

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 26, 2014

1:14 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Gabrielle LeDoux
Representative Charisse Millett
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

Representative Bob Lynn, Vice Chair
Representative Neal Foster

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 1

Proposing amendments to the Constitution of the State of Alaska relating to state aid for education.

- MOVED HJR 1 OUT OF COMMITTEE

HOUSE BILL NO. 269

"An Act providing immunity for certain licensed temporary health care providers who provide free health care services."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 1

SHORT TITLE: CONST. AM: EDUCATION FUNDING

SPONSOR(S): REPRESENTATIVE(S) KELLER

01/16/13	(H)	PREFILE RELEASED 1/7/13
01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	EDC, JUD, FIN
02/22/13	(H)	EDC AT 8:00 AM CAPITOL 106
02/22/13	(H)	Heard & Held
02/22/13	(H)	MINUTE(EDC)
03/01/13	(H)	EDC AT 8:00 AM CAPITOL 106
03/01/13	(H)	Heard & Held
03/01/13	(H)	MINUTE(EDC)

02/07/14 (H) EDC RPT 3DP 3DNP 1NR
 02/07/14 (H) DP: REINBOLD, SADDLER, GATTIS
 02/07/14 (H) DNP: P.WILSON, DRUMMOND, SEATON
 02/07/14 (H) NR: LEDOUX
 02/07/14 (H) EDC AT 8:00 AM CAPITOL 106
 02/07/14 (H) Moved Out of Committee
 02/07/14 (H) MINUTE(EDC)
 02/19/14 (H) JUD AT 1:00 PM CAPITOL 120
 02/19/14 (H) Heard & Held
 02/19/14 (H) MINUTE(JUD)
 02/26/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 269

SHORT TITLE: IMMUNITY FOR VOL. HEALTH CARE PROVIDER
 SPONSOR(S): REPRESENTATIVE(S) THOMPSON

01/21/14 (H) READ THE FIRST TIME - REFERRALS
 01/21/14 (H) HSS, JUD
 02/13/14 (H) HSS AT 3:00 PM CAPITOL 106
 02/13/14 (H) Moved CSHB 269(HSS) Out of Committee
 02/13/14 (H) MINUTE(HSS)
 02/17/14 (H) HSS RPT CS(HSS) NT 5DP
 02/17/14 (H) DP: SEATON, PRUITT, KELLER, TARR,
 HIGGINS
 02/26/14 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE STEVE THOMPSON
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 269.

JULIE ROBINSON, DDS, Co-Chair
 Alaska Mission of Mercy (AKMOM)
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 269.

JANA SHOCKMAN, RN, President
 Alaska Nurses Association (ANA)
 Anchorage, Alaska

POSITION STATEMENT: Testified in regarding HB 269.

DAVID LOGAN, DDS
 Alaska Dental Society (ADS)
 Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 269.

JANE PIERSON, Staff
Representative Steve Thompson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 269.

ACTION NARRATIVE

[1:14:50 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:14 p.m. Representatives Millett, Pruitt, Gruenberg, LeDoux, and Keller were present at the call to order.

HJR 1-CONST. AM: EDUCATION FUNDING

[1:15:10 PM](#)

CHAIR KELLER announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 1, Proposing amendments to the Constitution of the State of Alaska relating to state aid for education.

[1:15:24 PM](#)

CHAIR KELLER, noting that there have been over 24 hours of testimony and over 135 testifiers on the language in HJR 1, announced that HJR 1 is before the committee for consideration and vote.

[1:16:46 PM](#)

REPRESENTATIVE GRUENBERG advised he opposes HJR 1 as he believes it overturns a fundamental provision in the Alaska State Constitution, which prohibits the use of direct aid for private education, and urged that the constitution not be amended in this manner. He noted that a majority of people he has heard testify and who have contacted him are in opposition to this change.

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REPRESENTATIVE LEDOUX questioned how one reconciles the Blaine Amendment with performance scholarships that can be used at private and religious colleges. She recalled that money is granted under capitol grants for private and sometimes religious

pre-school transportation, as is the case in Fairbanks and in Kodiak parochial schools.

REPRESENTATIVE GRUENBERG stated he has performed extensive research on this provision since the 1980s and found that tax credits for contributions to public and private colleges in Alaska is not considered direct aid as the taxpayer would make the contribution. In regard to scholarships, he noted, it is similar in that it is not a direct aid to the university as it was to benefit each student receiving a scholarship. With respect to the transportation issue, he advised that he could not answer as he is not an expert on school funding. The question in this matter is should the [Blaine Amendment] be repealed in order to provide direct aid [to private schools] which is in opposition to the basic principle of separation [of church and state], he opined.

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REPRESENTATIVE PRUITT moved to report HJR 1 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HJR 1 was reported from the House Judiciary Standing Committee.

HB 269-IMMUNITY FOR TEMP. HEALTH CARE PROVIDER

[1:25:58 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 269, "An Act providing immunity for certain licensed temporary health care providers who provide free health care services." [Before the committee was CSHB 269(HSS).]

[1:26:18 PM](#)

REPRESENTATIVE STEVE THOMPSON, Alaska State Legislature, speaking as the prime sponsor, paraphrased from the following written sponsor statement [original punctuation as provided]:

The problem is that there is no clear answer as to whether an out-of-state dental professional issued a courtesy license is covered under Alaska Statute 09.65.300. AS 09.65.300 provides statutory immunity against civil damages resulting from an act or omission of a health care provider who provides free health care services, within the scope of their

license. Under AS 09.65.300 a patient must receive written notice of this immunity as well as giving informed consent before any medical service is provided. Under AS 09.65.300 patients still have the right to sue the medical provider for civil damages resulting from the provider's gross negligence, or reckless or intentional misconduct.

Unfortunately, it is unclear whether these out-of-state dental professionals, participating in the AKMOM event qualify under AS 09.65.300, the Volunteer Health Care Provider Immunity Act of 2004. The original purpose of the statute was to allow retired Alaska physicians to volunteer their services. The Department of Law opines that the meaning of the law will ultimately have to be interpreted in a court case.

HB 269 will clarify AS 09.65.300, ensuring that civil immunity is extended to these out-of-state medical professionals who are licensed to provide dental services in Alaska during the Mission of Mercy Event, without having the issue come before a lengthy proceeding before the Court.

Please join Representative Thompson in supporting this legislation.

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CHAIR KELLER opened public testimony.

[1:30:19 PM](#)

JULIE ROBINSON, DDS, Co-Chair, Alaska Mission of Mercy (AKMOM), informed the committee that the MOM event includes approximately 1,200 total volunteers, 216 dentists, and approximately 45 days for the AKMOM event. This legislation is important for this event because many of the dentists participating in the event apply for courtesy licenses. Eight dentists have applied for courtesy licenses, including dentists from Joint Base Elmendorf-Richardson (JBER) and the South Central Foundation as well dentists from 13 different states. Each dentist's participation is necessary for the success of this event, she emphasized. The [April] event is budgeted at approximately \$185,000 with a goal of treating 2,000 people during the course of 2 days. The projected number of people cannot be treated without the out-of-state and military dentists' participation, she opined.

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JANA SHOCKMAN, RN, President, Alaska Nurses Association (ANA), advised that ANA is in favor of HB 269, but suggested amending it such that the providers with a courtesy license are required to provide their Alaska patients with a local contact person that these patients may go to for follow-up care. Ms. Shockman noted that following treatment patients may require follow-up care due to complications; these patients may not have the financial resources to have their own local primary care provider. The Dental Society responded to ANA's concerns stating that [follow-up] has not been a problem for them since arrangements have been made for follow-up at the upcoming MOM event, she noted. The Alaska Nurses Association prefers that out-of-state providers, for programs yet to come, are required to do the same. Therefore, she suggested the earlier mentioned [amendment] to the bill be inserted under AS 09.65.300(a)(5), which lists providers' responsibilities.

[1:35:48 PM](#)

REPRESENTATIVE LEDOUX questioned whether the follow-up care would be "free" or simply [a dentist] the patients can call.

MS. SHOCKMAN responded that it would be a [dentist] who has agreed with the program or the provider to provide follow-up care for the patient. For instance, with the dental clinic the Dental Society has contacts available for patients with a problem, after receiving free care.

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REPRESENTATIVE PRUITT requested that Ms. Shockman reiterate her suggested language.

MS. SHOCKMAN specified that on to [page 2], line 6, following "(5) provider" insert "(C) the provider with the courtesy temporary license must provide a contact for follow-up care as needed."

[1:39:51 PM](#)

DAVID LOGAN, DDS, Alaska Dental Society, stated he is a dentist in Juneau and represents the Alaska Dental Society (ADS) supports HB 269 as written without any alteration. He advised that ADS supports follow-up care and, in fact, it is part of the

Alaska Mission of Mercy (AKMOM) protocol. He explained that chiropractors, dentists, physicians and nurses are the four professions affected by courtesy licensing and their individual professional requirements are different. Therefore follow-up care is best addressed within each profession's regulation. This bill deals with immunity for health care providers' services and under dentistry the dentist is issued a courtesy license only if they are performing free care but that is not the case for all professions. The question is should the state mandate [follow-up care] only for free care or for all holders of courtesy licenses, which by nature are transient and not permanently located in the state, he opined. He reiterated the belief that [follow-up care] is better addressed under regulations for each individual health care profession rather than in statute.

1:43:05 PM

REPRESENTATIVE PRUITT expressed his concern that a [health care provider] can obtain a temporary courtesy license, come to Alaska and leave shortly thereafter. In such a situation, he questioned what recourse the patient would have if [the patient requires additional care] or if the [health care provider] is grossly negligent and then leaves the state. While he said he agrees with the roles regulations play, the legislature must perform its own due diligence to ensure the patient has recourse. The Mission of Mercy may be an oddity for many of the patients as they most likely do not receive assistance on a regular basis. The state, he opined, should deal with temporary out-of-state [health care providers] in an appropriate manner as it appears the legislature is almost creating a second category of individuals.

DR. LOGAN remarked his concern is that the discussion is singling out a very narrow spectrum of temporary [health care] providers who come into the state, are not here on a permanent basis, and deal strictly with courtesy licenses that offer free health care. Whereas, he noted, there are chiropractors, physician, and nurses who temporarily come into the state and are paid but dentists are unique in that they either have a license or not, or are issued a short lived courtesy license. The ADS, he stated, believes follow-up care should be part of any treatment and as such is part of the MOM events. He opined that part of being a health care professional is self-regulation [and taking on things such as follow-up care]. He suggested that if the issue is approached at a professional level and is under regulation it will be easier to reach the broad range [of

providers] and the changes can be made in three separate regulations.

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REPRESENTATIVE PRUITT stated that if HB 269 passes as written, the intent is for there to be regulations that address this issue [for follow-up care].

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CHAIR KELLER related his understanding that in response to Representative LeDoux's question, Ms. Shockman did not answer whether [the follow-up care] is intended to be free. Ms. Shockman's suggested [amendment] language did not specify that the follow-up care would be free, but simply stated that a contact number would be provided. However, he said he understood Dr. Logan's testimony to imply it was free follow-up care.

DR. LOGAN said he suspected it would vary depending upon whether the service was free or not. For instance, the MOM events provide free dental care and free follow-up care in Anchorage for a period of 30 days afterwards, he explained. Within the MOM event he fully expects that in treating approximately 2,000 patients someone will require follow-up care after receiving a lot of dental work in a short period of time. Due to the gap in health care coverage, he predicted that more events [similar to MOM] will happen and if a [health care provider] is [providing services] at a free health care event, the provider has an obligation to provide free follow-up within reason. On the other hand, if a patient is treated by a [health care provider] who holds a temporary permit and is charging for his/her services, the follow-up care unless included as part of the service would have a charge.

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REPRESENTATIVE LEDOUX referred to the Good Samaritan Law wherein if a doctor stops at an accident [scene] to offer emergency aid, that doctor is not required to provide free orthopedic care forever. Therefore, she was not certain follow-up care should be legislatively mandated.

DR. LOGAN deferred to the sponsor of HB 269.

[1:51:34 PM](#)

JANE PIERSON, Staff, Representative Steve Thompson, Alaska State Legislature, explained that chiropractors, physicians, nurses and dentists have different duties and standards within their professions. The strongest approach, she opined, is for that the various health care boards and professions that issue courtesy licenses to be regulated by their own board under their own section of statute. She offered that MOM performs well in providing free health care follow-up for 30 days. Upon requesting HB 269, she was advised by Legislative Legal and Research Services that the bill was unnecessary as [health care providers] are already covered. However, the Attorney General's Office advised that [health care providers] may or may not be [covered], but that a court case would decide. Therefore, HB 269 attempts to avoid a court case. With regard to regulating under individual boards, she opined that it is up to each board to set its own standards as each profession may have different follow-up practices. Ms. Pierson testified that the sponsor prefers HB 269 as it is written.

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CHAIR KELLER characterized Representative Pruitt's comments as good, noting that it is very important to register legislative intent. He extended the invitation to the members of the committee to also join if they believe the legislative intent should be in the regulations to ensure there is adequate information regarding follow-up service.

[1:54:39 PM](#)

REPRESENTATIVE GRUENBERG inquired as to the meaning of the last paragraph of the memorandum from Hilary Martin, Legislative Counsel to Representative Steve Thompson, dated 1/13/14, which read:

Finally, please be aware of the temporary permitting for a locum tenens practice under AS 08.64.27 which allows a member of the state medical board or its executive secretary to grant a temporary permit to a physician or osteopath licensed in another state, territory, or province to substitute for another physician in the state. I am not sure how the temporary licensing and temporary permitting work together, but you might want to include a reference to this section in order to clarify whether a locum

tenens is included as a licensed health care provider under AS 09.65.300.

MS. PIERSON explained that a locum tenens is quite different than a temporary health care provider in that [the locum tenens providers] come to Alaska and work a practice for a period of time. She advised the committee that she spoke with Hilary Martin after receiving the memorandum, dated 1/13/14, and thought it was addressed in the 2/13/14 memorandum [from Megan A. Wallace, Legislative Legal and Research Services] to Representative Steve Thompson. Ms. Pierson further explained that a locum tenens would not be covered as it is a paid position, which is very different from temporary health care providers who provide free services in Alaska.

MS. PIERSON, in further response to Representative Gruenberg, advised that temporary [courtesy] licenses are issued for the duration of the MOM event, which is basically a weekend. She confirmed the expiration date is listed on the temporary licenses, which are issued by the board for a limited amount of time to provide free services for a certain event. She further confirmed, regarding page 2, line 4, that Representative Gruenberg is correct in that the services are free services and not services provided at a reduced rate.

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REPRESENTATIVE GRUENBERG, acknowledging this is current law, pointed out that on page 2, line 7, the language does not require the informed consent to be in writing, and yet on page 2, line 11, the language requires the notice of immunity to be in writing. He questioned if there is a good reason informed consent is not obtained in writing.

MS. PIERSON advised Representative Gruenberg she has worked on approximately 400 medical malpractice cases and informed consent is always in writing and is the first thing reviewed.

CHAIR KELLER suggested that if that is the case, then the law should be clear that written informed consent is required.

MS. PIERSON advised Chair Keller the sponsor would consider it a friendly amendment.

[2:00:24 PM](#)

CHAIR KELLER closed public testimony.

2:00:35 PM

REPRESENTATIVE GRUENBERG moved the committee adopt Conceptual [Amendment 1], as follows:

Page 2, line 7, following "consent";
Insert "**in writing**"

There being no objection, [Conceptual Amendment 1] was adopted.

2:01:46 PM

CHAIR KELLER, in response to Representative Gruenberg, advised that his staff had requested answers from Legislative Legal and Research Services in response to questions from Dr. Logan in an email but Legislative Legal and Research Services has not yet responded. Therefore, Chair Keller held over HB 269.

2:03:37 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:03 p.m.