

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 6, 2005

4:26 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

HOUSE BILL NO. 151

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

- MOVED CSHB 151(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 169

"An Act relating to the educational requirements for certain real estate brokers, associate brokers, and salespersons with new or suspended licenses; and allowing real estate brokers to hire certain experts to review real estate transactions; and providing for an effective date."

- MOVED CSHB 169(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 226

"An Act relating to breaches of security involving personal information; and relating to credit report security freezes."

- BILL HEARING POSTPONED

HOUSE BILL NO. 240

"An Act relating to brewery and brew pub licensing."

- BILL HEARING POSTPONED

HOUSE BILL NO. 180

"An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development, assigning certain Alaska Workers' Compensation Board functions to the division and the department, and authorizing the board to delegate administrative and enforcement duties to the division; establishing a Workers' Compensation Appeals Commission; providing for workers' compensation hearing officers in workers' compensation proceedings; relating to workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; relating to attorney fees; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; relating to the second injury fund; making conforming amendments; providing for a study and report by the medical services review committee; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 151

SHORT TITLE: RESPONSIBILITY FOR CARE AFTER EYE SURGERY
SPONSOR(S): LABOR & COMMERCE BY REQUEST

02/14/05 (H) READ THE FIRST TIME - REFERRALS
02/14/05 (H) HES, L&C
03/01/05 (H) HES AT 3:00 PM CAPITOL 106
03/01/05 (H) Scheduled But Not Heard
03/08/05 (H) HES AT 3:00 PM CAPITOL 106
03/08/05 (H) Heard & Held
03/08/05 (H) MINUTE(HES)
03/17/05 (H) HES AT 3:00 PM CAPITOL 106
03/17/05 (H) Moved CSHB 151(HES) Out of Committee
03/17/05 (H) MINUTE(HES)
03/18/05 (H) HES RPT CS(HES) 2DP 5DNP
03/18/05 (H) DP: ANDERSON, MCGUIRE;
03/18/05 (H) DNP: CISSNA, GARDNER, SEATON, KOHRING,
WILSON
04/06/05 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 169

SHORT TITLE: REAL ESTATE LICENSEES
SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

02/22/05 (H) READ THE FIRST TIME - REFERRALS
02/22/05 (H) L&C, FIN
04/06/05 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

JON BITTNER, Staff
for Representative Anderson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 151.

ERIC CHRISTIANSON, Optometrist
American Optometric Association
Ketchikan, Alaska
POSITION STATEMENT: Testified against HB 151.

DR. CARL ROSEN, Ophthalmologist
Alaska Eye Physicians and Surgeons
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 151.

DR. SHERYL LENTFER, Optometrist
Anchorage, Alaska

POSITION STATEMENT: Testified against HB 151.

DR. RANDY JOHNSTON, Senior Secretary for Advocacy
American Academy of Ophthalmology
Cheyenne, Wyoming

POSITION STATEMENT: Testified in support of HB 151.

BOB LOESCHER, Co-Chairman
Alaska Native Brotherhood
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 151.

DAVE FEEKEN, Industry Issues Legislative Chair
Alaska Association of Realtors
Kenai, Alaska

POSITION STATEMENT: Testified in support of HB 109.

PEGGY MCCONNOCHIE, Member
Key Industry Issues Workgroup,
Alaska Association of Realtors;
Education Chair,
Subcommittee of the Alaska Real Estate Commission
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 109.

BRAD FLETCH, Public Member
Alaska Real Estate Commission
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 109.

JERRY ROYSE, Member
Royse and Associates
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 109.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [4:26:34 PM](#). Representatives Anderson, Lynn, Rokeberg, and Crawford were present at the call to order. Representatives LeDoux and Guttenberg arrived as the meeting was in progress.

HB 151-RESPONSIBILITY FOR CARE AFTER EYE SURGERY

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 151, "An Act relating to provider

responsibility for ocular postoperative care; and providing for an effective date."

[4:27:42 PM](#)

JON BITTNER, Staff for Representative Anderson, Alaska State Legislature, related that on page 1, line 12, changes the minimum amount of time that an ophthalmologist had to be available to his or her patient from 120 hours to 48 hours. The change was made by the sponsor in response to testimony that 120 hours might be too much of a hardship on ophthalmologists. It was felt that 48 hours would be enough time to notice any major complications after surgery as well as being a reasonable amount of time to ask a doctor to stay in touch with his or her patient. He then stated that HB 151 outlines rules and restrictions regarding the delegation of postoperative care for eye surgery patients. He listed the provisional changes as the following [original punctuation provided]:

Section 1. Adds a new section to AS 08.64

Places limits on how and when a surgeon who performs eye surgery in this state may delegate responsibility to someone else for post-operative care of the patient

Mandates that a surgeon who performs the surgery must remain physically available to the patient for 48 hours

The doctor may delegate this responsibility if they arrange for another ophthalmologist to care for their patient for the 120 hours

- Defining the provisions of a co-management agreement.
- Outlines when a co-management agreement for postoperative care may be entered into.
- Maintains that any fees incurred as a result of a co-management agreement must reflect fair market value.
- Includes provision for disclosure of the co-management agreement to the patient

Section 2-3. Amends AS 08.64.370

Requires compliance with Sec. 1 of the bill by certain people who are exempt from licensing as physicians.

Section 4. Amends AS 08.64.380

Adds definition of "knowingly" which is a term used in sections 1 and 3 of the bill.

Section 5 and 7 Amends the uncodified law of the State of Alaska and adds an effective date. These sections allow the State Medical Board to begin the regulations process before the rest of the bill takes effect.

Section 6. Amends the uncodified law of the State of Alaska and applies the amendments made by the bill to eye surgery occurring on or after the effective date of Sections 1-4 of the bill.

MR. BITTNER then stated that the intent of this bill is to provide standards of care regarding co-management agreements for post-operative care of eye surgery patients. The sponsor of this bill feels that there is a certain minimum standard of care each and every Alaskan should expect after receiving eye surgery, which HB 151 ensures.

MR. BITTNER clarified that this bill in no way reflects poorly on the co-management system. [The sponsor] is not against the collaboration of ophthalmologists and optometrists when it is in the best interests of the patient. The legislation merely attempts to set certain limits on the co-management system to ensure that the patients' needs come first. He noted that Dr. Rosen was in the audience and would be able to answer the more technical questions.

[4:31:00 PM](#)

The committee took a brief at-ease.

ERIC CHRISTIANSON, Optometrist, American Optometric Association, stated for the record that he and the association are vehemently opposed to the legislation. He mentioned that he helped craft very similar legislation last year. Dr. Christianson emphasized that there is no precedent for legislation of this nature and it doesn't exist in any other state. Dr. Christianson said, "Optometrists in Alaska are state licensed to examine, diagnose, and treat conditions of the human eyes, employing methods they are educationally qualified to use, as established by the Optometry Board." Furthermore, co-management of pre- and postoperative care is already highly regulated under federal law. Dr. Christianson charged that HB 151 will reduce patient access to care, limit freedom of choice, and increase costs,

especially for rural patients. "There is no public health justification for this bill," he said. Dr. Christianson related that HB 151 doesn't directly impact him because he practices in Ketchikan where there isn't an ophthalmologist present all the time. Therefore, practically all of his patients requiring surgery must travel. This legislation covers the urban optometrists, who are no different than [those practicing in areas where there is no ophthalmologist]. The education an optometrist receives is very similar to that of a dentist and a family practice doctor. He opined that regular medical physician education in eye disease has diminished, and therefore he related that he sees practically every red eye in town.

DR. CHRISTIANSON specified that [the association] is opposed to HB 151 because clinical decision-making is being legislated. He related that when he chooses a surgeon to refer a patient, he chooses the surgeon based on clinical skill and the surgeon's judgment regarding when to release the patient to the optometrist. Dr. Christianson said that he didn't see the epidemiological evidence to support that optometrists are going beyond the scope [of their education/training].

REPRESENTATIVE LEDOUX related her understanding from Dr. Christianson's testimony and from others with which she has spoken that there is an exemption from HB 151 for those optometrists located in areas without an ophthalmologist. She asked where this exemption is located in the bill.

CHAIR ANDERSON pointed out that the language is located on page 2, lines 13-15.

DR. CHRISTIANSON highlighted that the language doesn't specify an optometrist.

[4:37:37 PM](#)

REPRESENTATIVE LEDOUX related her understanding from subsection (c) that a surgeon could only have a comanagement agreement with another ophthalmologist. Therefore, she interpreted subsection (d) to mean that [if the distance a patient would have to travel to the operating ophthalmologist is a hardship], the patient could only be referred to an ophthalmologist.

DR. CHRISTIANSON commented that this bill is poorly written and many angles from which one can attack it. Dr. Christianson opined that he doesn't believe HB 151 serves the public health of the patient. Furthermore, it calls into question the ability

of optometrists to do a procedure that they have been doing for 25 years and for which no real evidence of problems has occurred.

REPRESENTATIVE LEDOUX surmised that Dr. Christianson believes that with or without the exemption, HB 151 is bad bill.

DR. CHRISTIANSON stated that this bill is bad because it treats people who are in the city different than those in the rural areas. He characterized HB 151 as anti-patient and geared toward benefiting special interests. He highlighted that the committee was provided with studies illustrating that optometric comanagement of surgical cases has similar outcomes as those managed by the surgeons themselves.

REPRESENTATIVE ROKEBERG inquired as to the difference in cost between an optometrist and an ophthalmologist [for 48 hours of postoperative care].

[4:40:49 PM](#)

DR. CHRISTIANSON related that the most commonly performed procedures are usually covered by Medicare, and therefore Medicare specifies the charges. Optometrists can only charge 20 percent of the surgical fee, which means that the ophthalmologist has to reduce his or her fee by 20 percent to allow for payment to go to an optometrist. This is because the most common surgeries, such as cataract surgery, occurs with patients who are over 65 and thus is covered by Medicare.

REPRESENTATIVE ROKEBERG explained that his wife, who is retired and is not on Medicare, had cataract surgery this past summer. Therefore, he again inquired as to the cost of care differential.

DR. CHRISTIANSON said that he could not answer because he didn't know what ophthalmologists charge for cataract surgery, although he guessed optometrists would charge less than ophthalmologists.

REPRESENTATIVE LYNN asked how many ophthalmologists [from the Lower 48] perform cataract surgery in Alaska.

DR. CHRISTIANSON answered that there are two and they are members of one group.

REPRESENTATIVE LYNN asked how many ophthalmologists who are Alaskan residents perform surgery in Alaska.

4:42:40 PM

REPRESENTATIVE GUTTENBERG asked what would happen to a patient when during the 48 hours after the surgery the patient needed care that is outside the scope of what is allowed in the profession of an optometrist.

DR. CHRISTIANSON stated that there is a plan in place for such a situation. He stated that in his area, he would contact an emergency room physician as well as the surgeon who performed the cataract surgery and offer suggestions as to the course to take. If the situation occurred in Anchorage, the optometrist would consult with the ophthalmologist and the optometrist who works at the ophthalmologist's facility. He noted that the aforementioned optometrist is residency trained in postoperative care of patients. Some of these optometrists, like Paul Barney, have seen upwards of 30,000 one-day after surgical care visits with patients over the years. This figure, Dr. Christianson opined, would seem to be more patients than many ophthalmologists see for cataract surgery.

REPRESENTATIVE GUTTENBERG inquired as to how often Dr. Christianson has to refer a patient to whom he is providing postoperative care to the original ophthalmologist or someone else.

4:45:13 PM

DR. CHRISTIANSON answered that it rarely happens, although it would depend upon the surgery. He related that continual discussion and the patient returning multiple times are more technical surgeries, such as retinal detachment surgery. Dr. Christianson informed the committee that the surgeries that the ophthalmologist impacted by this legislation is cataract surgery and refractive surgery aren't systemically involved surgeries.

REPRESENTATIVE ROKEBERG surmised that this legislation, as a practical matter, wouldn't affect Dr. Christianson since there is not an ophthalmologist in his community.

DR. CHRISTIANSON, in response to Representative Rokeberg, explained that the concern is with a particular ophthalmologist who leaves patients in the care of an optometrist after only 48 hours. He questioned why there is a need to regulate this practice when in the eight years he was on the board there was not one instance or discussion with the medical board concerning

problems of patients receiving poor care [from an optometrist provide postoperative care].

4:47:12 PM

REPRESENTATIVE ROKEBERG concluded then that this isn't an issue of quality of care but rather one based on economic arguments.

DR. CHRISTIANSON agreed that this bill is based on cost of care arguments. He characterized HB 151 as legislation that detracts optometrists from focusing on the amplification bill. Furthermore, legislation similar to HB 151 has been attempted nationally in order to limit the comanagement for optometrists in order that [ophthalmologists] can take away care.

4:48:42 PM

DR. CHRISTIANSON offered an example in which an optometrist in Oklahoma can perform laser surgery after going through the same education and training to do so. An optometrist doing laser surgeries in a Veterans' Administration (VA) facility in Oklahoma. A local ophthalmologist charged that the aforementioned optometrist was providing improper care despite the fact that there was no epidemiological evidence. He explained that the aforementioned situation arose because optometry does their higher order residencies through the VA and doesn't receive funds for residencies from the Medicare while ophthalmology and other medical subspecialties do. He stated that if the higher order residencies performed at VA facilities are stopped, it stops optometry from moving forward.

4:49:43 PM

DR. CHRISTIANSON, in response to Representative Rokeberg, confirmed that a patient located in an urban with postoperative problems [beyond the scope of the optometrist] would be referred to an available surgical ophthalmologist.

CHAIR ANDERSON noted that as the Chair of the House Labor and Commerce Standing Committee he is the sponsor of HB 151 and "it rubs him wrong" when the optometrist said that HB 151 is an anti-business and anti-patient bill. He the asked why Providence Hospital, the Medical Board of Alaska, and ophthalmologists around the state and the nation support the bill.

DR. CHRISTIANSON said that all those supporting entities and individuals are physicians. Although he agreed that there is a difference of opinion, he reiterated the need bring forth the evidence to support the notion that optometrists are bringing forward inferior care. He specified, "You're taking something away that we have been doing for 25 years without problem."

CHAIR ANDERSON recalled Dr. Christianson's testimony stating that this legislation is an anomaly since similar legislation had not passed in other states. However, Chair Anderson recalled that several years ago similar legislation passed the Alaska State Legislature, but was ultimately vetoed by Governor Knowles.

DR. CHRISTIANSON clarified that the legislation which Chair Anderson recalled was the amplification legislation.

[4:51:54 PM](#)

REPRESENTATIVE LYNN inquired as to the meaning of the term "cataract mill" used in the sponsor statement.

CHAIR ANDERSON deferred to Dr. Rosen.

REPRESENTATIVE LYNN continued by stating that you mention this derogatory term in the new cover statement, but it isn't found in the older sponsor statement. He added that the inclusion of this statement must have some kind of significance.

CHAIR ANDERSON answered that it did, and then directed attention to the next witness.

DR. CARL ROSEN, Ophthalmologist, Alaska Eye Physicians and Surgeons, informed the committee that he is the only orbital and oculoplastic surgeon, and neuro-ophthalmologist specialist in the state of Alaska. Dr. Rosen stated that common sense would dictate that a surgeon physician, a graduate of medical school, should decide, after a discussion with the patient, who should have surgery. Further, the surgeon should obtain consent for the surgery and should follow the patient after surgery. However, the "opposition" would have everyone believe otherwise.

DR. ROSEN firmly stated that all [ophthalmologists] are asking is that once a surgeon operates on a patient, that the surgeon be available to the patient for 48 hours after the surgery, or have another similarly trained ophthalmologist take care of the patient during this time period when complications most often

occur. After that, he said, an optometrist can assume care. He then made it clear that rural areas are exempt. If it is necessary for a patient to be co-managed with an optometrist, that is fine with [ophthalmologists]. A comanaged arrangement with an optometrist can also work when there is a hardship issue or travel constraint by either the patient or the doctor. Dr. Rosen stressed that [ophthalmologists] aren't advocating eliminating comanagement. Although comanagement has been going on for years, it shouldn't be reflexive or routine. "That relationship ... has occurred ... because of a financial relationship that has been developed by some of these cataract mills. What we are trying to do is prevent further itinerant surgeons. And there are rumors flying around that more are coming because the business model that has been created works so effectively," he explained.

[4:54:29 PM](#)

DR. ROSEN stated that the Office of the Inspector General and Medicare never expected or intended comanagement to be done routinely. Originally, comanagement was intended to be used on a patient-by-patient basis in which the patient understood what was going on and this would only occur when the surgeon was not around. However, it's problematic to establish a situation in which the surgeon would simply show up for surgery, perform the surgery [with no follow up], and move on. This business model is relatively new, which explains why it has received a lot of interest recently.

[4:55:30 PM](#)

DR. ROSEN then turned to a situation in which a patient has a problem [after surgery]. He pointed out that optometrists don't carry a beeper that attaches them to a facility all day every day. Furthermore, an optometrist doesn't have privileges or the authority to walk into a hospital and see the patient. Therefore, when a patient of an itinerant surgeon has problems, the local ophthalmologist is beeped by the hospital. He commented that an itinerant surgeon who performs 100 cases a month is a phenomenal amount of cases. Dr. Rosen said that problems have occurred and one can find the epidemiological data if one digs deep enough. In fact, six months ago, Dr. Rosen said his beeper went off at 11:30 p.m., and he could not find the patient's optometrist. Therefore, he had to deal with the emergency room, see a patient who had never been to his facility, which is the largest practice in Alaska. Furthermore, he had to track down the surgeon, Dr. Ford, which was not easy.

4:56:58 PM

DR. ROSEN then said that this same practitioner, Dr. Ford, has failed to describe other complications that have occurred. With so many surgeries, he said that there are bound to be complications. He acknowledged that he isn't known as a cataract surgeon, but rather is known for facial reconstruction, tumors, cancers, plane wrecks, and bear maulings. [This being the case, he still had to cover the cases that were dropped by optometrists and other surgeons].

CHAIR ANDERSON informed the committee that Dr. Ford is a medical doctor who owns a practice [Pacific Cataract and Laser Institute] in Washington State. Dr. Ford works along side five other doctors who fly to Alaska to perform these surgeries.

DR. ROSEN agreed and said that's what he means by an itinerant surgeon. He pointed out that [Dr. Ford and his fellow ophthalmologists] have never taken "call" [called to the hospital by his beeper] in the state of Alaska, and they do not have privileges at Providence Hospital or Alaska Regional Hospital. However, the medical practitioners in Alaska do take call, which is a service for the people that is free and part of the medical care provided to the community. In so doing, it increases the liability of those [ophthalmologists] in Alaska and places more demand on his life. He noted that taking call is not required and he could decide to do what Dr. Ford does and not have any attachment to either Providence Hospital or Alaska Regional Hospital.

DR. ROSEN ended by stating that complications will occur, even to the best of surgeons. He offered [in referring to Dr. Ford] that when one performs 1,100 procedures, there will be more than three complications in a seven- to eight-year time period. He indicated that Dr. Ford failed to mention that there had been over 15 retinal detachments last year alone, which Dr. Rosen opined is a complication. In summary, Dr. Rosen characterized HB 151 as a good bill that will raise the standard of care for Alaskans.

4:59:42 PM

CHAIR ANDERSON informed the committee that there is a conceptual amendment to page 2, line 4, following "ophthalmologist", insert "or optometrist". Such a change should address the concern over communities.

5:00:04 PM

REPRESENTATIVE LYNN inquired as to how many complaints/complications Dr. Rosen has received within the last year resulting from cataract surgery.

DR. ROSEN said that his group did not like to delve into this area, and noted that his group did not have a database where they collect information on [the number of] complications. This is left up to the trial attorneys. He then reminded the committee that he was not a cataract surgeon per se, but he does it when required. He indicated that for his testimony today, he did a little digging and came up with the numbers he presented. "So, I don't know exactly how many, but it's more than what's talked about at the last testimony," he emphasized. In further response to Representative Lynn, Dr. Rosen specified that the information he provided is more than anecdotal, but he wasn't sure whether it would be appropriate to "go into it a little bit more".

5:01:08 PM

REPRESENTATIVE LYNN asked if this bill is aimed at some outside practitioner.

DR. ROSEN clarified that the desire is avoid itinerant surgeons in Alaska using this type of business model.

REPRESENTATIVE LYNN returned to the reference in the sponsor statement to "cataract mill" and asked if Dr. Rosen knew of anyone practicing in the state who was operating a "cataract mill".

DR. ROSEN replied yes.

REPRESENTATIVE LYNN asked if he could define what a cataract mill was.

5:02:04 PM

DR. ROSEN, in further response to Representative Lynn, classified that surgeons who perform about 100 cases in a three-day period and don't see the patient before of after surgery to be running a cataract mill. Dr. Rosen informed the committee that there are at least five cataract mills that he knew of, but

he reminded the committee that there is no central database for these procedures done in Alaska.

5:03:04 PM

CHAIR ANDERSON returned to Dr. Rosen's testimony regarding the fact that physicians, not optometrists, are on call. He surmised that Dr. Rosen isn't judging itinerant surgeons and ophthalmologists on their ability to practice but rather the fact that they aren't staying around to be on call. The aforementioned, he further surmised, is frustrating for surgeons in the state.

DR. ROSEN said that [the surgeons in the state] feel abused by this situation. The itinerant surgeons have been invited to join [the state call list], but they have continued to rebuff the association. Dr. Rosen said that itinerant surgeons are welcome to come up and perform surgeries, but they have not taken call.

CHAIR ANDERSON reminded the committee that HB 151 had been amended in the House Health, Education and Social Services Standing Committee to state that an itinerant ophthalmologist is required to stay in the state for a minimum of 48 hours after the procedure to provide postoperative care.

5:04:39 PM

DR. ROSEN emphasized that he has nothing against optometry. However, for those two critical days after surgery, Dr. Rosen preferred that the operating surgeon take care of his or her patient. He pointed out that trying to recreate the entire [history of the patient] during a critical period can be very dangerous.

5:05:00 PM

CHAIR ANDERSON referred to the American Academy of Ophthalmology letter, which stated that common surgical complications in the immediate postoperative, 48 hours, after eye surgery can occur.

5:05:12 PM

DR. ROSEN concurred, and added that when such complications do occur, it's bad. In further response to Chair Anderson, Dr. Rosen agreed that ophthalmologists and optometrists differ in regard to the amount of education they receive. Although he

wasn't sure whether medical malpractice coverage costs were more for ophthalmologists than optometrists, he highlighted that in the Ophthalmology journal reported that comanagement increases malpractice for refractive surgery.

REPRESENTATIVE ROKEBERG asked if the optometrist on staff at Dr. Rosen's facility provides postoperative care.

DR. ROSEN said that he did not know if the optometrist does postoperative care. The optometrist certainly relies on the ophthalmologists for any problems that might come up. Dr. Rosen said that he sees [the optometrist's] patients on a regular basis.

REPRESENTATIVE ROKEBERG, referring to previous testimony, recalled that Dr. Rosen said that there is epidemiological data available. However, he also recalled that Dr. Rosen said that he had no database or data. remarks that some of the testimony did not add up. Therefore, he asked the doctor to explain.

[5:07:35 PM](#)

DR. ROSEN stated that the Academy of American Ophthalmology has realized how controversial this issue is. Therefore, the Academy of American Ophthalmology has created a database that collects [reports of complications], which will be available. He then added that he has discussed with his peers information concerning complications [from which he has garnered that the number of complications] is certainly greater than what has been indicated by prior testimony. He reiterated that no matter how good of a surgeon one is there are going to be complications. Dr. Rosen clarified that he wants to stem the delay of care that may occur [when there are complications].

[5:09:13 PM](#)

DR. SHERYL LENTFER, Optometrist, indicated that she had been practicing for 10 years in the Anchorage and Wasilla area and that she is opposed to HB 151. In reference to testimony that optometrists don't take call, she agreed that optometrists don't take call at a hospital, but those who are VSP members do have to carry a beeper. Furthermore, HB 151 mainly deals with comanagement and it doesn't deal expressively with Dr. Ford. Dr. Lentfer informed the committee that with cataract surgery most of the complications that occur are usually referred to a separate ophthalmologist because it's usually a retinal issue and the patient is usually sent to a specialist.

DR. LENTFER highlighted that an optometrist or another eye care professional can't comanage unless there is a contract. In regard to the earlier indication that there is a financial arrangement between the optometrist and the outside ophthalmologists, she said that isn't the case. Dr. Lentfer the provided the following testimony:

For 20 years in Alaska optometrists have been comanaging eye surgery for the benefit of Alaskans. There has been over 100 optometrists in Alaska and they range from Nome to Southeast. After four years of doctorate work, inclusive of the whole human body and the ocular system, both in the classroom and in the clinic, we are well qualified to treat the ocular system as well as comanage. This bill would allow under hardship, ... people not qualified to comanage. Optometrists would not be able to comanage within this time period. If an optometrist does intervene, in this bill it does say that it would be a class A misdemeanor. This is difficult to understand how this would benefit Alaskans.

This leads to a second issue of availability. Optometrist's availability is remarkable in the state of Alaska. We are located statewide and are commonly the only eye care professionals within hours. There are only 26 eye surgeons in the state and they are located in Anchorage, Fairbanks, Soldotna, Homer, Wasilla, and Juneau. It would be tragic if an optometrist received a phone call in the middle of the night, no surgeon was available, and the care had to be denied secondary to the risk of it being a misdemeanor.

[5:13:03 PM](#)

In previous testimony on the bill, it was suggested that comanagement was a financial interest for optometrists. Since the majority of the testimony was relating to cataract surgery, this isn't a very valid point. The majority of cataract surgery patients are Medicare and there's not too many aspects of medicine that are paid well by Medicare. Also in previous discussion about the bill, optometrists were referred to as "not qualified and provide lesser care". I mentioned optometrists' four-year doctorate program

covering the whole human body and the ocular system. In addition, ... we examine the ocular system, diagnose, manage, and treat eye disease, every working day. Put in more tangible text, the National Institute of Health issued a study establishing that optometrists provide excellent comanagement eye care. This study was done by medical doctors....

Lastly, the bill restricts outside surgeons, and therefore competition. And it asks legislators to start regulating medicine. With medicine constantly evolving, surgeries are evolving, and the critical period for follow up may barely exist in the future. This is creating eye care professionals to return to the legislators to change the law again. Typically, the medical board regulates its body and not the legislative body. Comanagement ... is already federally regulated. Comanagement has been part of our profession for well before I started practicing. The patients being talked about in this legislation are typically our patients ... that we're referring to the eye surgeon. Optometrists are very educated and qualified to comanage and we're extremely available. Please vote no on this bill.

DR. RANDY JOHNSTON, Senior Secretary for Advocacy, American Academy of Ophthalmology, informed the committee that he is a practicing ophthalmologist from Wyoming who understands Alaska's issues in regard to patients having to travel great distances for eye care. Dr. Johnston opined that this really is a patient concern. He noted that the committee should have a letter, from Dr. Day, president of the American Academy of Ophthalmology, which details complications that commonly occur, if they occur, within 48 hours of cataract surgery. The problem with optometrists seeing patients with these common complications is that many of them require additional surgery. Dr. Johnston acknowledged that there are areas in Alaska and Wyoming where optimal coverage by ophthalmologists doesn't exist and the optometrists do what they can to serve the patients. However, in areas where there are ophthalmologists, it doesn't make sense to have someone who isn't capable of surgically intervening following the patient. Although the complications [following cataract surgery] are uncommon, they are devastating when they occur. In fact, infection of the eye, which is a frequently blinding condition, occurs in about 1 in every 1,000 cases.

DR. JOHNSTON noted his disagreement with Dr. Christianson's testimony that follow up care provided by an optometrist is a

cost saving device for the patient. He explained that with a Medicare cataract fee, 80 percent of the fee is for preoperative and interoperative care while 20 percent is for postoperative care. This postoperative charge is the same whether it is done by an optometrist or an ophthalmologist.

DR. JOHNSTON said that he couldn't speak to the problems that Alaska has. However, in Wyoming comanagement is most often used as a [business] tool to direct patients to the surgeon of optometrist's choice in return for the guarantee that those patients will return for postoperative care. For example, the four cataract surgeons in Cheyenne, Wyoming are routinely bypassed by the local optometrists who send their patients 50 miles away to surgeons in Fort Collins, Colorado. The aforementioned occurs because [the optometrists] have agreements with the surgeons [in Fort Collins] that the patients will return to the [optometrists] for postoperative care. However, the ophthalmologists [in Cheyenne] prefer to perform their own postoperative care of their own patients and thus the local optometrists don't refer patients to the local ophthalmologists.

BOB LOESCHER, Co-Chairman, Alaska Native Brotherhood, informed the committee that he is legally blind as a result of type II diabetes. Mr. Loescher related that he had seen an optometrist all his life. In fact, a month before becoming completely blind, he said that he had seen his optometrist to get new glasses and the optometrist failed to recognize his problems. He commented that the blindness wasn't the optometrist's fault but rather his own failing health. He related that he has had nine surgeries, office treatment, and laser surgery for macular degeneration, as well as cataract surgery. He revealed that he is totally blind in the right eye, and has only a little retina left in the left eye. With the help of his ophthalmologist, he related that he has been able to retain a little sight. Mr. Loescher stated that he supports this bill. He remarked that as a consumer it seems that this is an argument over fees.

[5:20:45 PM](#)

MR. LOESCHER advised the committee of his concern as a citizen and Alaska Native because Alaska Natives have many complications with their health. He said he has found that his ophthalmologist are capable of interacting with his other doctors who treat other conditions from which he suffers. Mr. Loescher expressed concern with an optometrist's inability to treat someone like himself because they aren't able to prescribe drugs. Mr. Loescher opined that it's best to have an

ophthalmologist that's trained to deal with one's entire body and communicate with other doctors who may be treating an individual. He expressed the need for there to be a link between the optometrist and the ophthalmologist no matter how the comanagement situation is managed. He expressed further concern with regard to the arguing between the optometrists and the ophthalmologists. Mr. Loescher concluded by reiterating his support of HB 151 and highlighted the importance of addressing the complications of postoperative care of eye surgeries.

5:24:04 PM

CHAIR ANDERSON closed public testimony. He then offered the following Conceptual Amendment 1:

Page 2, line 4:

Delete "ophthalmologist; and"

Insert "is an optometrist, or an ophthalmologist who either".

CHAIR ANDERSON opined that the aforementioned conceptual amendment will ameliorate the problems in rural Alaska. He stipulated that he wanted ophthalmologists "to stick around" after doing surgery for 48 hours, or assign to another ophthalmologist.

5:25:26 PM

CHAIR ANDERSON asked if there were any objections to the Conceptual Amendment 1. There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE ROKEBERG related his wife's recent experience with surgery at Pacific Cataract and Laser Institute. He explained that his wife wasn't covered by Medicare. The total cost of the surgery was around \$6000, although the actual the surgery only took about five minutes. He expressed concern with the cost of the surgery. He indicated that the quality of care was [acceptable] and the [postoperative care] was provided by an on site optometrist who is a member of the firm. Representative Rokeberg opined that anything the legislature can do to improve the quality of care and lower the costs is a positive thing. "I think there has been some testimony regarding the impacts of that and [that it] will effect the quality of care, but I'm not convinced that the incident of problems that result from that are not outweighed by the overall quality of care and cost benefits that (indisc.)," he said. He noted that he is very

sensitive to the argument of the optometrists. Representative Rokeberg stated that he isn't particularly supportive of HB 151.

REPRESENTATIVE LYNN highlighted that eyes and their health are critical. He opined that the larger issue seems to do more with business competition rather than actual concern about postoperative care. He noted that he has problems with HB 151.

[5:30:28 PM](#)

REPRESENTATIVE CRAWFORD related that his experiences with ophthalmologists over the years have not been for cataract procedures but have been more trauma oriented. He said that it was good to have a well-trained ophthalmologist available to address the trauma. Therefore, he opined that it would be in the best interest of the patient to have a trained ophthalmologist available during the critical postoperative timeframe. This legislation makes sense, he opined, because he wants to have a strong cadre of ophthalmologists who live in Alaska and take call for the population that lives here. He then said that he does not want to disparage those medical practitioners that come up from Washington State. However, he reiterated the need for [itinerant ophthalmologists to be responsible and provide reasonable postoperative care for the patients upon which they perform surgical procedures]. He concluded by saying that the bill makes sense and that he supported it.

[5:32:07 PM](#)

REPRESENTATIVE LEDOUX indicated that she isn't thrilled about the bill, since she isn't convinced that there is really a problem. She related that her core philosophy is "if it ain't broken don't fix it".

REPRESENTATIVE GUTTENBERG noted his agreement with Representative Crawford and Chair Anderson. He said that some of the arguments are economic in nature and others relate to patient care. He informed the committee that he recently had surgery after which he had complications. Fortunately, he had a doctor here that could cover the postoperative time period. He opined that [itinerant] surgeons should remain in Alaska to take care of complications that might arise. He ended by noting his support of the bill.

CHAIR ANDERSON said that he wouldn't have sponsored the bill if he had thought it was anti-patient or anti-business. In fact,

he thought the legislation is actually the opposite. He said that he isn't trying to degrade the profession of optometry, but feels that there is a difference between a surgeon, a medical doctor and an optometrist. The ophthalmologist has more experience and understanding of "problems" when it comes to postoperative care. With regard to the issue of call, the monetary amounts are compelling. With regard to testimony that other states don't have similar [legislation], Chair Anderson pointed out that Alaska could be first.

[5:34:46 PM](#)

REPRESENTATIVE CRAWFORD moved to report CSHB 151(HES), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE LYNN objected.

A roll call vote was taken. Representatives LeDoux, Guttenberg, Crawford, and Anderson voted in favor of CSHB 151(HES), as amended. Representatives Rokeberg and Lynn voted against it. Therefore, CSHB 151(L&C) was reported out of the Standing House Labor and Commerce Committee by a vote of 4-2.

HB 169-REAL ESTATE LICENSEE EDUCATION

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 169, "An Act relating to the educational requirements for certain real estate brokers, associate brokers, and salespersons with new or suspended licenses; and allowing real estate brokers to hire certain experts to review real estate transactions; and providing for an effective date."

REPRESENTATIVE ROKEBERG moved to adopt CSHB 169, Version 24-LS0424\S, Bannister, 4/04/05, as the working document. There being no objection, Version S was before the committee.

[5:37:40 PM](#)

REPRESENTATIVE ROKEBERG informed the committee that there is a three-page sectional analysis of the proposed CS. He explained that aside from some conforming amendments, there are only two substantive sections. He indicated that those two substantive sections include Section 4, which creates 20 hours of post-licensing education within the first year of an individual receiving his or her initial license. The aforementioned section was requested by the Alaska Association of Realtors.

The other substantive section, Section 14, provides that a real estate broker may contract with an attorney or an associate broker to assist with the review of real estate transactions. He noted that statute requires that brokers supervise all the activity of the licensees underneath them. Section 14 allows brokers to obtain additional personnel in the form of an attorney.

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REPRESENTATIVE ROKEBERG stated that he has a conceptual amendment [that he would like to offer].

REPRESENTATIVE LYNN declared a conflict of interest because he is an licensed real estate associate broker.

REPRESENTATIVE ROKEBERG declared a conflict of interest as well.

CHAIR ANDERSON announced that both members would be required to vote.

REPRESENTATIVE ROKEBERG moved that the committee adopt Conceptual Amendment 1 [with handwritten changes], which read as follows:

Page 1, Lines 2-3:

Delete: "allowing real estate brokers to hire certain experts to review real estate transactions;"

Insert: "allowing for review of real estate transactions by attorneys or associate brokers;"

Page 4, Line 4:

Delete: "cancel the suspension."

Insert: "renew a suspended license."

Page 4, Line 9:

Delete: "canceling the suspension of a license"

Insert: "renewing a suspended license"

Page 5, Line 13:

Delete: "five"

Insert: "seven"

Page 8, Line 20

Delete: "Use of experts."

Insert: "Review of transactions."

CHAIR ANDERSON objected for discussion purposes.

[5:41:04 PM](#)

REPRESENTATIVE ROKEBERG explained that the first section of Conceptual Amendment 1 changes the term "experts" in the title to "review of". Representative Rokeberg then said that he needed to make an amendment to Conceptual Amendment 1.

CHAIR ANDERSON asked for a brief at ease.

The committee took an at-ease from 5:41:31 p.m. to 5:41:52 p.m.

[5:41:52 PM](#)

REPRESENTATIVE ROKEBERG moved that the committee adopt the following amendments to Conceptual Amendment 1, such that on page 4, line 4, the language reading "renew a suspended license." would be replaced by "reinstate a suspended license." and the language on page 4, line 9, reading "renewing a suspended license" would be replaced by "reinstating a suspended license". There being no objection, the amendment to Conceptual Amendment 1 was adopted and thus Conceptual Amendment 1, as amended, was before the committee.

REPRESENTATIVE ROKEBERG, continuing to discuss Conceptual Amendment 1 [as amended], stated that the change specified for page 5, line 13, and is per the request of the Real Estate Association. He explained that the rationale for the aforementioned change is that the associate broker should be consistent with brokers because they are one in the same.

[5:43:21 PM](#)

REPRESENTATIVE ROKEBERG, in response to Representative Guttenberg, specified that the change on page 5, line 13, of Conceptual Amendment 1 [as amended] conforms to existing statute.

REPRESENTATIVE ROKEBERG, continuing to discuss the Conceptual Amendment 1 [as amended], finished by stating that on page 8, line 20, the header on that section needed to be changed from "**Use of experts.**" to "**Review of transactions.**"

CHAIR ANDERSON removed his objection.

[5:44:24 PM](#)

CHAIR ANDERSON announced that Conceptual Amendment 1 [as amended] was adopted.

DAVE FEEKEN, Industry Issues Legislative Chair, Alaska Association of Realtors, stated that this bill came from the industry brokers who wanted education to be required for brokers who were taking over managerial positions. Within the realtor industry, 95 percent were in favor of this type of legislation. He indicated that this type of educational requirement is already mandated by several states. He explained that pre-licensing education used to obtain a license teaches the individual how to pass the test, while post-licensing education addresses practical applications within the industry. He related that the states that have implemented these kinds of requirements have seen a reduction in complaints at the real estate commission level.

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MR. FEEKEN stated that the issue of supervision and review of transactions came from large brokerage firms requesting the ability to retain an attorney to help review the large number of transactions, and from firms that only perform large commercial transactions.

CHAIR ANDERSON asked if there were any questions.

REPRESENTATIVE CRAWFORD related that over the years he has bought several homes and has noticed that some realtors are better than other realtors, which he attributed to the years of experience of the realtor. He agreed that more education is a good thing. He asked if Mr. Feeken could describe what the education would consist of and whether there could be some sort of apprenticeship before the [realtors] are "turned loose."

[5:48:12 PM](#)

MR. FEEKEN agreed that education is important and that the emphasis is primarily put on practical applications of writing offers, legal matters, and the use of good solid language in sales and customer relations. The impetus is on the real estate commission to create this [education], he said.

REPRESENTATIVE LYNN opined that he would like to see the emphasis be placed on practical real estate rather than just salesmanship.

MR. FEEKEN said that the biggest complaint that he receives is the lack of knowledge in practical things like filling out forms and doing paperwork.

REPRESENTATIVE LYNN suggested that perhaps the first listing an agent works up and for which he or she receives a deposit, the agent can be mentored by a more experienced agent or broker.

CHAIR ANDERSON stated that this was so noted, and then indicated to the committee that they needed to adopt a zero committee fiscal note, since the committee is waiting for a fiscal note from the Department of Administration. He noted that the fiscal note could be amended [during the remaining committee process].

[5:50:33 PM](#)

CHAIR ANDERSON announced that there being no objection, the committee would adopt a zero fiscal note for the House Labor and Commerce Standing Committee.

MR. FEEKEN mentioned that the [Alaska Real Estate Association] supports all of the previously adopted amendments.

PEGGY MCCONNOCHIE, Member, Key Industry Issues Workgroup, Alaska Association of Realtors; Education Chair, Subcommittee of the Alaska Real Estate Commission, informed the committee that the aforementioned educational subcommittee had originated the idea here in Alaska. She then stated that she looks forward to increasing the professionalism and consumer protection of the industry.

[5:51:40 PM](#)

BRAD FLETCH, Public Member, Alaska Real Estate Commission, gave his full support of the bill as well as Version S, as amended.

JERRY ROYSE, Member, Royse and Associates, noted that he supported the bill. He pointed out that Section 11 requires Alaskan applicants to complete the post-education requirements before the license is issued. However, "Section 26-3" specifies that applicants have a year to complete this, and therefore it's not accurate in regard to what this legislation specifies.

[5:53:37 PM](#)

MR. ROYSE then turned attention to Section 14, which specifies that use of experts are allowed. He suggested using the language "attorney, broker, associate broker through their employing broker" rather than "attorney or associate broker" in Section 14. He explained that per [AS 08.88].403 a broker can

technically pay an associate broker from another firm directly based on the language in the legislation, although that's inconsistent with the requirement that all payments made to a licensee be paid through the employing broker. If it is an in-house broker versus an independent broker, then it's not a problem. However, if it's a small broker without an associate broker, then that small broker must rely on [an outside reviewer from another firm]. He opined that he did not want an inconsistency in state law such that a broker from a different firm pays an outside associate broker directly [to review a transaction]. He suggested that the payment should go through the associate broker's broker.

[5:54:53 PM](#)

MR. ROYSE then pointed out in Section 16, under [AS 08.88].990 (12)(A), that the definition of "initial license" is a little confusing. It appears that [an initial license] would require a person moving from a broker to an associate broker status, that it would be necessary to do the required educational update every time the individual's [professional] status is changed.

[5:56:38 PM](#)

REPRESENTATIVE ROKEBERG stated firmly that Mr. Royse's interpretation of Section 14 is flawed in that an associate broker cannot work for more than one broker at a time.

MR. ROYSE highlighted that the language [in Section 14] specifies that [a broker] can pay an associate broker, but it doesn't specify that the associate broker has to be under the [broker's] license. Therefore, he suggested that the language allowing an associate broker to be brought in could be construed to mean that an associate broker from another firm could be brought in to review [transactions].

REPRESENTATIVE ROKEBERG specified, "You can't, because that's the way the statute is; you have to be employed by a broker." He reiterated that [an associate broker] can only work for one broker at a time. He emphasized the need to read the language in the context of the entire chapter.

MS. MCCONNOCHIE explained that once the education is given after licensing, there is not a requirement to take the post-licensing education again throughout a real estate career.

CHAIR ANDERSON, upon determining there was no one else who wished to testify, closed public testimony.

[5:58:44 PM](#)

REPRESENTATIVE LYNN moved to report CSHB 169, Version 24-LS0424\S, Bannister, 4/04/05, as amended, out of committee with individual recommendations and the accompanying zero Labor and Commerce fiscal note. There being no objection, CSHB 169(L&C) was reported from the House Labor and Commerce Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 6:00 p.m.