contains a definition of what would constitute a qualifying terminal condition.

CHAIR McGUIRE offered her understanding of the difference between euthanasia and a situation that could involve a DNR order.

MS. TUPOU, in response to questions regarding the language pertaining to a woman of childbearing years, indicated that a physician would have a duty to ascertain whether the woman is pregnant, and, if she is, regardless of what stage of her pregnancy she is in, the physician would at that point administer resuscitative measures.

[2:53:59 PM](#)

SHELLEY OWENS, Health Program Manager, Section of Injury Prevention & Emergency Medical Services, Division of Public Health, Department of Health and Social Services (DHSS), relayed that she administers the Comfort One Program and would be commenting on how Section 5 of HB 442 will impact emergency medical technicians (EMTs) and other emergency responders, and that members' packets contain a letter from section chief Tim Bundy. She offered her understanding that members' packets also contain an amendment by the sponsor that is intended to address the DHSS's concerns. She went on to say:

The Comfort One Program has been in effect for 10 years, and it provides a standard procedure for [emergency medical service (EMS)] responders outside of a hospital to identify and honor the wishes of a terminally ill patient not to be resuscitated when his or her heart stops. In order to obtain a DNR order, ... a patient must have a terminal condition or be in a state of permanent unconsciousness. The DNR order

must be signed by a doctor, and takes effect only at the time of cardiac arrest. If a DNR patient is choking on a piece of food, breaks a hip, or gets into a car accident, EMS personnel will treat them using standard medical procedures.

We're concerned about the use of the term "health care provider" in Section 5, ... and want to thank Representative Weyhrauch for preparing the amendment, which would cure our concerns. The [term] "Health care provider" is defined in [AS 13.52.390(23)] as "an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession". This term would include emergency trauma technicians [ETTs] who have only 40 hours of initial training in advanced first aid. Section 5 would authorize providers with limited medical training to override a physician's DNR order on the basis of a diagnosis which they are not medically trained to make. It wouldn't be possible to train emergency providers, such as an ETT, to diagnose if a person is dying of their terminal condition or as a result of the action of the health care provider.

I understand that a concern of the drafters is that if a DNR patient goes into cardiac arrest during surgery for a condition unrelated to the patient's terminal condition, a surgeon or anesthesiologist may want to resuscitate the patient; however, it's possible [the bill drafters] ... didn't anticipate the consequence to the pre-hospital medical providers and the Alaska Comfort One Program. There are over 4,000 emergency medical responders in Alaska, of which 75 percent are volunteers; they have only seconds to make immediate life and death decisions. They're the heart and backbone of our emergency response system in Alaska, but they aren't doctors and shouldn't be given the responsibility to revoke a doctor's DNR order. It wouldn't be fair to either them or the patient.

We would urge you to accept ... Representative Weyhrauch's amendment, and we would support the bill if this amendment is adopted. Thank you.

[2:57:30 PM](#)

REPRESENTATIVE ANDERSON indicated a willingness to offer the aforementioned amendment, labeled 24-LS1618\F.3, Bannister, 3/27/06 [later known as Amendment 1], which read:

Page 3, line 10, following "patient.":

Insert "This subsection does not apply when a health care provider performs emergency medical services to a patient in the field, unless an online physician orders the health care provider to perform cardiopulmonary resuscitation or other resuscitative measures. In this subsection,

(1) "health care provider" does not include a physician;

(2) "in the field" does not include in a health care facility, health care institution, hospital, or mental health facility;

(3) "online physician" means a physician who is immediately available in person or by radio or telephone, when medically appropriate, for communication of medical direction to health care providers."

REPRESENTATIVE GRUENBERG mentioned that Kenneth C. Kirk had written an article for the Alaska Law Review addressing [the Health Care Decisions Act] noting a number of deficiencies in the Act and suggesting [improvements]. For example, according to Mr. Kirk, there is a mis-reference to "conservatorship" when what is actually meant is "guardianship". He indicated a desire to provide members with a copy of that article.

[2:59:32 PM](#)

JON S. DAWSON, Attorney at Law, Davis Wright Tremaine, LLP, relayed that he represents Providence Anchorage Anesthesia Medical Group, P.C., a group of anesthesiologists that provide anesthesia services to [Providence Alaska Medical Center]. He said he wants to emphasize, "from a real world perspective," the importance of passing [HB 442]. Doctors want to honor the wishes of the patient, comply with the law, and avoid liability. Current statute speaks to a requirement that doctors "act reasonably"; in terms of advanced care directives and DNR orders, this means that doctors are required to investigate whether an order or directive is factually and legally supportable. This is particularly an issue when an order comes from out of state, and a doctor must determine whether an order or directive complies with the laws of the state from which it came; this isn't possible from a practical standpoint, and so

doctors are faced with either performing a procedure against the wishes of the patient, or exposing themselves to liability. He opined that [HB 442] does an excellent job of clarifying that "good faith" is what is required.

MR. DAWSON offered his understanding that [Section 5] will address situations involving someone with a terminal illness who is having some sort of procedure done in order to make his/her final months more comfortable. For example, if an elderly patient has fallen and broken a hip, it doesn't mean that doctors shouldn't treat the broken hip just because the patient is suffering from a terminal illness. Under current law, however, if an anesthesiologist were to administer too much anesthesia to such a patient during surgery, for example, the anesthesiologist would not be able to correct his/her mistake if the patient has a DNR order. "Presumably people who seek medical assistance, even when they have a DNR order, want that medical assistance to succeed, and if there is a mistake or if there is something else unrelated to that [terminal] condition that needs to be corrected, then it ought to be corrected; [Amendment 1] ... permits that to happen," he remarked, noting that [the bill] also provides some additional protection for a physician honoring a DNR order from being sued for malpractice.

[3:05:19 PM](#)

MR. DAWSON, in response to a question, relayed that he'd only read the parts of Mr. Kirk's article that pertained to his clients, and noted that the article contains case examples illustrating how nationally recognized cases would have fared under Alaska's Health Care Decisions Act.

REPRESENTATIVE COGHILL noted that [Amendment 1] says in part that a "'health care provider' does not include a physician", and asked why that language is included.

MR. DAWSON offered his understanding that [Amendment 1] is designed to prevent EMS personnel from being put in the position of having to exercise their discretion regarding DNR orders, but if one is actually a physician in the field, then he/she should have that discretion.

REPRESENTATIVE GRUENBERG asked whether the bill should contain a retroactive effective date, retroactive to the date that Alaska's Health Care Decisions Act was effective.

MR. DAWSON opined that such would be appropriate.

REPRESENTATIVE GRUENBERG remarked that when members have a chance to read Mr. Kirk's article, they may not want every provision of the bill to be retroactive.

CHAIR MCGUIRE asked Ms. Tupou whether the sponsor has had an opportunity to read Mr. Kirk's article and whether he's considered including any of Mr. Kirk's suggested changes.

MS. TUPOU relayed that the sponsor is familiar with Mr. Kirk's article and agrees with some of Mr. Kirk's points but not others, and that the sponsor would like to just address the issues now contained in the bill but may give future consideration to the other points raised in Mr. Kirk's article; therefore, the sponsor would not be amenable to any other amendments.

REPRESENTATIVE GRUENBERG pointed out, however, that Mr. Kirk's article addresses technical changes that could be in order.

MS. TUPOU reiterated that the sponsor has read that article.

The committee took an at-ease from 3:11 p.m. to 3:15 p.m.

[3:16:04 PM](#)

CHAIR MCGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 442.

CHAIR MCGUIRE made a motion to adopt Amendment 1 [text provided previously]. There being no objection, Amendment 1 was adopted.

[3:16:47 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2 to add a retroactive effective date clause effective as of the effective date of Alaska's Health Care Decisions Act.

REPRESENTATIVE KOTT sought clarification that such a clause would pertain to the whole bill.

REPRESENTATIVE GRUENBERG indicated that that is his intention.

CHAIR MCGUIRE asked whether there were any objections to Amendment 2. There being none, Amendment 2 was adopted.

[3:17:44 PM](#)

REPRESENTATIVE KOTT moved to report CSHB 442(HES), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 442(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:18 p.m.