ALASKA STATE LEGISLATURE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE
March 31, 2007
12:35 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Bob Roses, Vice Chair
Representative Anna Fairclough
Representative Mark Neuman
Representative Paul Seaton
Representative Sharon Cissna
Representative Berta Gardner

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative William "Bill" Thomas
Representative Ralph Samuels
Representative Scott Kawasaki

COMMITTEE CALENDAR

HOUSE BILL NO. 113
"An Act relating to the prescription and use of pharmaceutical agents, including controlled substances, by optometrists."

- MOVED CSHB 113(HES) OUT OF COMMITTEE

HOUSE BILL NO. 173
"An Act relating to court approval of involuntary administration of psychotropic medication; and providing for an effective date."

- HEARD AND HELD

SENATE JOINT RESOLUTION NO. 1
Relating to reauthorization of federal funding for children's health insurance; and encouraging the Governor to support additional funding for and access to children's health insurance.

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 113
SHORT TITLE: OPTOMETRISTS' USE OF PHARMACEUTICALS
SPONSOR(s): REPRESENTATIVE(s) SAMUELS

01/30/07	(H)	READ THE FIRST TIME - REFERRALS
01/30/07	(H)	HES, L&C
03/20/07	(H)	HES AT 3:00 PM CAPITOL 106
03/20/07	(H)	Heard & Held
03/20/07	(H)	MINUTE(HES)
03/31/07	(H)	HES AT 12:30 AM CAPITOL 106

BILL: HB 173
SHORT TITLE: INVOLUNTARY PSYCHOTROPIC DRUG TREATMENT
SPONSOR(s): HEALTH, EDUCATION & SOCIAL SERVICES

03/05/07	(H)	READ THE FIRST TIME - REFERRALS
03/05/07	(H)	HES, JUD
03/20/07	(H)	HES AT 3:00 PM CAPITOL 106
03/20/07	(H)	<Bill Hearing Canceled>
03/31/07	(H)	HES AT 12:30 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE WILLIAM "BILL" THOMAS, Member
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented CSHB 173, as the co-sponsor.

MICHAEL BENNETT, O. D.; President
Alaska Optometric Association
Juneau, Alaska
POSITION STATEMENT: Testified in support of CSHB 173.

AARON WEINGEIST, M. D.; Member
American Academy of Ophthalmology
West Seattle, Washington
POSITION STATEMENT: Testified in opposition of CSHB 173.

PAUL BARNEY, O. D.; Center Director
Pacific Cataract and Laser Institute
Anchorage, Alaska
POSITION STATEMENT: Testified in support of CSHB 113.

ROBERT BREFFEILH, M.D.; Member

Alaska State Medical Board
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB [113].

REPRESENTATIVE RALPH SAMUELS, Member
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified during the hearing on CSHB 113, as the sponsor.

REBECCA ROONEY, Staff
to Representative Peggy Wilson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 173 on behalf of Representative Peggy Wilson, sponsor.

STACIE KRALY, Chief Assistant Attorney General
Statewide Section Supervisor
Human Services Section
Civil Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Answered questions during the hearing on HB 173.

TIM FARRELL
Fairbanks, Alaska
POSITION STATEMENT: Testified during the hearing on HB 173.

FRANK TURNEY
Fairbanks, Alaska
POSITION STATEMENT: Testified in support of HB 173.

JIM GOTTSTEIN, Attorney-at-Law
Law Project for Psychiatric Rights
Anchorage, Alaska
POSITION STATEMENT: Testified during the hearing on HB 173.

ACTION NARRATIVE

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order at 12:35:28 PM. Representatives Wilson, Fairclough, Seaton, Neuman, Gardner, and Roses were present at the call to order. Representative Cissna arrived as the meeting was in progress.

HB 113-OPTOMETRISTS' USE OF PHARMACEUTICALS

12:36:02 PM

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 113, "An Act relating to the prescription and use of pharmaceutical agents, including controlled substances, by optometrists." [Before the committee was CSHB 113, 25-LS0411\K, Bullard, 3/5/07.]

12:36:49 PM

REPRESENTATIVE WILLIAM "BILL" THOMAS, Alaska State Legislature, presented HB 113 as the co-sponsor. He informed the committee that he represents 37 rural communities and this bill will provide optometric assistance in the rural areas. He expressed his concern that SouthEast Alaska Regional Health Consortium (SEARHC) bears the burden of the high cost of providing eye care that optometrists in rural areas could provide if authorized by the passage of this bill.

12:38:50 PM

CHAIR WILSON opened public testimony on CSHB 113, Version K.

12:38:59 PM

MICHAEL BENNETT, O.D., President, Alaska Optometric Association, stated his support for [Version K], paraphrasing from a written statement, which read as follows [original punctuation provided]:

> I am Dr. Michael Bennett, a private practice optometrist here in Juneau and current president of the Alaska Optometric Assoc. Thank you Madame Chair and all committee members for taking the time on a beautiful Saturday afternoon to hear this committee substitute on HB 113, an issue of importance to Alaska's eye care patients. I would also like to thank Chair Wilson and her staff for their efforts in crafting this substitute bill. This bill will allow licensed optometrists to prescribe medications by additional routes of administration for treatment of conditions of the eye and immediately surrounding tissues, as well as pain medications for very brief periods of time. It also provides for the treatment of anaphylactic shock which can occur under very rare

circumstances, following the administration of dilating eye drops in the office. This is a treatment which patients with bee sting allergies self-administer. This bill is narrow in scope; it does not allow prescription of the most abused controlled substances; it specifically prohibits injections inside the eye; it in no way grants surgical privileges, and it mandates continuing education and competency testing.

Optometry has long been well qualified for these prescriptive rights. We are a doctoral level profession, meaning four vigorous years beyond a bachelor's degree. Optometry school provides over 200 hours in pharmacology course work and greater than 2,000 hours of supervised patient contact. Entrance requirements and health science curriculum are the equal of medical and dental school. I have heard opposition say that this is a very recent development, but that is the case only if you consider 35 years to be very recent.

In the years this bill has been before this committee we have heard several eye surgeons testify on the length and depth of their education and specialties. I applaud them for their efforts as I frequently trust my patient's vision to their surgical skills and I think it's appropriate they spend a few extra years learning the intricacy of ocular surgery. But their surgical education has nothing to do with this bill. That is like a heart surgeon saying your primary care doctor should not treat your high blood pressure. It's much more informative to look at professions with less training and education. Advanced nurse practitioners are able to prescribe medications for the entire body, including the eye, with a master's degree level of education as determined and licensed by their board. They do a terrific job in Alaska. They do it through hard work, dedication and training and a common sense approach to referrals to specialists. I don't believe you have seen an outcry against Alaska's nurses from eye surgeons across the country in their quest to protect the public. Optometry is singled out for competitive reasons not safety concerns. We have been proving that for 30 years in 45 states.

In the 16 years the National Practitioner Data Bank has been in existence medical doctors have paid more than 229,000 malpractice claims. Optometrists have paid 514 nationwide. That is a ratio of 446:1. A million dollars of malpractice insurance costs an Alaskan optometrist $511 per year, less than many people's monthly car payments. That is the same rate as in North Carolina which has oral prescriptive authority for 30 years. An Alaskan eye surgeon, by comparison, pays 38 times that much for the same one million dollar coverage. Malpractice rates are based on experience plus a profit for the carrier. Malpractice rates set so unbelievably low reflect a low rate of actual occurrence of malpractice.

Optometrists are a conservative bunch. Our track record bears out that we are not wildly seeking scope expansion beyond our training. Rather we want to practice primary eye care to the full extent of our training and to the betterment of our patient's eye health. They deserve no less. As an integral part of the medical community, to not advance and grow with new technologies would be to shirk our responsibility to the public. In the interest of being brief, I have not addressed in depth every aspect of this legislation. If it pleases the chair I would be happy to answer any questions raised by the committee. Thank you for your time and attention.

12:44:45 PM

REPRESENTATIVE SEATON asked for a description of the injections that are allowed by HB 113.

DR. BENNETT explained that injections into the area surrounding the eye, primarily the eyelids, are allowed. In addition, there is approval for an epinephrine injection into the body for a patient suffering anaphylactic shock. Currently, optometrists have prescriptive rights to use therapeutic and diagnostic drops that can produce anaphylactic shock, but not the legal authority to treat it.

12:46:15 PM

CHAIR WILSON asked whether Dr. Bennett can have an epinephrine shot in his office for administration to a patient.

DR. BENNETT answered no. He added that legally, board authority could provide that, but permission must come from the legislature.

12:46:53 PM

REPRESENTATIVE FAIRCLOUGH asked for further specifics on what type of injections are made into the eyelid.

DR. BENNETT replied that injections are needed for unusual infections such as for chronic sties.

REPRESENTATIVE FAIRCLOUGH noted that, currently, a rural resident would need to fly to a hub community for this treatment.

DR. BENNETT responded that there is possibility that a primary care physician could treat this condition.

REPRESENTATIVE FAIRCLOUGH remarked:

> I'm just wondering what the risk factor associated to ... we've already excluded the ocular globe itself and so we need to weigh, as a committee, the benefit of the eyelid, and the ability to expand that scope to an optometrist versus someone needing additional care from more of a medical perspective, and a actual ophthalmologist. Can you tell this committee specifically why you think an optometrist should be allowed to inject into the eyelid.

DR. BENNETT said:

> The training and scope have been ... a part of optometric curriculum for a long long time. ... There's a certain nervousness that seems to pervade the use of a needle. The medications are widely in use, it's just a different route of administering it. We're not talking about doing intravenous injections ... [or] injecting behind the globe. And there are certainly situations involving eyelids that you would want that patient to see a surgeon for. A great example is, primary care physicians could do brain surgery or ... deliver babies ... they tend not to do that because there are people who specialize in that. ... We rely on every profession to make quality judgments ... on when it is appropriate to refer and

when it's not necessary. ... North Carolina has had similar ... for 30 years now. And their malpractice rates are not any higher than ours and they've not had a single instance of any inappropriate actions reported to their board. ... No optometrist had any inclination to be injecting into the globe, in states where it's not specifically prohibited, they're not doing it. It's a, that is a very highly specialized retinal ... practitioner's prerogative and just because it's something that they're licensed to do doesn't mean that people are doing it if there is somebody better qualified.

12:51:25 PM

REPRESENTATIVE FAIRCLOUGH further asked whether there are more than one state that allows injections into the eyelid.

DR. BENNETT estimated 11 states.

12:51:55 PM

REPRESENTATIVE ROSES asked for the number of patients who require treatment by injection.

DR. BENNETT responded that it would be several patients a year.

REPRESENTATIVE ROSES requested clarification of "ocular adnexal disease or conditions."

DR. BENNETT replied that it is a disease of the surrounding structure of the eye.

12:52:44 PM

REPRESENTATIVE GARDNER informed the committee that information in the committee packet is supplied by the Alaska Optometric Association and indicates that 29 states have injectable drug authority.

12:53:21 PM

DR. BENNETT, in answer to a question, explained that the information provided further describes the differences between the authority rights for optometrists state by state.

12:53:53 PM

AARON WEINGEIST, M.D., informed the committee that he represents the American Academy of Ophthalmology. Dr. Weingeist stated his organization's opposition to CSHB 113 [Version K] due to the fact that the bill allows procedures exceeding the median optometric scope across the country. He suggested that the bill has been put forth by the practice of optometry and that there is no patient outcry for these services to be provided. He noted that, as an ophthalmologist, he rarely uses systemic medications, and that the currently allowed topical medications are adequate for the management of pain and infection. In fact, only about .5 percent of routine eye patient visits result in an oral prescription. He stated that studies on rural access of care reveal that most prescriptions are written in urban areas even though authorized optometrists are available locally. Dr. Weingeist said that CSHB 113 [Version K] allows all injections, other than those into the eye, and that there are many structures around the eye that are injected with Botox, steroids, and anesthetics. He pointed out that optometric education in pharmacology is didactic, and happens mostly in classrooms. Students do not see patients with multiple issues and medications. Ophthalmologists and medical doctors are trained for four years beyond optometric training, caring for hospitalized patients. In addition, optometry does not have a national board certification. Dr. Weingeist noted that the major difference between nurse practitioner's, podiatrist's, physician assistant's and nurse anesthetist's training versus optometrist's training, is the mandated time working in a hospital environment.

1:00:15 PM

DR. WEINGEIST referred to optometrist's prescriptive authority in other states and territories. He pointed out that state law varies greatly on what is allowed by optometrists; in fact, in Puerto Rico, optometrists can not prescribe therapeutic medications at all. Furthermore, in Oregon, a professional committee decides which medications are on the formulary; in Pennsylvania, drugs must be approved by the secretary of health; in Texas, a professional committee decides which medications are acceptable for optometric prescribing, and some are prohibited around surgery. In other states, many drugs are restricted to at-risk patients. He opined that the language in CSHB 113 [Version K] is extremely broad and vague; in fact, it would be one of the most permissive optometric scope laws in the country. He told the committee that the interpretation of "non-topical" could be to include all future medications applied by all

routes, and with the only restriction being a maximum of four days for narcotics. The need to inject steroids around the eyes are uncommon; in fact, during ten years of practice he has only done this procedure once. Dr. Weingeist relayed that the bill also advocates all the remaining prescriptive authority to the board of optometry and reduces legislative oversight. He concluded by saying that CSHB 113 [Version K] is a precursor to surgery.

1:02:41 PM

REPRESENTATIVE GARDNER asked Dr. Weingeist to explain how CSHB 113 [Version K] is a precursor to surgery.

DR. WEINGEIST answered that the bill removes most of the barriers that restrict optometrists from doing surgery. The next expansion in the scope of their practice would be laser surgery.

REPRESENTATIVE GARDNER affirmed that then, by default, the next step is surgery.

DR. WEINGEIST clarified that there are other procedures that optometrists see in training and some states allow removing foreign bodies from the surface of the eye or the eyelid.

1:04:45 PM

REPRESENTATIVE GARDNER questioned whether what was described would qualify as surgery.

DR. WEINGEIST said that it would depend on how surgery is defined. The terms "surgery" and "surgical procedures" can be argued.

1:05:29 PM

REPRESENTATIVE ROSES asked how ophthalmologists define these procedures.

DR. WEINGEIST expressed his belief that current procedural terminology (CPT) codes recognize that surgery is an invasive procedure that has inherent risks.

REPRESENTATIVE ROSES re-stated his question as to how Dr. Weingeist personally qualifies the procedures that the optometrists have characterized as treatment.

DR. WEINGEIST responded that the removal of a corneal foreign body has the potential to not be surgical; however, an incision to release fluid or removal of tissue is surgical.

1:07:47 PM

REPRESENTATIVE CISSNA observed that there are many people in rural Alaska who do not have easy access to flights, much less medical help. In addition, health care costs are so high that rural communities are trying to practice preventative care. CSHB 113 [Version K] will allow some prescriptive authority in rural communities that is currently not possible. She asked that Dr. Weingeist address the statistics for malpractice suits that indicate a low incidence of malpractice by optometrists.

1:10:55 PM

DR. WEINGEIST advised that the profession of optometry has a single insurance carrier that covers all states. Therefore, optometrists pay an average cost across the country, regardless of the scope of their practices. In addition, unlike medical doctors and ophthalmologists, there is no mandatory requirement for optometrists to report malpractice claims or claims that are settled out of court.

1:12:25 PM

REPRESENTATIVE CISSNA expressed her belief that insurance companies would monitor claims settled out of court.

DR. WEINGEIST disagreed, and stated that the malpractice risk factor of ophthalmologists versus optometrists is an unfair comparison.

1:13:42 PM

REPRESENTATIVE SEATON clarified that Dr. Weingeist is not testifying that this bill allows surgery, but that surgery may be the next step.

DR. WEINGEIST answered yes.

1:14:07 PM

REPRESENTATIVE ROSES commented that rural care in other states is not comparable to the economic regions of Alaska which are:

urban, rural, and remote. He then asked whether the bill would be less objectionable if all injections were restricted.

DR. WEINGEIST agreed that restricting injections would improve patient safety; however, his organization would still object because the remaining language includes prescribing oral medications and leaves the determination of appropriate medicine up to the board of optometry.

DR. WEINGEIST, in response to questions, explained that, in most states, ophthalmologists are governed by the medical board and optometrists are governed by the board of optometry.

REPRESENTATIVE ROSES questioned whether the practices are governed by different boards because of the different procedures allowed.

DR. WEINGEIST opined that the practices have been viewed as different professions over the last 35 years.

1:17:46 PM

REPRESENTATIVE ROSES asked whether the restriction of injections will limit this bill to only allowing optometrists to provide oral medication.

DR. WEINGEIST concurred.

REPRESENTATIVE ROSES further asked whether there are classifications of oral medications in the bill.

DR. WEINGEIST responded that the only restriction is the limitation on some narcotics, and the term of the prescription.

REPRESENTATIVE ROSES quoted the definition from the Committee Substitute which stated "the pharmaceutical agent is not a schedule IA, IIA or VIA controlled substance; and is prescribed in a quantity that does not exceed four days of prescribed use if it is a controlled substance;" and asked which drugs fall into these categories.

DR. WEINGEIST answered that these are all in the categories of controlled substances in Alaska and have potentially addictive qualities. He added that the 29 states that allow injections may just be referring to the epinephrine to treat anaphylactic

shock. He opined that only three states allow other forms of injections.

1:20:59 PM

CHAIR WILSON asked whether Dr. Weingeist was aware of any general practicing M. D. who performs brain surgery.

DR. WEINGEIST said that he was not.

1:21:15 PM

PAUL BARNEY, O. D., Center Director, Pacific Cataract and Laser Institute, Anchorage, informed the committee that he has been practicing optometry for 22 years and is speaking in favor of CSHB 113 [Version K]. Dr. Barney explained how this bill will impact rural Alaska by eliminating the need for a referral to a specialist or primary care physician. He is licensed in Alaska and Washington and can prescribe oral medication to patients in Washington, but not in Alaska. This is a burden on the patient in rural Alaska due to potential travel cost and loss of time. He warned that Alaska may be on the verge of a health care crisis due to the decline in the number of health care providers practicing in the state. For new doctors of optometry looking for a place to practice, Alaska is not a top choice, as they will not be able to practice to the full level of their training. He opined that this bill will safely provide patients with care and will help attract new doctors of optometry to the state. He then referred to previous testimony that stated that there is not a national certification board for optometry; in fact, there is a national board examination required to qualify for the state licensing examination. On the issue of the bill removing the barriers towards performing surgery, Dr. Barney emphasized that there are surgeries that can be performed with the application of topical medications, such as laser vision correction. Lasix is done with topical anesthesia; therefore, if the only barrier to optometrists performing surgery is a lack of prescriptive authority, that barrier does not exist. He concluded by saying that the intent of this bill is not to remove barriers to surgery, the intent is to allow Alaskans better access to eye care without undue costs.

1:27:48 PM

REPRESENTATIVE ROSES repeated his question about whether CSHB 113 [Version K] would be less acceptable to optometrists if the

committee removed the ability to perform injections of pharmaceuticals.

DR. BARNEY opined that the bill would still provide some improved access to care.

REPRESENTATIVE ROSES inquired as to the necessity of performing injections at the witness's Washington practice.

DR. BARNEY answered that he performs injections into eyelids approximately once a month.

1:29:26 PM

DR. BARNEY, in answer to a question, said that his practice in Alaska is licensed by the Board of Optometry. However, in Washington State, the Board of Optometry and the State Medical Board are grouped in the same licensing department. He agreed with the statement of a previous witness that the two professions developed at different times and the boards were created separately.

1:31:04 PM

REPRESENTATIVE ROSES suggested that optometrists, if given further authority for writing prescriptions and injections, may then be governed by the medical board.

DR. BARNEY advised that the change would be objectionable because there is a certain amount of friction between the two professions. He opined that, if the optometrists were governed by ophthalmologists, optometrists would not receive fair treatment, and the converse would also be true.

1:32:45 PM

ROBERT BREFFEILH, M. D. informed the committee that he is an ophthalmologist, has practiced in Southeast Alaska for 18 years, and is a member of the State Medical Board of Alaska. He stated his opposition to HB [113], and described his practice route in rural Alaska that includes Skagway, Haines, Sitka, Petersburg, Wrangell, Ketchikan, and Annette Island. Dr. Breffeilh relayed his education and experience, and noted that during his residency at Walter Reed Army Medical Center he worked without animosity with optometrists in triage and mass casualty situations. He said that his testimony is not as a

representative of the State Medical Board. He read from a prepared statement [original punctuation provided]:

> I will not reiterate the difference in training between ophthalmologists and our optometric colleagues. But I will, from my experience with the medical board, state that poorly or non-trained health care professionals who have not passed through a proper vetting process will constitute a danger to our citizens.
>
> We must not allow an ill advised legislative action to proceed further for the sake of our ... patients, fellow citizens, friends, and families. I would like to make a mention of one statement that was made in previous testimony about injections in the State of Washington. It is state law that injections are allowed by optometrists for anaphylaxis, which is an injection usually subcutaneous in the arm, or elsewhere, nowhere near the eye. But it specifically prohibits all other injections by optometrists. So, I question the previous testimony as to what's being done and the fact that it's legal. Now this has been a issue that comes back over and over every year. The optometric lobby is quite active, we try to avoid the issue of turf battles and the like, and try to keep it on the level of patient care. It's been a difficult process. I don't really know what the future holds, but I would like to make one observation, which is a bit tongue in cheek, but I would pray that those in the legislative process who are eager to see this bill pass, and if it's successful, will show equal alacrity and be the first in line for our optometric colleagues to practice their new-found surgical and medical skills on.

REPRESENTATIVE SEATON asked, "You said surgical?"

DR. BREFFEILH said, "Surgical and medical, because that's coming. ... As you well recognize, this is a step-wise process, this is going to go on."

1:37:26 PM

REPRESENTATIVE GARDNER asked for the source of the "Prohibitions and Restrictions on the Practice of Optometry" checklist and asked whether it is current and above question.

DR. WEINGEIST replied that the information is up to date.

1:38:59 PM

REPRESENTATIVE GARDNER compared laws in Alaska and Washington. She read the restriction for Washington and said:

> [Washington] requires pharmacy board to be consulted and to approve specific guidelines for the prescription and administration of drugs by optometrists.

REPRESENTATIVE GARDNER concluded that Washington prohibits optometrists to prescribe all schedule I and II controlled drugs; schedule IV analgesics for more than seven days; schedule V analgesics for more than seven days; anti metabolites; and topicals, unless the prescriber has further education. In addition, the State of Washington requires oversight consultation with a treating eye M. D. for 90 days following surgery, when an oral is used; prohibits prescription of oral drugs unless the prescriber has further education; and prohibits infusions. She noted the difficulties of evaluating medical information for those who are not in the medical field.

1:42:09 PM

REPRESENTATIVE GARDNER then asked Dr. Breffeilh questions about the Alaska State Medical Board.

DR. BREFFEILH, responding to questions, said that he was on the medical board, but was not representing it. He added that the State Medical Board governs physicians, physician's assistants, and Emergency Medical Technicians (EMT).

REPRESENTATIVE GARDNER asked whether the State Medical Board has issued an opinion on HB 113.

DR. BREFFEILH explained that the medical board has not been formally requested to issue an opinion. He then said that the current chair is reluctant to become involved; however, the board will be meeting next week and the bill may be an agenda item.

1:43:23 PM

REPRESENTATIVE ROSES asked whether physician's assistants are allowed to prescribe medications and injections.

DR. BREFFEILH said yes.

REPRESENTATIVE ROSES asked Dr. Breffeilh to compare the training of physician's assistants and optometrists.

DR. BREFFEILH estimated that physician's assistants have two years of didactic training and one thousand four hundred hours of work in a clinic, under direct supervision of a physician.

REPRESENTATIVE ROSES asked whether nurse practitioners are allowed to prescribe or inject.

DR. BREFFEILH said yes. He also said that nurse practitioners are not governed by the medical board.

1:44:53 PM

REPRESENTATIVE ROSES asked:

> ... being a member of the medical board when somebody comes before you for a review, and there's a state law that dictates what they can and can not do. How do you handle that situation, if you even don't particularly like it, but it falls under the guidelines of the law?

DR. BREFFEILH said:

> Pretty straight forwards. We have to censor them. ... And, as aside, the Alaska State Medical Board has been noted by the National Federation of Medical Boards to be one of the most active of the state medical boards nationwide, and most effective.

1:46:15 PM

DR. BREFFEILH then pointed out that injections for chalazia are not the standard of care. Moreover, when there is a problem with oral medications in a community the optometrist can always go to the nurse practitioner, physician's assistant, or primary care physician to consult on a prescription.

1:47:10 PM

REPRESENTATIVE SEATON asked:

> ... is it your testimony then, that for the specialty of eyes, that people are better off going to a nurse practitioner or a physician's assistant than they are to an optometrist that specializes in ...

1:47:41 PM

DR. BREFFEILH said:

> That's not what I said. I think ... that the diagnostic process can be done by the optometrist. These other professions already have the privilege of providing medications and in most cases those people that are concerned at that time are already patients of theirs and they know them intimately, and so if there's any problems with any medication interactions they would be the ones to know about it. And they could prescribe it; it would be a simple process of having a consulting relationship.

1:48:20 PM

CHAIR WILSON closed public testimony.

1:48:31 PM

REPRESENTATIVE GARDNER commented that this bill is confusing and has been intensely lobbied. She noted that, along with good and compelling testimony, there appears to be red-herrings and false claims or exaggerations on both sides of this bill. It appears to be a "turf war" and the important question is whether this is good for Alaskan health care or a real danger. She emphasized that in all this testimony, the committee has only heard from one patient; all of the testimony has been from practitioners, not patients, or the rural or Native health clinics. Representative Gardner stated that she has not been persuaded that the changes brought by the bill are necessary or unambiguously safe.

1:51:16 PM

REPRESENTATIVE ROSES relayed that the testimony about malpractice insurance claims may not be relevant in this discussion. In addition, the cost savings for urban and remote health care may not be a compelling argument, either, due to

insurance coverage. He recalled that there was an individual who testified in opposition, and he has received a letter from one individual supporting the bill.

1:53:26 PM

REPRESENTATIVE ROSES offered Conceptual Amendment 1, which would eliminate the ability of an optometrist to inject. He suggested that the language would read:

> That a doctor of optometry shall not administer any pharmaceutical agent by injection except for emergency anaphylactic.

1:53:57 PM

REPRESENTATIVE NEUMAN objected. He said that the bill has gone through many changes, and that an injection is just another way to administer medication. The practical impact of the bill, in Alaska, is whether an optometrist is going to put his/her practice in jeopardy by performing unsafe procedures. Representative Neuman stated that he would not support the amendment and felt that the optometrists' integrity and the participation of the pharmacist will provide checks and balances to prevent drug interactions.

1:56:23 PM

CHAIR WILSON commented that, in her experience as a nurse, as in other professions, there is a wide spectrum of quality and responsibility in health care.

1:57:16 PM

REPRESENTATIVE GARDNER, speaking to the amendment, opined that a pharmacist would not be involved if an injection were given in the optometrist's office. She stated her objection to the amendment and pointed out that medications, whether oral or injected, are systemic.

1:58:15 PM

REPRESENTATIVE ROSES told the committee that the amendment is meant to address the safety concerns for injections and to prevent the injection of Botox. He continued to say that intervention by pharmacists or insurance companies may not be timely enough to prevent drug interaction.

1:59:43 PM

REPRESENTATIVE SEATON relayed that this amendment changes the bill somewhat, and stated that he may support it. The quality of service to residents of rural and remote Alaska may be enhanced by the use of other drugs. He stressed the importance of authorizing optometrists to use an injection to treat anaphylactic shock. Representative Seaton asked the sponsor for more information on the other injectable drugs.

2:00:59 PM

CHAIR WILSON informed the committee that an injection, incorrectly administered, will deliver medication directly to the heart.

2:01:32 PM

REPRESENTATIVE FAIRCLOUGH stated her opposition to the conceptual amendment. She recalled that only six communities in the state have ophthalmologists and that eye health care is extremely limited to remote and rural Alaska. She opined that the need for an optometrist to inject medication is rare. Representative Fairclough acknowledged that there have been exaggerations in testimony and expressed her concern that both sides have brought fears into the discussion in order to protect their "turf."

REPRESENTATIVE ROSES indicated that without passage of the Conceptual Amendment 1 he will not support the bill.

2:03:47 PM

REPRESENTATIVE RALPH SAMUELS, Alaska State Legislature, sponsor of HB 113, stated that the intent of this bill is to provide medical access to Alaskans. He spoke of the changes that have limited some of the scope of the original bill, and commented that with Conceptual Amendment 1 the bill will still improve rural and remote access to care. He encouraged the committee to keep its focus on the question of optometrists and eye care, not on nurse practitioners or governing boards. Representative Samuels stressed that HB 113 is about access to health care for rural residents.

2:06:11 PM

REPRESENTATIVE SEATON expressed his belief that providing access to health care to remote Alaska is critical.

2:06:45 PM

REPRESENTATIVE ROSES agreed that the testimony supports the infrequent need of injections and removal of the authority does not change the quality of care the bill seeks to provide. The amendment provides a higher level of safety, and the person who testified here was concerned about injections by optometrists. He reviewed the testimony surrounding the injection aspect of HB 113.

2:08:21 PM

REPRESENTATIVE FAIRCLOUGH referred to the report stating that 11 states give injectable drug authority to optometrists. Taking into consideration that the malpractice insurance has not increased in those states does support the safety factor of this authority.

2:10:26 PM

REPRESENTATIVE NEUMAN spoke of the unavailability of medical care in rural Alaska. He noted that new techniques are needed, along with important medical tools, for professionals to utilize. He stated his opposition to the amendment.

2:11:58 PM

REPRESENTATIVE ROSES stated that ophthalmologists and optometrists were open to the changes made by his amendment.

2:12:41 PM

A roll call vote was taken. Representatives Seaton, Roses, and Wilson voted in favor of Conceptual Amendment 1. Representatives Neuman, Cissna, Gardner, and Fairclough voted against it. Therefore, Conceptual Amendment 1 failed by a vote of 3-4.

2:13:46 PM

REPRESENTATIVE CISSNA provided a personal story. Speaking as a member of this committee for seven years, she emphasized the need for committee members to travel to remote and rural Alaska. She stated her support for the bill.

2:16:02 PM

REPRESENTATIVE NEUMAN restated his concern for residents living in a remote area. He stated his support for the bill.

2:17:00 PM

REPRESENTATIVE SEATON expressed his concern about the care for residents in rural areas, and stated his support for the bill.

2:17:31 PM

REPRESENTATIVE ROSES stated his opposition to the bill.

2:17:54 PM

REPRESENTATIVE GARDNER stated that that she would like know whether there is support for this bill from health care providers, community health centers, and consortiums that are not connected with optometry or ophthalmology.

2:18:43 PM

REPRESENTATIVE FAIRCLOUGH reviewed health care cost statistics for Alaska. She noted that fears and concerns about expansion of authority beyond this bill are not relevant. In addition, she cited state statute that the removal of foreign bodies from the eye is not surgery. Representative Fairclough opined that support for this bill has been from optometrists because they have to refer patients to subsequent doctors for treatment that they feel trained to do. Representative Fairclough quoted testimony from a previous witness and noted that the language in HB 113 outlines specific practices and training that optometrists must complete to protect the safety of Alaskans. She expressed her support for the bill.

2:21:46 PM

CHAIR WILSON opined that the statute cannot govern the disposition of a foreign object in an eye. As an advocate for health access to rural areas, she stated that this bill has evolved in a positive way. Nevertheless, she stated her opposition to the bill.

2:22:53 PM

REPRESENTATIVE SAMUELS stated that he will solicit impartial witnesses to provide testimony to the next committee of referral regarding the remaining concerns about the bill.

2:23:44 PM

REPRESENTATIVE SEATON moved to report CSHB 113, Version 25-LS0411\K, Bullard, 3/5/07, out of committee with individual recommendations and the accompanying fiscal notes.

2:23:57 PM

REPRESENTATIVE ROSES objected.

2:24:09 PM

A roll call vote was taken. Representatives Seaton, Cissna, Gardner, Fairclough, and Neuman voted in favor of CSHB 113, Version 25-LS0411\K, Bullard, 3/5/07. Representatives Roses and Wilson voted against it. Therefore, CSHB 113(HES) was reported out of the House Health, Education and Social Services Standing Committee by a vote of 5-2.

The committee took an at ease from 2:25 p.m. to 2:32 p.m.

HB 173-INVOLUNTARY PSYCHOTROPIC DRUG TREATMENT

2:33:09 PM

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 173, "An Act relating to court approval of involuntary administration of psychotropic medication; and providing for an effective date."

2:33:56 PM

REBECCA ROONEY, staff to Representative Peggy Wilson, Alaska State Legislature, introduced HB 173, on behalf of the sponsor. She paraphrased from the following written statement [original punctuation provided]:

> The purpose of HB 173 is to bring Alaska statutes into conformance with the Alaska Supreme Court decision in Meyers v. API, which was decided by the court in June of 2006. The court's decision provides additional patient protection when authorizing involuntary administration of psychotropic medications. These

additional protections have already been put into practice.

Current statutes provide that when a designated evaluation or treatment facility wanted to medicate an involuntarily committed patient (in a non-emergency situation) the hospital had to prove to a court only that the patient (1) was presently incapable of giving or withholding informed consent, and (2) had not in the past, while competent, reliably indicated a wish not to be treated with such medication in the future. Once those showings were made the court was required to approve the hospital's request to administer the medication.

This past year, the Alaska Supreme Court decided in Myers v. API, the current statute was unconstitutional as written. The court based its decision on the Alaska Constitutional guarantees of liberty and privacy to Alaska's citizens, and on the fact that psychotropic medication, which is intended to alter a recipient's mind, is both very intrusive into the recipient's life, and may cause potentially devastating side effects.

In Myers vs. API the court ruled that in addition to the criteria in current statute the court must be convinced that the recommended psychotropic medication treatment is in the best interest of the patient and also be convinced that there is no less intrusive alternative available for the recommended course of treatment.

This court decision has provided additional protections for patient's rights. HB 173 will put those protections into statute. Please pass HB 173 out of committee.

2:36:22 PM

REPRESENTATIVE SEATON asked whether the proposed use must be a pre-authorization, not a post justification for the administration of psychotropic drugs.

MS. ROONEY clarified that this is to satisfy a court order to approve the administration of psychotropic drugs.

2:37:08 PM

REPRESENTATIVE SEATON referred to the bill on page 2, sub-subparagraph (j), and noted that for a person who has had several episodes the court would require the court order for each episode, unless the commitment period is extended.

MS. ROONEY deferred to the Department of Law (DOL).

2:37:49 PM

STACIE KRALY, Chief Assistant Attorney General, Statewide Section Supervisor, Human Services Section, Civil Division, Department of Law (DOL), advised the committee that when an individual is involuntarily committed they are committed for 30 days and the court order for medication is for 30 days; for subsequent commitments, the court order for forced medication would be concurrent with the period of the commitments.

REPRESENTATIVE SEATON re-stated his question. He asked for confirmation that when someone is committed at one time, and is administered drugs, and then is admitted with the same condition six months or a year later, the court would need to make another finding for use of the drugs.

MS. KRALY concurred.

2:40:02 PM

REPRESENTATIVE NEUMAN relayed a story of an individual who was unable to function, despite the assistance that was offered to him, and concluded that this bill would be helpful in a similar case.

2:41:04 PM

CHAIR WILSON opened public testimony.

2:41:21 PM

TIM FARRELL informed the committee that he is a resident of Fairbanks, and directed the committee's attention to his written testimony included in the committee packet. Mr. Farrell stated his opposition to HB 173 and said that the use of psychotropic drugs is very dangerous for the patient. He opined that these drugs are mind-altering and can cause violent and suicidal effects.

CHAIR WILSON observed that this bill makes the court finding more rigorous, prior to the administration of these drugs.

MR. FARRELL asked the committee to review his suggested amendments.

REPRESENTATIVE CISSNA asked for a copy of Mr. Farrell's amendments.

2:44:13 PM

CHAIR WILSON provided copies of Mr. Farrell's email for the committee members, which read [italics designate deletions]:

> ***Section 1.** AS 47.30.839(g) is repealed and reenacted to read:
>
> (g) the court *shall* may approve the proposed use by a facility of a psychotropic medication if the court determines, by clear and convincing evidence, that
>
> (1) it does not go against the person's health care choices previously determined and documented in a mental health advance directive, as described in AS 13.52;
>
> (2) it does not run contrary to the patient's history of health care decisions so that a person being considered by a psychiatric facility for forced drugging is not prevented from actively seeking alternative and recognized (licensed or certified) health care practitioners to diagnose and treat medical/physical ailments;
>
> *(1)* (3) the patient does not have the capacity to give or withhold informed consent (not just disagreeing with recommended psychiatric treatment) regarding the patient's treatment s described under AS 47.30.837 and did not have the capacity at the time of previously expressed wishes under (g)(2) of the Section;
>
> *(2)* (4) the facility must document their efforts to achieve informed consent as informed consent; and
>
> *The proposed use of the psychotropic medication is in the patient's best interest; and*

(3) (5) the facility/psychiatrists must actively allow alternative approaches to helping someone who is in an emotional crisis of lesser or greater degree and actively allow complementary treatment to occur on premises by state licensed/certified health care practitioners.

There is no less intrusive alternative treatment available.

End of revisions.

2:44:28 PM

FRANK TURNEY stated that he is a resident of Fairbanks, and stated his support for HB 173. He said that the bill will protect the rights of patients by the increased restrictions against involuntary drugging by the court system. Mr. Turney expressed his support for the amendments suggested by Mr. Farrell and relayed a personal story regarding the drug Prolyxin. He noted his support for the court action regarding Faith J. Myers v. Alaska Psychiatric Institute; however, the Supreme Court failed to rule on incarcerated mental health patients in jails and prisons. Another area of his concern is about how often recommendations for the treatment of illicit drug use are more drugs versus an alternative treatment. He concluded by asking the committee to consider that the bill does not apply to the administration of medication to prisoners confined in correctional institutions.

2:48:17 PM

CHAIR WILSON responded that the committee has not looked at that point. She asked for his opinion of medications in general.

2:48:39 PM

MR. TURNEY replied that, as a former twenty-year mental health client from Oregon, he survived his treatment only with the intervention of his family. He gave personal examples of the long and short term effects of psychotropic drugs. Mr. Turney encouraged the consideration of holistic treatment alternatives instead of forced medication. He urged the committee to adopt Mr. Farrell's amendments to HB 173.

2:51:37 PM

REPRESENTATIVE NEUMAN opined that the change suggested by Mr. Farrell for Sec. 1, subsection (g), from "the court shall" to "the court may" appears to make the language stronger.

2:52:11 PM

CHAIR WILSON informed the committee that guidelines were set out during the lawsuit. She asked her aide to provide the criteria required prior to approval of the order for the use of the drugs.

2:53:02 PM

MS. ROONEY explained that, under AS 47.30.837(d)(2), guidelines were developed regarding how the court is to determine what is in the patient's best interest. The guidelines are:

> An explanation of the patient's diagnosis and prognosis or their predominant symptoms with and without the medication; information about the proposed medication, its purpose, the method of administration, the recommended ranges of dosages, possible side effects and benefits; ways to treat side effects and risks of other conditions such as tartive disconesia ... ; a review of the patient's history including medication history and previous side effects from medications; an explanation of interactions with other drugs, including over-the-counter drugs, street drugs and alcohol; and information about alternative treatments and their risks; side effects and benefits, including the risks of non-treatment; also the extend and duration of changes in behavior patterns and mental activity effected by the treatment; the risks of adverse side effect; the experimental nature of the treatment; its acceptance by the medical community of the state; and the extent of intrusion into the patient's body and the pain connected with that treatment.

2:54:30 PM

REPRESENTATIVE GARDNER expressed her understanding that Representative Neuman is asking whether the judge is required to approve the order, if all of the conditions are met.

2:55:13 PM

CHAIR WILSON directed the question to the DOL.

2:55:21 PM

MS. KRALY speaking from a drafting standpoint, advised that the use of the word "shall" is a mandatory action, and "may" is more permissive. She opined that in this context, meeting the criteria as read by Ms. Rooney, and meeting a clear and convincing evidentiary standard, will require the issuance of the order by the court.

2:56:29 PM

REPRESENTATIVE GARDNER expressed her belief that all psychotropic drugs are somewhat experimental and it appears that under the current language, a judge will be required to approve the order after conditions in paragraphs (1), (2), and (3) are met.

MS. KRALY answered no. She added that all four of the standards would have to be met, and she reviewed the four criteria.

2:57:53 PM

CHAIR WILSON said that under subsection (g) there are only three criteria listed and she read:

> (1) the patient does not have the capacity to give or withhold informed consent regarding the patient's treatment as described under AS 47.30.837 and did not have the capacity at the time of previously expressed wishes under (d)(2) of this section;

MS. KRALY explained that those are two distinct findings that the court would have to make in addition to the two findings by the Alaska Supreme Court in the Myers decision. She opined that there are four evidentiary burdens that the state must meet before forced medication can be administered.

2:58:42 PM

REPRESENTATIVE GARDNER remarked:

... if the court makes those four findings, does not [sub]section (g) say the court shall approve the proposed use, if these findings are true?

MS. KRALY answered:

If all four of them have been met by clear and convincing evidence, the standard is the "shall", that means the court shall order the administration ... of drugs .... So, the answer to your question is yes.

2:59:23 PM

CHAIR WILSON said:

In the past they only had to do the first two ... So we've added two more safeguards for the patient so that there's a lot more criteria that has to be met. Is that correct?

3:00:02 PM

MS. KRALY agreed.

[Temporarily lost reception]

3:00:09 PM

CHAIR WILSON asked:

... I just want to make sure that, that with the ruling of the court these four now, meet that requirement that the court upheld.

3:00:13 PM

MS. KRALY said yes.

3:00:16 PM

REPRESENTATIVE GARDNER remarked:

So, I understand that if we change the word from "shall" to "may", in [sub]section (g) it's a sea change in terms of how we do treatment. Because it would give the court the discretion to say, even if

all those findings are met, the court could choose not to. What would you think about doing that?

MS. KRALY answered:

Personally, ... I don't think ... I could comment on that particular question, but I would agree that if you changed the word "shall" to "may" it would give the court discretion in those instances even when all four have been met, or the standards have been met to still not grant the petition for forced medication.

3:01:30 PM

REPRESENTATIVE NEUMAN questioned whether, with the four criteria, does the court have the discretion to say ... yes or no with that word "shall" ....

MS. KRALY answered:

Well, under traditional statutory construction the word "shall" would be a mandatory requirement. I do believe that the courts have inherent discretionary authority to make decisions and now with this Myers decision, the best interest requirement gives the court a lot of discretion to decide what is in the individual's best interest, irrespective of the other three criteria that are required. So, the "shall" although, under general statutory construction, would require a mandatory action by the court system the court system, in these instances, have in many instances, have broad discretionary authority to make appropriate decisions on a case by case basis.

3:03:00 PM

REPRESENTATIVE CISSNA referred to one of Mr. Ferrell's suggestions that complementary medicine is beginning to be licensed and certified in Alaska. However, institutions of last resort are often focused on the medical model. She expressed her concern that, even with the Myers decision by the court, Sec. 1 paragraph (3) states "there is no less intrusive alternative treatment available." Representative Cissna observed that if the medical staff at the institution does not like complementary treatment, it would not be available. She urged use of the word "may" or the elimination of paragraph (3).

CHAIR WILSON asked whether changing "shall" to "may" would satisfy the lawsuit.

3:05:46 PM

MS. KRALY replied that the change would give a broader protection in the administration of the drug, and she restated that the court could decide to not grant a petition for use of the drug, even if all four criteria were clearly established.

3:06:21 PM

REPRESENTATIVE FAIRCLOUGH remarked:

> ... truly, it feels like we're debating a word that already has permissive language in there. And I appreciate the person who's offered the amendment, but "shall" is already a "may" in this particular context, if you go down to line 2, ... a judge, in his discrimination, not line 2, but number 2, [HB 173, Sec. 1, (g)(2)] all he has to do so he doesn't have to administer the drug, if he ... make a finding that is not in the patient's best interest. ... So, I think we can change it ... to "may" easily, because it's already there, or we could leave it .... The judge can look to that, not modify the language that we have before us, and still could ... make a determination that it's not in the best interest and then the "shall" goes away.

3:07:42 PM

REPRESENTATIVE SEATON recalled testimony regarding the side effects of drugs. He questioned whether the judge ever hears discussion about which particular medication is being proposed or if the specific choice of medication is left to the facility.

MS. KRALY explained that the statewide practice for hearings is that when a petition for forced medication is filed the questions are directed towards the specific medication being proposed for that individual. The judge hears testimony about the specific drug and its side affects, interactions and benefits. The approval of the petition is not a blanket approval for any medication.

3:10:21 PM

REPRESENTATIVE SEATON noted that the language in the bill is not specific in that regard.

3:10:41 PM

[3:10:28 to 3:11:30 testimony obscured by outside noise]

REPRESENTATIVE GARDNER asked Mr. Farrell whether he, personally, could conceive of a situation for the endorsement of a psychotropic medication being administered to an unwilling patient.

3:11:40 PM

MR. FARRELL responded that it goes against human rights to force medication.

MR. TURNEY agreed and added that the involuntary use of psychotropic drugs would not be appropriate even in extreme cases.

3:12:22 PM

REPRESENTATIVE CISSNA reiterated her concern that there are other alternatives that will not be made available because it is not the method that the professionals in that setting are approving. She suggested expanding the rights of the individual by changing paragraph (3) to read:

> And a chosen less intrusive alternative treatment has been utilized and proven ineffective.

MS. KRALY advised that the language for the legislation was taken from the Alaska Supreme Court decision and placed in the bill. She stressed that the question of alternative medications is brought before the judge at the time of the petition, and that all of the alternatives available are discussed in order to meet the clear and convincing burden of the petition.

3:15:23 PM

CHAIR WILSON observed that HB 173 will be reviewed by the House Judiciary Standing Committee.

3:16:03 PM

REPRESENTATIVE CISSNA noted that having the implied or inferred standard may be insufficient. She pointed out that science is changing every day. In addition, a judge may not recognize the legislature's intention when acting on legislation. She stated her concern for the rights of patients who may see the world in a different perspective.

3:17:29 PM

JIM GOTTSTEIN, attorney-at-law, Law Project for Psychiatric Rights, informed the committee that he was the attorney who won the Myers v API lawsuit. Mr. Gottstein suggested an addition to the bill in order to comply with the court ruling in Myers v API. He read:

> When making the best interest determination under (g) of this section, the court shall, at a minimum, consider the same factors as set forth in AS 47.30.837(d)(2)

MR. GOTTSTEIN explained that the Alaska Supreme Court specifically indicated that those factors should be considered. In answer to a question, he noted that the factors he referred to have been read into the record and suggested that they be a part of the statute, and not only a part of the court decision. In addition, he informed the committee that the court petition hearings are often "a sham". Mr. Gottstein reiterated that the court ruled that those factors should be considered at a minimum. He continued to explain that, in Anchorage, testimony by physicians is not challenged by the public defenders and the elements of discovery are not discussed. He opined that patient's rights are not honored, but dishonored, as a matter of course.

CHAIR WILSON asked whether strengthening the language about what information is provided to the judge will make a difference.

MR. GOTTSTEIN answered that to solve the problem, patients need to be given real legal representation. Otherwise, their rights will be ignored. However, he opined that the problem of legal representation was beyond the scope of this committee. Mr. Gottstein then turned to the issue of "shall" versus "may".

[Due to technical difficulties Mr. Gottstein’s testimony was interrupted, and the meeting was subsequently adjourned.]

[HB 173 was held over.]

3:30:39 PM

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 3:42 p.m.