

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

March 18, 2017

3:03 p.m.

MEMBERS PRESENT

Representative Ivy Spohnholz, Chair
Representative Sam Kito
Representative Geran Tarr
Representative David Eastman
Representative Jennifer Johnston
Representative Colleen Sullivan-Leonard

MEMBERS ABSENT

Representative Bryce Edgmon, Vice Chair

Representative Matt Claman (alternate)
Representative Dan Saddler (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 159

"An Act relating to the prescription of opioids; establishing the Voluntary Nonopioid Directive Act; relating to the controlled substance prescription database; relating to the practice of dentistry; relating to the practice of medicine; relating to the practice of podiatry; relating to the practice of osteopathy; relating to the practice of nursing; relating to the practice of optometry; relating to the practice of veterinary medicine; related to the duties of the Board of Pharmacy; and providing for an effective date."

- HEARD & HELD

CS FOR SENATE BILL NO. 91(HSS)

"An Act relating to the opioid epidemic; authorizing the chief medical officer of the Department of Health and Social Services to issue a standing order for the prescription of an opioid overdose drug; and providing for an effective date."

- MOVED CSSB 91(HSS) OUT OF COMMITTEE

HOUSE BILL NO. 103

"An Act relating to the practice of optometry."

- MOVED CSHB 103(HSS) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 159

SHORT TITLE: OPIOIDS;PRESCRIPTIONS;DATABASE;LICENSES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/06/17 (H) READ THE FIRST TIME - REFERRALS
03/06/17 (H) HSS, FIN
03/18/17 (H) HSS AT 3:00 PM CAPITOL 106

BILL: SB 91

SHORT TITLE: DISASTER EMERGENCY: OPIOID EPIDEMIC

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/10/17 (S) READ THE FIRST TIME - REFERRALS
03/10/17 (S) HSS
03/13/17 (S) HSS AT 1:30 PM BUTROVICH 205
03/13/17 (S) Heard & Held
03/13/17 (S) MINUTE(HSS)
03/15/17 (S) HSS AT 1:30 PM BUTROVICH 205
03/15/17 (S) Moved CSSB 91(HSS) Out of Committee
03/15/17 (S) MINUTE(HSS)
03/16/17 (S) HSS RPT CS 5DP NEW TITLE
03/16/17 (S) DP: WILSON, VON IMHOF, BEGICH, GIESSEL,
MICCICHE
03/16/17 (S) TRANSMITTED TO (H)
03/16/17 (S) VERSION: CSSB 91(HSS)
03/17/17 (H) READ THE FIRST TIME - REFERRALS
03/17/17 (H) HSS
03/17/17 (H) HSS WAIVED PUBLIC HEARING NOTICE, RULE
23
03/18/17 (H) HSS AT 3:00 PM CAPITOL 106

BILL: HB 103

SHORT TITLE: OPTOMETRY & OPTOMETRISTS

SPONSOR(s): SPOHNHOLZ

02/03/17 (H) READ THE FIRST TIME - REFERRALS
02/03/17 (H) HSS, L&C
03/14/17 (H) HSS AT 3:00 PM CAPITOL 106
03/14/17 (H) Heard & Held
03/14/17 (H) MINUTE(HSS)
03/16/17 (H) HSS AT 3:00 PM CAPITOL 106
03/16/17 (H) Scheduled but Not Heard

03/18/17

(H)

HSS AT 3:00 PM CAPITOL 106

WITNESS REGISTER

JAY BUTLER, MD, Chief Medical Officer/ DPH Director
Central Office
Division of Public Health
Department of Health and Social Services
Anchorage, Alaska

POSITION STATEMENT: Answered questions during discussions of HB 159 and SB 91.

BERNICE NISBETT, Staff
Representative Ivy Spohnholz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions about HB 103 on behalf of the bill sponsor, Representative Spohnholz.

JILL GEERING MATHESON, OD
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 103.

HARRIET MILKS, Assistant Attorney General
Commercial and Fair Business Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during discussion of HB 103.

RACHEL REINHARDT, MD
American Academy of Ophthalmology
Seattle, WA

POSITION STATEMENT: Testified in opposition to HB 103.

VICTORIA BLOWER, OD
Optometrist
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 103.

KARL ROSEN, MD
Ophthalmologist
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 103.

ALFRED DERAMUS, MD

Ophthalmologist
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 103.

DAVID ZUMBRO, MD
Ophthalmologist
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 103.

PAUL BARNEY, OD
Chair
Board of Optometry
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 103.

ELIZABETH MORGAN, MD
Ophthalmologist
Anchorage, Alaska

POSITION STATEMENT: Testified during discussion of HB 103.

DAVID KARPIK, OD
Kenai, Alaska

POSITION STATEMENT: Testified in support of HB 103.

ERIC COULTER, MD
Ophthalmologist
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 103.

ERIK CHRISTIANSON, OD
Optometrist
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 103.

ACTION NARRATIVE

[3:03:19 PM](#)

CHAIR IVY SPOHNHOLZ called the House Health and Social Services Standing Committee meeting to order at 3:03 p.m. Representatives Spohnholz, Sullivan-Leonard, Eastman, Kito, and Tarr were present at the call to order. Representative Johnston arrived as the meeting was in progress.

HB 159-OPIOIDS;PRESCRIPTIONS;DATABASE;LICENSES

3:03:59 PM

CHAIR SPOHNHOLZ announced that the first order of business would be HOUSE BILL NO. 159, "An Act relating to the prescription of opioids; establishing the Voluntary Nonopioid Directive Act; relating to the controlled substance prescription database; relating to the practice of dentistry; relating to the practice of medicine; relating to the practice of podiatry; relating to the practice of osteopathy; relating to the practice of nursing; relating to the practice of optometry; relating to the practice of veterinary medicine; related to the duties of the Board of Pharmacy; and providing for an effective date."

3:04:59 PM

JAY BUTLER, MD, Chief Medical Officer/ DPH Director, Central Office, Division of Public Health, Department of Health and Social Services, stated that there had been a fourfold increase in the number of opioid associated deaths in the past 20 years. He declared that this was an opioid epidemic, pointing out that no other cause of death had increased so remarkably over such a short period of time. He reported that there was also an increase in the rates of Hepatitis C, as well as other burdens on the health care system associated with increased use of opioids, both legal and illicit. He said that there were many things that had to be done, which would require a multi-faceted approach. He declared that it was necessary to address the needs of people who were currently struggling with addiction, and to prevent addiction through more evidence based prescribing practices, control the flood of prescription opioids in the community, and address the access to treatment and the de-stigmatization by improving provider knowledge. He reported that there had been an increase in illicit opioid use, beginning with heroin in the past five years, and more recently with fentanyl and other synthetic opioids. He noted that 80 percent of heroin users started opioid use with prescription painkillers. He said that HB [159] aligned with many prescribing guidelines delivered to the legislature from the health care boards through Senate Bill 74 in 2016, as well as the Centers for Disease Control and Prevention pain management guidelines, and the Surgeon General's report on alcohol, drugs, and health. He added that recent statements from the American Medical Association and the American Dental Association, as well as recommendations for evidence based improvement and prescription drug monitoring from the PEW Charitable Trust also supported these guidelines.

DR. BUTLER offered to outline the proposed bill for three particular areas: patients, providers, and the prescription drug monitoring program. He said that proposed HB [159] empowered patients in two ways, it provided an option for those who did not wish to be prescribed opioids to communicate that preference to the providers by way of a voluntary revocable opioid advanced directive which could be placed on the medical record. He shared that this had been a request from the recovery community, describing the challenges they faced in interactions with the health care system when a provider was unaware that the patient was in recovery. He shared that the second way was that it allowed patients to request that the pharmacist dispense less than the total prescribed amount. He said that a partial fill was authorized under federal law, with a goal to affirm the rights of the patient and the authority of the pharmacist. He said that a portion of the continuing professional education that health care providers must receive would include a section of at least two hours designated on pain management and the basics of addiction medicine. He explained that the renewal of a medical license required at least 40 hours of continuing medical education credit. He said that the second component for providers was a setting of dispensing limits for the initial opioid prescription to no more than 7 days. He added that the proposed bill did allow exceptions, when in the professional judgment of the provider, a longer supply was necessary due to chronic pain, severe acute pain, cancer pain, or palliative care, or when a longer supply was necessary due to travel or other logistical barriers. The third component was for changes to the prescription drug monitoring program, a data base accessible to prescribers and dispensers, in order to share information about controlled substances. He declared that the data base was secure and confidential, and met the requirements of the Health Insurance Portability and Accountability Act (HIPAA). He added that this database was not openly available to law enforcement without appropriate search warrant authority.

DR. BUTLER said that the proposed bill authorized the pharmacy board to issue routine periodic confidential reports to prescribers to provide feedback on their prescribing practices relative to those of their peers. These "report cards" were a good way to provide feedback for providers for their own prescribing habits. He said that this had been proven effective in other states for reducing the number of excessive prescriptions with other substances. He stated that the second component of the changes to the prescription drug monitoring program (PDMP) was for clarification to include veterinarians who prescribe opioids to register and use the monitoring

program. He referenced recent media reports regarding attempts to get opioid medications from veterinarians. He explained that the third component was to make the PDMP a more useful tool by providing that pharmacists update the data on a daily, rather than weekly, basis. He stated that the proposed bill had a zero-fiscal note from the Department of Health and Social Services and the Department of Corrections, and a one-time cost of \$27,500 from the Department of Commerce, Community & Economic Development to cover legal costs to amend the regulations and for printing. He directed attention to a letter of support from the Alaska Dental Society.

REPRESENTATIVE TARR asked if there had been a response from pharmacists regarding the more frequent updating of PDMP.

DR. BUTLER said that there had been this discussion with the pharmacists and that DHSS shared concern for any increased burden on the smaller pharmacies. He explained that there could be a delay for this requirement to take effect. He pointed out that some of the larger, more automated pharmacies already updated more frequently than currently required by law.

[3:16:58 PM](#)

CHAIR SPOHNHOLZ asked about the option for patients to decline the full prescription amount, as it seemed counter intuitive to ask permission to accept less medicine than prescribed. She asked if that was not currently possible.

DR. BUTLER offered his belief that "it depends on who you ask" and that federal law had recently changed, which clarified that pharmacists could do a partial fill at the request of the patient.

REPRESENTATIVE KITO pointed out that there were certain medications which required the full regimen to be effective, which could lead to some confusion.

DR. BUTLER acknowledged and stated that the law specified for federally designated Schedule 2 controlled substances. He said that this use for full regimen may have inadvertently lead to patient confusion with opioid prescriptions.

[3:19:16 PM](#)

DR. BUTLER paraphrased from the Sectional Analysis [Included in members' packets], which read:

Sec. 1 Adds a new Chapter 55, Voluntary Nonopioid Directive Act, to AS 13, Decedents' estates, guardianships, transfers, trusts, and health care decisions, that provides an option for patients to execute a Voluntary Nonopioid Directive that would allow a person in recovery (or for other reasons) to make clear the person's desire not to be administered an opioid. A person, guardian, conservator or other appointed person may revoke a directive at any time. The person would provide this confidential information to a health care provider or hospital on a form provided by the Department of Health of Social Services. The department would promulgate regulations on procedures, confidentiality, and exemptions for emergency or substance misuse treatment. Providers are not liable for following a directive. Prescriptions are assumed to be valid; pharmacists are not liable for dispensing a controlled substance in contradiction to a directive. The directive does not alter an advance health care directive, limit opioid overdose drugs, or limit treatment for substance abuse or opioid dependence.

Sec. 2-25 Amend AS 08, Business and Professions, for the Boards of Dentistry, Medicine, Nursing, and Optometry to

- Require two (2) hours of pain management and opioid misuse and addiction instruction;
- Disciplinary actions for prescribing or dispensing an opioid in excess of the maximum dosage allowed by law or violated a law related to drugs, regardless of any criminal action;
- Set the maximum dosage for initial opioid prescriptions at a seven-day supply unless, in the practitioner's professional judgment, it is necessary for chronic pain management or a patient is unable to access a practitioner in time to refill the prescription; and
- Require, for a minor under 18 years of age, the practitioner discuss with the parent or guardian why the prescription is necessary and the risks associated with opioid use.

Sec. 26-27 Amend AS 08.80 for the Board of Pharmacy to

- Register with the Prescription Drug Monitoring Database (PDMP) with or without a federal Drug Enforcement Administration registration number; and
- Allow pharmacists to dispense less than the prescribed amount of a schedule II or III controlled substance at a person's request; the pharmacists would inform the prescribing practitioner and the Prescription Drug Monitoring Database.

Sec. 28 Amends AS 08.98 for the Board of Veterinary Medicine to

- Register with the Prescription Drug Monitoring Database if the veterinarian has a federal Drug Enforcement Administration number; and
- Identify resources and educational materials for veterinarians to identify clients at risk for opioid misuse or diversion of prescribed opioids.

Sec. 29-36 Amend AS 17.30, Controlled Substances, to change the frequency pharmacists report to the Prescription Drug Monitoring Database from weekly to daily; remove the prohibition on sharing information with the federal government. The pharmacy board may provide a confidential unsolicited notification in summary form to a practitioner's licensing board which includes the basis for the notification. The notification must be provided to the practitioner as well.

Sec. 37 Directs the Department of Health and Social Services to draft regulations to implement the Voluntary Nonopioid Directive Act.

Sec. 38 Repeals sunset dates in sections 52 and 73 of Ch. 25, SLA 2016 (SB 74).

Sec. 39-40 Set an immediate effective date and provide an effective date for regulations.

[3:28:24 PM](#)

REPRESENTATIVE EASTMAN asked for the type of information on the report cards and whether the confidentiality was discoverable in any legal action.

DR. BUTLER explained that the report cards, as used in other states, would compare the usage over the previous 12 months with

other providers. He replied that he did not know if this was discoverable in a legal situation.

REPRESENTATIVE EASTMAN directed attention to page 7, [lines 8 - 9] of the proposed bill, and questioned whether there should be sanctions "regardless of whether there has been a criminal action or patient harm." He expressed his concern, as there was the possibility of easily breaking one of many, many laws. He asked if this was opening up the providers to liability. Although he was unsure of the implications, he suggested this might require the hiring of extra staff to deal with potential technical violations, or the increasing of insurance coverage. He asked for the reason behind this language.

DR. BUTLER offered his understanding that this language was not new in this bill.

REPRESENTATIVE TARR directed attention to page 28, Section 36, of the proposed bill, and stated that she was supportive of the idea that providers be responsible, benchmark their practice against others, and adjust their own prescribing practices accordingly. She pointed out that the language was permissive and not required, and asked if this should be required. She declared that providers were part of the solution, as they recognized that there were alternative options for their patients to address health care needs.

DR. BUTLER explained that the primary goal of Section 36 of the proposed bill was to provide authority to the Board of Pharmacy to issue the report cards, and whether or not it was a mandate was a matter of ideology. He said that, as the issuance of these types of report cards was not currently allowed under Alaska law, the desire was to establish the authority to do so.

REPRESENTATIVE TARR asked if the board had a better understanding for whether this would be voluntary. She asked if these were the recommendations from the task force.

DR. BUTLER, in reference to the Alaska Opioid Policy Task Force, said that a number of its recommendations were used in the bill.

[3:35:28 PM](#)

CHAIR SPOHNHOLZ said that the bill would be held over.

SB 91-DISASTER EMERGENCY: OPIOID EPIDEMIC

[3:35:50 PM](#)

CHAIR SPOHNHOLZ announced that the next order of business would be CS FOR SENATE BILL NO. 91(HSS), "An Act relating to the opioid epidemic; authorizing the chief medical officer of the Department of Health and Social Services to issue a standing order for the prescription of an opioid overdose drug; and providing for an effective date."

JAY BUTLER, MD, Chief Medical Officer/ DPH Director, Central Office, Division of Public Health, Department of Health and Social Services, reported that in late 2016, Department of Health and Social Services was awarded a five-year federal grant to support an opioid overdose prevention program which included the distribution of naloxone, a lifesaving drug when administered during an opioid overdose. He explained that the grant funds had been used to acquire a nasal spray form of the drug which was part of the rescue kit, and distributed through Project HOPE, Harm reduction Overdose Prevention and Education. He added that Project HOPE had prioritized partnerships with staff of organizations which did not have medical direction, and whose staff were most likely to be present when an overdose occurred, including first responders and recover support. In order to provide the kits statewide under a standing order, with a prescription that was present, DHSS had explored some options and decided that the best way to move forward expeditiously was for the state medical officer to issue a standing order, under a disaster declaration. He reported that the governor had issued the disaster declaration on February 14, with an anticipated legislative resolution to extend this declaration. He pointed out that no state funds were requested, and that 14 provider organizations had received over 1200 kits. He reported that Legislative Legal Services had offered the opinion that a bill was required to extend the disaster declaration for continued distribution of the kits. He reported that SB 91 included further improvements to HB 174, as it authorized the Chief Medical Officer of DHSS to issue a state wide standing order for prescription of an opioid overdose drug. This authorization would mean that the disaster declaration was no longer necessary to conduct the program, and would be allowed to lapse after 30 days, as prescribed under Alaska statute. He added that, as stated in AS 44.62.270, emergencies were held to a minimum. He pointed out that the proposed bill had a zero fiscal note, and was supported by the federal grant.

[3:40:20 PM](#)

DR. BUTLER paraphrased from Senate Bill 91 Sectional Analysis, version J, [Included in members' packets] which read:

Sec. 1 amends AS 17.20.085, Opioid overdose drugs, to authorize the Chief Medical Officer to issue a standing order, including a statewide standing order, for the prescription of an opioid overdose drug through June 30, 2021. The department is required to report annually to the Legislature on the opioid epidemic's SAMHSA grant activities and expenditures.

Sec. 2 repeals section 1 on June 30, 2021.

Sec. 3 makes the effective date retroactive to March 15, 2017, when the disaster declaration expires.

Sec. 4 provides for an immediate effective date.

REPRESENTATIVE EASTMAN said that the committee substitute was cleaner than the original and he asked if the emergency [declaration] had expired and was not being extended.

DR. BUTLER replied, "that is correct."

REPRESENTATIVE EASTMAN voiced his support for not making a habit of declaring emergencies for one year.

[3:42:18 PM](#)

CHAIR SPOHNHOLZ opened public testimony.

[3:43:38 PM](#)

CHAIR SPOHNHOLZ closed public testimony.

[3:43:45 PM](#)

REPRESENTATIVE TARR moved to report CSSB 91(HSS) out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSSB 91(HSS) was moved from the House Health and Social Services Standing Committee.

[3:44:10 PM](#)

The committee took an at ease from 3:44 p.m. to 3:49 p.m.

HB 103-OPTOMETRY & OPTOMETRISTS

[3:49:32 PM](#)

CHAIR SPOHNHOLZ announced that the final order of business would be HOUSE BILL NO. 103, "An Act relating to the practice of optometry."

[In front of the committee was the proposed committee substitute for HB 103, Version D.]

[3:49:57 PM](#)

BERNICE NISBETT, Staff, Representative Ivy Spohnholz, Alaska State Legislature, paraphrased from the sponsor statement [Included in members' packets] which read:

HB 103 modernizes and updates the Alaska Optometry Statute, as many parts are over 50 years old. It allows the optometry board the authority to regulate its practice the same as other prescribing health professions such as dentistry, medicine and nursing. This bill also allows the board to continue to adopt regulations, updated to current practice and moves the continuing education (CE) requirements back into regulations. Continuing education is still required by current statute, but the hours and subjects will be determined by the board as with other professions. This change allows the board flexibility to control CE requirements and is recommended by the Department of Commerce, Community and Economic Development. The current regulations require more CE hours than the statute subsection deleted by this bill. HB 103 allows the optometry board to determine prescribed drug schedules, including standards and limitations on practice determined by the board. The bill ensures that no licensee may perform any procedure beyond the scope of the licensee's education, training, and experience as established by the board. This allows for future new and improved diagnostic and therapeutic procedures as determined by the board, while not having to return to the legislature for every new technological advance, which is currently the case and unnecessarily burdensome. The optometry definition in this bill is updated to reflect current and modern-day practice.

MS. NISBETT paraphrased from the Sectional Analysis [Included in members' packets], which read:

Section 1 AS.08.72.050 (4)(6) updates very old statutes to indicate that regulations shall be adopted to govern the current prescription and use of pharmaceutical agents; and develop uniform standards for the practice of optometry.

Section 2 AS.08.72.060 (c)(4) the board shall publish advisory opinions regarding standards for the practice of optometry.

Section 3 AS 08.72.181(d) moves the continuing education (CE) requirements back into regulation, as desired by the Department of Commerce, Community and Economic Development. Continuing education is still required by current statute, but the hours and subjects will be determined by the board.

Section 4 AS 08.72.272(a) clarifies the current statute for the board to regulate pharmaceutical agent prescription including standards and limitations on practice determined by the board.

Section 5 AS 08.72.278 Limitation on practice adds a new section that sets limitations on services, ensuring that the board may not authorize any procedure beyond the scope of the licensee's education and experience.

Section 6 AS 08.72.300(3) updates the optometry definition to reflect current practice.

Section 7 Effective date for Section 2. This is because (3) of Section 2 was added to statute in 2016 via Senate Bill 74, the Medicaid Reform bill, and it had the effective date of July 2017, so (4) is written to comply with that date as well. (per Legislative Drafting)

[3:52:17 PM](#)

CHAIR SPOHNHOLZ opened public testimony.

[3:52:44 PM](#)

JILL GEERING MATHESON, OD, reported that she was a practicing doctor of optometry and that she had testified numerous times before legislative committees in support of changes to the optometry statute over the last 25 years. She explained that those statutes had allowed doctors of optometry to safely practice to the level of their training and education. She asked for support to proposed HB 103, explaining that the state boards and commissions were appointed and confirmed by the Alaska State Legislature to represent the people of Alaska in these areas of expertise. She explained that the state chose to set up separate boards for each medical profession because each profession was unique and the oversight needed to be handled by the members of that profession. She noted that the approved statutes were very broad for the medical board, the dentistry board, and the Board of Advanced Practice Nurses, and that these boards could autonomously manage their respective professions within the law in an honest, safe and responsible manner. She pointed out that the optometry statute, however, was too complicated and restrictive. Proposed HB 103 would allow the State Board of Examiners in Optometry to have the same autonomy as the other boards. She assured the committee that, as a past president of the state optometry board, the board acted with the same level of professionalism and safety as the aforementioned boards. She reiterated that the proposed bill was not about eye surgery, even though doctors of optometry had performed minor eye surgery for many years. They were trained in depth for these procedures, which were routine within the scope of practice. She declared that she would no more perform an eye surgery that she was not trained for than any other profession. She offered her belief that all professions, including optometry, must evolve and there was no way to predict what tools and options a doctor of optometry would need in 20 years to protect or cure the vision of a patient. She stated that the proposed bill allowed the profession to evolve and make the necessary changes. HB 103 allowed doctors of optometry in Alaska to operate with the same autonomy, respect, efficiency, and oversight as the other professional health care practitioners were granted.

REPRESENTATIVE SULLIVAN-LEONARD asked about the minor surgeries performed by optometrists.

DR. MATHESON explained that the most common surgery was for removal of a foreign body, and that these had been approved and authorized for almost 25 years.

REPRESENTATIVE TARR offered her belief that practitioners should be authorized to practice to their full scope and be regulated by peer professionals. She stated her support for the proposed bill. She said that regulations would be drafted, which would be followed by a public comment period when professionals could speak out, and if there was anything questionable, the process would reveal any problems.

DR. MATHESON expressed her agreement that any complaint brought to the board would be investigated, and there could be a vote to see if there should be a sanction on an optometrist. She said that the legal process would also be started. She stated that there had not been any sanctions against optometrists during her 8 years on the board.

REPRESENTATIVE TARR asked if the regulations were available for public comment.

DR. MATHESON expressed her agreement, and explained that after the regulations were set, they went to Department of Law to ensure they met the law, went out for public comment, and were again voted on by the board.

REPRESENTATIVE EASTMAN stated that the investigation process could be very costly, even if they did not result in sanctions. He asked if there was any hesitation due to the potential of an increase to liability cost.

DR. MATHESON replied that she was not aware of any opposition from optometrists for that reason, and she explained that this could lead to an increase in licensing fees at a later time. She offered her belief that optometrists and the board were all "a pretty conservative bunch."

CHAIR SPOHNHOLZ pointed out that Dr. Matheson was a practicing optometrist and not necessarily an expert on the operations of the board.

REPRESENTATIVE EASTMAN asked why the optometry board was not currently treated like the other boards.

DR. MATHESON offered her belief that this had just been a matter of time, and, as other parts of the statute had been cleaned up, this was now the final stage.

[4:04:01 PM](#)

HARRIET MILKS, Assistant Attorney General, Commercial and Fair Business Section, Civil Division (Juneau), Department of Law, said that she represented professional licensing boards.

REPRESENTATIVE TARR asked about the process.

MS. MILKS, in response, said that the board typically drafted the proposed regulation, and it often took time to determine the language which represented the inclination of the board. Then, the proposed regulation went out for public comment. It could go out more than once for public comment and for more than 30 days. She noted that, based on public comment, the board could revisit the regulation, and if there were substantial changes, it would again go out for public comment. She acknowledged that the transparency of this process could sometimes frustrate the public for the amount of time necessary to adopt a regulation. She added that the board did discuss the scope of practice. She said that typically the health care related boards met at least two or three times each year, and that the public was always advised.

[4:08:09 PM](#)

RACHEL REINHARDT, MD, American Academy of Ophthalmology, reported that she was a board-certified ophthalmologist. She stated her opposition to proposed HB 103. She said that the primary goal of any legislation involving medical care was for patient safety. She stated that HB 103 removed the existing surgery restrictions, and would redefine the field. She asked that it be clearly specified in the law that surgery was outside the scope of practice for optometry. She said that without specific language to restrict surgery, Alaska would be the first state to adopt such broad unprecedented legislation. She suggested that the definition of surgery be added to the proposed bill, and that surgery be expressly prohibited. She noted that the Board of Optometry could still govern its own profession, even though surgery was prohibited. She offered an example of the lack of restrictions under the Oklahoma law. She said that a major study released in July 2016 had data which concluded that optometrists doing laser surgery in Oklahoma were causing patient harm and increasing health care costs. She stated that the proposed bill would result in unprecedented sweeping change in the practice of optometry, with profound implications for patient safety. She said that, at the very least the proposed bill needed a definition of surgery to ensure public safety. She made the distinction that optometry school was not a medical education or a surgical education, as the

students received approximately one tenth of the clinical hours. She concluded by stating that prescription narcotic death was the leading cause of unintended death in the country, and that HB 103 would allow optometrists to prescribe these narcotics. She declared that this was not the time to expand who could prescribe these medications.

REPRESENTATIVE TARR said that there was a challenge from a shortage of providers in every area of health care in Alaska. She suggested that the proposed bill offered an opportunity for trained professionals to meet this need for health care. She relayed that the optometrists wanted to continue with the things they had already done for the past decade.

DR. REINHARDT relayed that there were 26 ophthalmologists in the State of Alaska and that the State of Washington had a similar ratio of ophthalmologists to the population. She acknowledged that the Alaska population was spread over remote areas, though she stated that the State of Washington had patients in remote areas, as well. She said that it was important to note that ophthalmologists had a responsibility for patient safety. She suggested that there was a nationwide trend of optometrists introducing vague bills with the intention of expanding the scope to include surgery.

REPRESENTATIVE JOHNSTON asked about the committee substitute which had removed the reference to surgery.

DR. REINHARDT explained that the committee substitute did not change Sections 5 and 6, which offered new definitions for optometry, which inserted language for treatment or performance of preventive procedures. She stated that the inclusion of treatment opened the door for any treatment modality to treat any and all eye diseases, and it included surgery. She deemed that the crux of the issue was that the new definition of optometry could be interpreted to include all surgeries.

[4:17:41 PM](#)

VICTORIA BLOWER, OD, Optometrist, shared that she had been in optometric practice in Anchorage for 32 years. She stated her support for HB 103. She reported that technology and best practices had advanced to allow for superior medical care, which included eye care. She pointed out that the statute governing the optometry board was more than 40 years old and did not allow for reaction to the rapidly changing environment without repeatedly going to the Alaska State Legislature for action.

She noted that the protocols had been extended to protect the public. She shared her respect for the Board of Optometry. She said it was unfair and a waste of resources to prevent optometrists from providing care at the highest level of their education and training, as this did include knowledge about the entire body. She pointed out that, as so much of Alaska was rural, most of the eye care was administered by the more than 150 optometrists serving in 80 communities. She directed attention to a letter of support from the CEO of the Southcentral Foundation. She expressed her objection to the argument that optometrists could not be trusted to have sound judgement about their skills and training, thereby not acting in the public's best interest. She offered examples about other medical professions working within their education and training. She stated that HB 103 would modernize the statute and allow detailed legislation to be determined by the optometry board, as was the current standard in all other prescribing professions in Alaska. It would also streamline the legislative governing process and bring the best practices to the residents of the state in a cost-effective manner.

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KARL ROSEN, MD, Ophthalmologist, voiced his strong opposition to the proposed bill. He reported that he had been in practice for 23 years in Anchorage. He shared his educational background. He declared that the proposed bill was the most expansive scope of practice bill in the country. He said that the bill dismissed the rigorous training of an ophthalmologist. He offered his belief that the optometry board, a group of non-surgeons, was going to decide which potential surgical privileges would be allowed. He suggested to correct the proposed bill by providing an amendment with a definition of surgery. He declared that the optometry board already had the ability to regulate its profession. He shared an article which refuted the statement that more optometrists doing procedures would cut costs, and he directed attention to a study which determined that more than twice the number of eyes were re-treated after laser surgery by optometrists versus ophthalmologists. He stated that health policy makers should be cautious about approving laser privileges for optometrists. He pointed out that optometrists did not take hospital calls and did not have hospital privileges, and if a complication occurred, there would be the need to transfer patients to a hospital. He declared "you can't get good doing a couple of procedures a year." He said that insurance carriers would not accept CPT codes by optometrists. He declared that, should all

privileges be made similar, then there needed to be an equally strong legislative effort to ensure that all aspects of school, training, and continued competency were also similar, or it would become a two-tiered system for patients. He declared that the proposed bill would make it difficult to recruit new ophthalmologists to Alaska.

REPRESENTATIVE KITO asked how much of his educational study and experience provided for vision and eye, or was most of it just medical.

DR. ROSEN explained his education and background, which included three years of ophthalmology residency of more than 110 hours each week. He stated that it was not a job, it was a lifestyle, a culture. He shared that studying at a major medical center included interaction with the other colleges and allowed for better communication with the other areas of medicine.

REPRESENTATIVE TARR said that she shared the concern for surgeries by properly trained individuals. She mused that, if the Board of Optometry wanted to propose regulations allowing performance of Lasik surgery, those regulations would be opened for a public comment period. She offered her belief that those with views similar to Dr. Rosen would speak out in opposition. She said that she did not see the circumstance to which he was worried actually happening, as it would not make its way through the public process.

DR. ROSEN replied that this was an ideological question and he asked if optometry was being redefined. He said that there had been a change in the past 10 years, and that optometry wanted to be something else. He stated that there had been a process for standardization in the American Medical System since 1910.

REPRESENTATIVE TARR reiterated that she could not see a circumstance where this would happen.

DR. ROSEN said most providers followed their oath, although he was there to protect the public from the outliers. He reminded that there was method in place for licensing.

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ALFRED DERAMUS, MD, Ophthalmologist, stated his gentle opposition to the proposed bill. He said that this was the latest legislation on which he had been testifying since 1982. He said that the ophthalmologist purview for the definition of

surgery was different than the definition of surgery by optometry. His problem was that the proposed legislation left an opening for interpretation that treatment for all eye disease could include surgery. He declared that "we should be very, very careful about this bill." He emphasized that ophthalmologists were concerned that optometrists would perform ophthalmic surgeries and be protected by the definition.

REPRESENTATIVE JOHNSTON asked what type of surgery would be performed by optometrists.

DR. DERAMUS replied that the definition was open ended, and he offered an example for the removal of a superficial foreign body versus a deeply imbedded foreign body in the cornea.

CHAIR SPOHNHOLZ referenced the earlier testimony regarding the regulatory process for changing regulations around the practice of optometry and asked if he was concerned that there would not be the opportunity to testify and for those concerns to be put on the record.

DR. DERAMUS expressed his agreement that he would be allowed to testify, and, in response to Chair Spohnholz, that he was aware that the meetings of the Board of Optometry were all public. He replied that he had only testified on one occasion regarding various optometric bills, and that he had found that, regarding the experience, he had been able to present his point of view and have it weighed by the board. In further response to Chair Spohnholz, he said that he had always been treated respectfully by the board.

REPRESENTATIVE TARR reiterated that she could not see the circumstance whereby optometrists were given the authority to perform procedures that offered concern to ophthalmologist. She stated that there were "bad actors that are in the provider community whether it be for dental care or physical therapy or other areas."

DR. DERAMUS said that the reality of life goes far beyond the written or spoken word. He said that the pain of experience from a surprise was "where you really find out where you stand." He offered an example for a seemingly minor accident.

CHAIR SPOHNHOLZ asked if he was suggesting that an optometrist might try to treat this incident in an emergency room.

DR. DERAMUS replied that he did not believe that an optometrist would be in the operating room because they did not have admitting privileges.

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DAVID ZUMBRO, MD, Ophthalmologist, shared his background as a retina surgeon. He offered his belief that the proposed bill "radically redefines optometry" as optometry did not have any procedural background in its training or practice. He stated that the proposed bill removed the prohibition against lasers in surgery. He declared that there was a difference between optometry and ophthalmology. He offered an example of some co-workers who were optometrists and had gone back to school for ophthalmology. He stated that they were not given any credit by the medical school for their doctor of optometry degree. He offered his belief that the regulations had changed in 2008 when prescriptive authority advanced the scope of the optometry practice. The proposed bill was too vague and open ended, as it removed the specific prohibition against lasers in surgery and allowed non-physicians to regulate the practice of surgery. He declared that the focus of any health care issue should be patient safety.

CHAIR SPOHNHOLZ asked where the legislation changed the scope of practice.

DR. ZUMBRO explained that the removal of the prohibition against lasers in surgery and the allowance for the treatment of eye conditions were worrisome, as it would allow optometrists to expand the scope of practice.

CHAIR SPOHNHOLZ stated that the proposed bill did not remove any limitations, but only added language for the opportunity to use pharmaceutical agents for the treatment of eye disease and develop uniform standards for the practice of optometry. She said that it rescinded the limitations on the amount of education, as the continuing education requirements had already been expanded.

DR. ZUMBRO suggested that an amendment defining eye surgery would offer clarity for all the parties.

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PAUL BARNEY, OD, Chair, Board of Optometry, reassured the committee that the board did not have the authority to write

regulations for anything that optometrists did not have the education to do, and that the purpose of the board was to protect the public. In response to Representative Tarr, he said that he supported the bill.

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ELIZABETH MORGAN, MD, Ophthalmologist, said that she had practiced in Anchorage for almost 14 years, and that she worked closely with optometrists, especially in working with glaucoma patients. She lauded the relationship and stated that the proposed bill created a divisive force between the two practices. She said that ophthalmologists took eye care of individuals very seriously and they were adamant if there was something that threatened the patient's best interest. She offered her belief that the problem with the bill was that the language was "a bit open ended." She suggested that the two groups of providers arrive at a common definition for treatment that was in the best interest of the patient.

REPRESENTATIVE JOHNSTON asked for that definition for treatment.

DR. MORGAN offered her belief that both sides needed to agree on the definition of surgery.

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DAVID KARPIK, OD, stated that he was an optometrist and his group provided the majority of eye care on the Kenai Peninsula. He reported that he was also the medical director [indisc], and that these practices offered similar comprehensive eye care services and worked in conjunction with other primary care providers. He declared that this model was cost effective and in the patient's best interest. He stated that optometrists practiced in small communities throughout Alaska and had a long history of compassionate conservative care. He referenced a recent study which reported that Alaska was last in access to health care, and that this was an opportunity to help change that alarming statistic. He said that all health care providers practiced to the extent of their ever-evolving training. He declared that optometrists have had full prescribing privileges for 10 years. He pointed out that optometrists had been safely performing procedures for decades, noting that they had training on the entire body. He said that some schools duplicate medical and dental courses for the first few years of the program.

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ERIC COULTER, MD, Ophthalmologist, referenced a letter that he had sent to the committee, and shared that he had good relationships with optometrists. He stated that privileges were delineated through hospitals and surgery centers and were outlined by law. He expressed his concern that the optometric community would not let the public know the differences in medical training. He declared that the proposed bill needed a definition of surgery.

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ERIK CHRISTIANSON, OD, Optometrist, said that he was the only full-time eye care provider in the community. He suggested that the proposed bill was modernizing language to allow the profession to move forward and regulate similar to other health care providers. He said that the goal was to work as effectively as possible, and that there were a variety of little procedures that could be done often enough to be good. He expressed his concern for the rural communities to get qualified health care providers, and, unless there was the ability to practice to the level of training, it would be difficult to attract them.

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CHAIR SPOHNHOLZ closed public testimony.

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CHAIR SPOHNHOLZ stated that the proposed bill was introduced to modernize the way optometry was managed in Alaska, as it was the only health profession in the state where it was necessary to visit in statute every time a small change was made to education or scope of practice. She pointed out that things changed more rapidly than the legislature could move. She offered her belief that there were enough tools in the regulatory process to allow for robust public participation and opportunities for concerns to be expressed and to ensure that the Board of Optometry would not "go rogue." She added that the proposed bill would get the legislature out of the business of micromanaging optometrists. She shared a personal story of an eye surgery performed by a local optometrist. She offered her belief that it was best to not define "surgery" in statute as it was a complex and broad term. She shared that it was very difficult to arrive at a definition of "surgery" which met all the criteria. She suggested that it was best to let the regulatory process work.

She said that best management practices were to delegate authority to the lowest possible level, and allow those professionals the opportunity to perform their work. She lauded the "robust regulatory process as it related to the way that board regulations were adopted."

REPRESENTATIVE JOHNSTON asked how the board for chiropractors regulated in Alaska.

MS. MILKS, in response, explained that the Board of Chiropractic Examiners was managed with the same legal advice from the Department of Law as the other boards. She stated that an Assistant Attorney General was assigned to advise in both board procedure and procedure for constructing and adopting regulations, and that sometimes the Assistant Attorney General would attend the board meetings.

REPRESENTATIVE JOHNSTON asked if there was a similar process for change which required bringing proposed changes to the Alaska State Legislature.

MS. MILKS replied that all the boards were under the Administrative Procedure Act (APA). She explained that the APA set out the procedures for adopting regulations and having hearings, and that all the boards were under the APA and followed the same rules with respect to adoption of regulations.

REPRESENTATIVE EASTMAN shared that the board of chiropractors were very proud of their process, as they had pursued some unique approaches to their profession. He expressed his hope that the Board of Optometry would review this example. He asked whether an expanded scope for optometrists would result in fewer ophthalmologists.

CHAIR SPOHNHOLZ emphasized that she did not, as the sponsor of the proposed bill, introduce the bill because of the unique nature of the state. She said that this was a response to a comparison of the State of Alaska to the State of Washington by an earlier testifier. She declared that the intent of the proposed bill was not to expand the scope of the Board of Optometry, but instead to delegate discussions regarding the practice of optometry to the Board of Optometry, rather than having it done in statute on an annual basis.

REPRESENTATIVE TARR said that she would have concerns if the regulations allowed for optometrists to perform eye surgery. She offered her understanding that this was beyond the scope of

practice, and she could not see a circumstance in which this would be the result. She declared that there were many barriers to expansion of specialties. She opined that with the limited number of providers it was necessary to take the opportunity to allow practice to the full scope of training. She added that the health care fields were always evolving, and she stated her support of HB 103.

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REPRESENTATIVE TARR moved to report CSHB 103, Version 30-LS0459\D, Bruce, 2/21/17, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 103 (HSS) was moved from the House Health and Social Services Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 5:17 p.m.