

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 8, 2005

8:37 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

Senator Gene Therriault

COMMITTEE CALENDAR

SELECT COMMITTEE ON LEGISLATIVE ETHICS
Confirmation Hearing: Dennis "Skip" Cook

CONFIRMATION ADVANCED

SENATE BILL NO. 67

"An Act relating to claims for personal injury or wrongful death against health care providers; and providing for an effective date."

HEARD AND HELD

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

WITNESS REGISTER

Mr. Dennis Cook
Fairbanks, AK 99501

POSITION STATEMENT: Confirmation Candidate to the Select Committee on Legislative Ethics.

Mr. Roland Gower, Surgeon
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 67

Mr. Paul Dillon
Dillon & Findley
Juneau, AK 99801

POSITION STATEMENT: Testified in opposition of SB 67

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:37:23 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

Confirmation Hearing - Select Committee on Legislative Ethics

[8:38:10 AM](#)

The previous link contains an interview by the Judiciary Committee of Dennis "Skip" Cook who was up for reappointment to the Select Committee on Legislative Ethics.

SENATOR CHARLIE HUGGINS moved to forward Dennis Cook's recommendation by the Judiciary Committee to the Senate floor. Hearing no objections, the motion carried.

[9:11:56 AM](#)

SB 67-CLAIMS AGAINST HEALTH CARE PROVIDERS

[9:17:48 AM](#)

MR. BRIAN HOVE, staff to Senator Seekins, presented SB 67, which amends AS 09.55 by adding a new section. The section places a \$250,000 limit on non-economic damage awards for healthcare providers who render services. SB 67 intends to alleviate a growing crisis in Alaska's healthcare industry. Medical malpractice insurance companies find Alaska uneconomic and have left the market. This has created higher rates across the board.

Every Alaskan needing medical care pays added costs. There is also a critical shortage of physicians in Alaska. Over half of Alaska's physicians exceed the age of 50. It is difficult to recruit doctors when other states have capped non-economic damages at or near \$250,000.

Bottom line, Alaska is viewed as an undesirable place for medical insurance carriers to do business. As a result, fewer physicians open clinics here. Other states have effectively placed an upper limit on non-economic damage awards, thereby providing a stable, predictable, insurable climate. SB 67 does not alter awards for quantifiable damages, such as lost wages and medical expenses, and does not affect awards for gross negligence or reckless behavior.

[9:21:19 AM](#)

SENATOR FRENCH stated that current law differentiates between pain and suffering losses for some injuries that are inflicted through negligence and there is a differentiation for severe physical impairment. He asked Mr. Hove if SB 67 differentiates in the same manner.

MR. HOVE believed SB 67 did not differentiate.

SENATOR FRENCH asked Mr. Hove why the decision was made to not address the differentiation.

MR. HOVE stated the intent of SB 67 was to make the insurance market more attractive.

[9:22:49 AM](#)

SENATOR FRENCH asked Mr. Hove the number of states that have a \$250,000 cap.

MR. HOVE answered 10.

SENATOR FRENCH pointed to page 3, lines 11-14, which lists instances that qualify for compensation for non-economic losses. He asked if those would still be recoverable under SB 67 but be limited to \$250,000.

[9:24:27 AM](#)

MR. HOVE agreed.

SENATOR FRENCH stated under SB 67 one can sue for loss of enjoyment of life (page 3, line 13) but one cannot sue for hedonic damages. He asked Mr. Hove to explain the difference.

MR. HOVE deferred the question.

[9:25:36 AM](#)

SENATOR GUESS asked Mr. Hove how the sponsor decided on \$250,000.

MR. HOVE replied the current limit is \$400,000. The intent is to provide relief and encourage competition in the marketplace.

SENATOR GUESS asked Mr. Hove which states have lower doctor/patient ratios than Alaska.

MR. HOVE did not know.

[9:30:18 AM](#)

CHAIR SEEKINS provided a list of states that have a cap of \$250,000 to committee members. They include California, Kansas, Montana, Ohio, Texas, and West Virginia. SB 67 is not suggesting to short fund proper medical care.

[9:32:44 AM](#)

DR. ROLAND GOWER, surgeon, a member of the board of directors of Alaska Physicians and Surgeons and chief of staff at Alaska Regional Hospital, testified in support of SB 67. He expressed concern with the lack of medical access and stated it affects all Alaskans. Lack of malpractice insurance will cause a crisis. Alaska has two insurance companies that offer liability insurance. They are both physician run boards out of California and they are not-for-profit companies. During a fee crisis in the late 1980s, premiums rose to \$100,000.

DR. GOWER commented his premium is currently up 12 percent over last year and has doubled since 2001. One company has limited the type and extent of the policies it is writing for some practitioners. In the past, costs were passed on to the patient but today the preferred provider contracts limit the ability to raise physicians' rates. In Florida, neurosurgeons, cardiac surgeons and OBGYN surgeons are paying over \$200,000 a year for liability insurance. The trend in Alaska is toward higher premiums.

[9:38:43 AM](#)

DR. GOWER remarked half of the medical doctors in Alaska are over 50 and towards the end of their careers. Many would retire tomorrow if insurance availability ceased. Recruiting new

doctors is difficult because of this issue. California brought stability by putting a cap on non-economic damages.

[9:41:37 AM](#)

DR. GOWER remarked he does not see society looking at other solutions such as mandatory arbitration, a review board to look at suits, limiting attorney fees, and/or mal-occurrence insurance where patients buy insurance. SB 67 will provide predictability and stability to the insurance companies that practice in Alaska.

[9:43:49 AM](#)

CHAIR SEEKINS asked Dr. Gower to comment on whether Alaska needs better doctors.

DR. GOWER declared he is impressed with the current level of medical care that Alaskans have access to.

[9:45:17 AM](#)

SENATOR HUGGINS asked Dr. Gower if there is a policing mechanism within the industry to police questionable practitioners.

DR. GOWER explained the multi-tiered process of achieving credentials.

[9:49:20 AM](#)

SENATOR HUGGINS asked whether the Alaska State Medical Board did the oversight.

DR. GOWER explained a physician needs a state license to practice but hospital privileges are not automatic.

SENATOR HUGGINS asked Dr. Gower whether the rise in rates is based on the effectiveness of the doctor or on a pool.

DR. GOWER answered it is based on pooled risks. Specialists are in a higher risk category than non-specialists.

[9:51:47 AM](#)

SENATOR HUGGINS asked if the trend is toward out of court settlements.

DR. GOWER affirmed that settling malpractice claims out-of-court is the best way to save on additional attorney fees.

[9:54:13 AM](#)

SENATOR GUESS asked Dr. Gower if the legislature should look at the process of removing a physician from practice.

DR. GOWER stated he has never served on the state medical licensing board but has served on the credential committee of both hospitals in Anchorage. There is a fine line in attempting to remove a physician who is practicing bad medicine. It is almost always implied that competition is the main factor for removing a physician. The bylaws are set up so that multiple hearings and multiple reviews must occur before taking a physician's hospital privileges away. He stated the process works.

[9:58:18 AM](#)

SENATOR GUESS asked Dr. Gower to comment on why the public doesn't want to consider any other solutions.

DR. GOWER said he did not mean to imply the public wouldn't want to look to other solutions. He stated the issues are complex and the majority of the public does not comprehend the various ways the problem can be solved. Solutions are out there but they are not in the hands of the physicians or the public. Solutions are in the hands of partisan legislation and various interest groups. He said 40 percent of insurance premiums end up going to the attorneys.

[10:01:39 AM](#)

SENATOR GUESS clarified Dr. Gower meant 40 percent of premiums, not payouts.

DR. GOWER agreed.

SENATOR GUESS asked Dr. Gower to comment on the percentage of his premiums to the overall increase of his other costs.

DR. GOWER commented in 1988, his premium costs were close to 18 percent of his total revenue. Reimbursement of medicine nationwide is down significantly.

SENATOR GUESS asked if he was seeing his other costs increase at the same rate.

DR. GOWER answered yes.

[10:03:41 AM](#)

CHAIR SEEKINS commented that Florida has a \$500,000 cap that can be increased to \$1 million under certain circumstances. He said

some members of the Judiciary Committee are looking to address the huge amount of litigation costs of medical malpractice claims. He asked Dr. Gower if he or any of his colleagues considered an arbitration step and speedier resolution where more money goes to the person injured.

DR. GOWER answered it has been talked about but no one thinks it will ever happen. He stated it makes sense to have a review process before a lawsuit is filed. It only takes \$75. Once the lawsuit is filed it costs money and time. One can file a lawsuit without consulting a medical expert to see if the case is valid. He said malpractice cases are a lot like divorce cases where the attorneys make more money the longer the issue stays unresolved.

[10:08:41 AM](#)

CHAIR SEEKINS pointed out the committee received a document yesterday from the Alaska Action Trust.

[10:09:01 AM](#)

MR. PAUL DILLON, attorney, Dillon & Findley, testified in opposition to SB 67. He primarily represents insurance companies and also physicians. SB 67 attempts to create a market conducive to insurers. He referenced the 66th annual report from the Division of Insurance (DOI), and compared it with past reports. The DOI produced a report on the annual effects of medical malpractice legislation. He said his testimony would be balanced on various journals and press releases.

[10:11:53 AM](#)

MR. DILLON said SB 67 is based on the premise of a crisis in Alaska. The circumstances of the crisis are not born from bad medical care. Alaska has a tiny insurance market. NORCAL Mutual Insurance Company and Medical Indemnity Corporation of Alaska (MICA) control 80 percent of the insurance market. Everyone else is small time. Within the insurance market, a series of tort reform efforts began in the '70s. The last one in 1997 culminated in a \$400,000 cap. Under AS 09.55.530, a panel of physicians was set up to review malpractice claims. The panel is designed to review medical malpractice claims prior to a court process. The purpose of the panel is to review and analyze cases quickly and to avoid unnecessary lawsuits. The panel is routinely waived by the defense. The insurance defense bar does not use the panel. He does not know why.

[10:15:57 AM](#)

SENATOR HUGGINS asked Mr. Dillon to describe the function of the panel and the authority level.

MR. DILLON recalled its function is to review the issue of medical negligence and causation of damages and to render a report based on the two issues. It is designed to be a tool to weed out the frivolous cases and to provide a level of protection to the medical field by preventing unnecessary cases going to court.

SENATOR HUGGINS thought if the panel ruled the lawsuit is unnecessary, it would stop the process.

MR. DILLON replied it was ultimately the plaintiff's call.

10:17:30 AM

SENATOR HUGGINS remarked the panel seemed to have no authority.

MR. DILLON offered the panel carries great weight due to the evidentiary value. A medical malpractice case is one of the most expensive cases a plaintiff's lawyer has. They are expensive and time consuming. In his office the malpractice lawyers screen hundreds of cases each year and take less than 10 percent of them on. Cases are screened based on doctor's reviews. The case has to have the support of the medical profession behind it.

10:19:14 AM

MR. DILLON declared the availability of insurance and the costs of premiums are presently acceptable. Data from the DOI shows medical premiums have declined over the last 13 years. He alleged the DOI is not aware of any crisis in the insurance industry.

CHAIR SEEKINS asked Mr. Dillon if he is familiar with the nature of the insurance companies he referred to.

MR. DILLON alluded Dr. Gower described them correctly.

CHAIR SEEKINS clarified they were described as mutual companies. He commented if they had increased losses they would pass that on to their members.

MR. DILLON agreed.

CHAIR SEEKINS asserted a crisis might be indicated in increased premiums.

MR. DILLON agreed but said there haven't been any.

CHAIR SEEKINS commented Dr. Gower testified his premiums have increased 12 percent.

MR. DILLON stated anyone could play with numbers to get the results they want.

[10:23:33 AM](#)

CHAIR SEEKINS said everyone has a different definition of the word "crisis."

MR. DILLON disagreed and maintained there is no crisis in the insurance industry. Medical schools are predicting huge national shortfalls of physicians by 2020.

CHAIR SEEKINS agreed, but stated that physicians who are high in demand can choose to practice in states where the liability is less.

MR. DILLON said Alaska's insurance issues are no different than any place in the Lower 48.

[10:25:51 AM](#)

CHAIR SEEKINS referred to the Alaska Action Trust information and said deterring malpractice is the best way to bring down costs and protect families.

MR. DILLON agreed deterring malpractice lawsuits is in the best interest of everyone.

CHAIR SEEKINS indicated there was more room for improvement in terms of rising costs of insurance.

[10:27:15 AM](#)

MR. DILLON disagreed. He stated the rise in insurance premiums is an internal situation with the doctors.

[10:28:58 AM](#)

CHAIR SEEKINS said everyone benefits if meritorious cases are settled in the proper manner.

[10:30:22 AM](#)

CHAIR SEEKINS announced SB 67 would carry over to the next committee meeting.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:30:45 AM](#).