

**ALASKA STATE LEGISLATURE**  
**SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE**

March 9, 2020

1:32 p.m.

**MEMBERS PRESENT**

Senator David Wilson, Chair  
Senator Natasha von Imhof, Vice Chair  
Senator Cathy Giessel  
Senator Mike Shower  
Senator Tom Begich

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S)

State Medical Board

David Boswell - Fairbanks

- CONFIRMATION ADVANCED

SENATE BILL NO. 229

"An Act relating to immunity for consulting physicians, podiatrists, and osteopaths."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 229

SHORT TITLE: LIABILITY OF CONSULTING PHYSICIANS

SPONSOR(S): SENATOR(S) KIEHL

02/24/20	(S)	READ THE FIRST TIME - REFERRALS
02/24/20	(S)	HSS, JUD
03/09/20	(S)	HSS AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

DAVID BOSWELL, Appointee  
State Medical Board  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified as appointee to the State Medical Board.

SENATOR JESSE KIEHL  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as sponsor of SB 229.

CATHY SCHLINGHEYDE, Staff  
Senator Jesse Kiehl  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided information on SB 229.

ROBERT CRAIG, Chief Executive Officer  
Alaska Heart and Vascular Institute  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 229.

JACOB KELLY, M.D.  
Alaska Heart and Vascular Institute  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 229.

BOB URATA, M.D., Valley Medical Care  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 229.

#### **ACTION NARRATIVE**

[1:32:04 PM](#)

**CHAIR DAVID WILSON** called the Senate Health and Social Services Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Begich, Shower, and Chair Wilson. Senator von Imhof and Senator Giessel arrived shortly thereafter.

#### **CONFIRMATION HEARING(S)** **State Medical Board**

[1:32:37 PM](#)

**CHAIR WILSON** announced the consideration of the confirmation hearing for David Boswell, appointee to the State Medical Board.

[1:33:07 PM](#)

DAVID BOSWELL, Appointee, State Medical Board, Fairbanks, Alaska, said he has been a minister at the Northern Lights Church of Christ for 15 years. He is active in the community. He and his wife had four children before foster parenting nine children, four of whom were adopted.

MR. BOSWELL said he has always been interested in the medical field. He studied genetics and biochemistry at the University of Alberta. At that time, he was called to seminary and received a bachelor's degree in theology. Serving on the medical board will give him an opportunity to give back to the community in a meaningful way. He said he is committed to performing this job to the best of his ability, that his life has been dedicated to service in serving the church. He expressed his gratitude for the opportunity to serve the people of the state.

1:36:15 PM

SENATOR BEGICH asked him to touch on why he is interested in serving on the board and whether he had applied to serve on other boards.

MR. BOSWELL replied he currently serves on the Governor's Council on Disabilities and Special Education. His adopted children have varying degrees of fetal alcohol syndrome.

SENATOR BEGICH asked why he applied to be on the medical board.

MR. BOSWELL replied these are the two boards he thought he would be best suited to serve. As a minister, it is an excellent opportunity to use his ethics training to serve the community.

SENATOR BEGICH asked what, other than his background in ethics and undergraduate work in biomedical, contribute to his ability to oversee professional licensing for Alaska's medical professionals.

MR. BOSWELL answered that as a minister he is comfortable working with people from all socioeconomic backgrounds, including physicians, legal professionals, and the average guy. That puts him in a unique position to represent a great cross section of Alaska, he said.

SENATOR BEGICH pointed out that the board adopts regulations to carry out law and deals with final licensing decisions. More importantly, it takes disciplinary action against medical professionals who may violate those licensing laws. He asked Mr. Boswell if he has been involved in any processes and systems

that provide disciplinary action against people who violate state law.

MR. BOSWELL responded that this would be his first time in that kind of position but being a father of eight has prepared him to do be involved in disciplinary action.

SENATOR BEGICH suggested that serving on the medical board would extend beyond family disciplinary matters.

MR. BOSWELL replied he understood that.

SENATOR BEGICH asked if he had taken time to familiarize himself with the regulations and state statutes of the board.

MR. BOSWELL answered that since his appointment a month and a half ago, he has spent considerable time learning the state laws regarding licensing and the board.

SENATOR BEGICH asked if he could separate his religious beliefs from his secular role.

MR. BOSWELL responded absolutely.

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SENATOR VON IMHOF asked whether, in his role as minister, he goes into hospitals with families dealing with the end of life and works with hospice, doctors, or nurses.

MR. BOSWELL replied he has done that in 15 years of being a minister.

SENATOR VON IMHOF asked if he has discussions with physicians when patients are near the end of life and what has he learned.

MR. BOSWELL replied he has not necessarily had conversations with physicians about end-of-life issues. He spends time with patients and their families. He has been with families when physicians have those types of conversations with families.

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SENATOR GIESSEL asked if he has observed a board meeting.

MR. BOSWELL answered no. The last State Medical Board meeting occurred when he was in Juneau meeting with the Governor's Council on Disabilities and Special Education.

SENATOR GIESSEL asked if he was aware that the State Medical Board is a quasi-adjudicatory authority board and that licenses are a property right.

MR. BOSWELL responded that he had not thought of it in those terms.

SENATOR GIESSEL said that is the case, so discipline is very structured and meted out with care and significant documentation, not just based on board member's opinions.

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CHAIR WILSON solicited a motion.

[1:45:36 PM](#)

SENATOR VON IMHOF stated that in accordance with AS 39.05.080, the Senate Health and Social Services Standing Committee reviewed the following and recommends the appointment be forwarded to a joint session for consideration:

State Medical Board

David Boswell - Fairbanks

[Signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees; the nominations are merely forwarded to the full legislature for confirmation or rejection].

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At ease

### **SB 229-LIABILITY OF CONSULTING PHYSICIANS**

[1:47:40 PM](#)

CHAIR WILSON reconvened the meeting and announced the consideration of SENATE BILL NO. 229, "An Act relating to immunity for consulting physicians, podiatrists, and osteopaths."

He stated his intent to hear an overview of the bill and invited and public testimony. He invited Senator Kiehl to the table.

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SENATOR JESSE KIEHL, Alaska State Legislature, spoke as sponsor of SB 229. When Alaska passed medical malpractice caps, he thought the caps were too low. However, the practice of medicine

is complex. There are specialties and subspecialties and medical professionals frequently consult with one another to get the necessary advice and expertise. A generalist might call a specialist in a bodily system or organ to help decide whether to treat a symptom or refer a patient for full workup and treatment by that specialist. A specialist might call a psychiatrist about a mental health condition that is complicating treatment. The sole practice doctor in a small town might call a doctor in a hub or larger city to decide whether to treat an injury at home or call for a medevac with the costs and risks that those can bring. The term for these consultations is "curbside consults." Patients do not see these consultations, but these consultations are an essential part of Alaskans' health care.

SENATOR KIEHL said SB 229 protects curbside consultations. He recalled that over a year ago, the Minnesota Supreme Court considered a case where something went wrong and decided the consulting doctor could be liable for damages to a patient. The consulting doctor had never seen or treated the patient or taken a fee. It was in many ways a first-of-its-kind ruling that alarmed the medical community. Without this bill, if that ruling holds, Alaska would see significant increases in health care costs as medical malpractice insurance rises. With Alaska's long distances and small communities with few specialists, it is likely that health care would suffer if doctors stopped curbside consults. It will create more risk to patients if treating doctors lose access to their colleagues' experience and advice.

SENATOR KIEHL said SB 229 shields the consulting doctor in a curbside consult from liability if the patient gets injured. SB 229 will ensure that an injured patient still has access to justice. Under SB 229, the treating doctor cannot reduce liability by shifting some of the blame to the consulting doctor. The treating doctor remains responsible for patient care. That is the fundamental point of the bill. Alaskans can go to the doctor, get seen, doctors can get needed advice and expertise from colleagues, and Alaskans will benefit without raising costs, without raising risks, and without denying anyone access to justice.

CHAIR WILSON noted that it is a one-section bill, so the committee did not need an in-depth sectional analysis.

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SENATOR SHOWER asked if SB 229 will affect other health care providers who give advice, such as nurse practitioners and nurses.

SENATOR KIEHL replied that since he has introduced the bill, some people in the medical community have suggested that it should be expanded to include advance practice registered nurses and physician assistants. It makes sense, but he does not have any amendments. He said he has been working to begin that drafting process.

SENATOR SHOWER asked if there are any other similar court cases.

SENATOR KIEHL deferred to his staff to respond.

[1:55:19 PM](#)

CATHY SCHLINGHEYDE, Staff, Senator Jesse Kiehl, Alaska State Legislature, Juneau, Alaska, said that she does not have a case involving an advanced practice registered nurse as the consultant, but she could do some research.

SENATOR GIESSEL thanked Senator Kiehl for being open to her input on SB 229. She often consults with pharmacists about how a medication she might prescribe would interact with a disease condition or other medication, as do her physician colleagues.

CHAIR WILSON called on invited testimony.

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ROBERT CRAIG, Chief Executive Officer, Alaska Heart and Vascular Institute, Anchorage, Alaska, said he has been at the Alaska Heart and Vascular Institute for about four years. He has about 30 years of experience in health care administration. Alaska Heart Institute has 32 physicians providing cardiology expertise in Alaska in the form of general cardiology, interventional, and electrophysiology. The goal with SB 229 is not to start a tort issue or seek immunity for the care doctors provide to patients but to resolve this consult dilemma. Often the Heart Institute's physicians receive calls about patients who are not established with the practice from locations where there is no cardiologist, typically in remote and small communities. Rather than insist that these patients be flown in or travel to the institute, it is more desirable to have a collaborative discussion about the care than contributing to increases in health care costs. The institute's physicians have always answered these calls freely, without compensation, regardless of the time of day or night. The institute believes the calls are valuable for the expertise provided, which helps to ensure the patient receives the right care at the right time. These calls provide assistance to other

health care providers in remote areas without the physician being left vulnerable.

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JACOB KELLY, M.D., Alaska Heart and Vascular Institute, Anchorage, Alaska, said he has been a cardiologist in advance heart failure and cardiac transplant cardiologist in Alaska for three years. He came to Alaska for the unique ability to pursue an outdoor lifestyle and to care for a diverse population of patients who are often off the road system. In the tradition of medicine, practitioners share, teach, and learn together. It is human nature to want to deliver care to all individuals despite location, ability to pay, race, gender, location. This drives him and his colleagues to practice medicine in Alaska and to provide curbside consults with medical providers across the state.

DR. KELLY said he often receives calls at night regarding someone experiencing atypical chest pain. These patients often have low to low intermediate risk and may live in a region that is quite remote. It would disrupt the workflow and the patient's ability to pay to immediately transfer the patient, potentially on multiple flights, to Anchorage when sometimes the doctor can help the provider reassess the risk, provide some good education, and if the patient's condition worsens, the patient could be transferred to Anchorage. However, there is risk there for him with opening this up to curbside consultation and the .1 to 1 percent of the times it could be more severe. He often has patients with heart failure symptoms.

CHAIR WILSON asked if there is a difference between formal and informal consultations.

DR. KELLY replied an informal consult on the phone giving general advice can be 30 seconds to three minutes. The conversation typically ends with the statement that if the patient gets sicker or the practitioner is concerned, the provider should call the institute back. The practitioner may give a brief reading of an EKG or chest x-ray. He characterized these types of calls as unofficial or curbside consults. He acknowledged some intermediate things could be trickier when there may be borderline amounts of material. Telehealth is attempting to address this. The difficulty with telehealth is that someone must engage vital signs and a certain amount of durable and electronic equipment is needed to transfer information. A full consult involves seeing the patient or with

an official telehealth visit, a practitioner can visualize the patient, receive vitals, and review the patient's chart.

SENATOR VON IMHOF asked if there is generally fee-for-service with telehealth, if so, it would fall outside of the purview of this bill.

DR. KELLY agreed that telehealth is a separate billable charge, and that does not fall under this bill. He said that telehealth is complicated and not specific to this bill.

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SENATOR VON IMHOF said the definition of telehealth is expanding and the bill sponsor should contemplate what triggers the difference between a curbside consult and telehealth. She offered her belief that the trigger is if money changes hands.

SENATOR BEGICH pointed out that line 14 specifically states "not compensated", which would be the trigger. This bill will ensure that informal conversations between physicians can continue.

[2:08:06 PM](#)

BOB URATA, M.D., Valley Medical Care, Juneau, Alaska, said he has been practicing family medicine in Juneau since 1984. The purpose of SB 229 is to protect consultations from lawsuits and to allow this important service for his patients to continue. These consultations improve overall care and keep costs under control. He utilizes this service in his practice at least five times a week. He calls various specialists, including heart doctors, cancer specialists, chest surgeons, neurosurgeons, high-risk obstetricians, endocrinologists who deal with thyroid and diabetes, and neurologists. He encouraged members to expand the bill to include midlevel practitioners like physician assistants and nurse practitioners. He has given curbside consults for patients and providers in Yakutat, Skagway, Haines, and Gustavus. These midlevel practitioners are the only health care available in those towns. These professionals provide good care, but occasionally call to discuss patients, who may need to be sent to Juneau or Anchorage for further care. He characterized these as more of a triage-type curbside consult. He agreed with Senator Giessel that the consultations should include pharmacists. He finds that with the complexity of various medications now, he needs to ask a pharmacist about different side effects, drug interactions, and other similar things.

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CHAIR WILSON opened public testimony and after ascertaining that no one wished to testify, closed public testimony on SB 229.

SENATOR KIEHL said the question on telehealth is excellent. SB 229 does not immunize doctors who treat their patients. Only if a health care provider is with a patient providing treatment would the provider's consultation with another doctor elsewhere fall under the bill. Generally speaking, when a provider treats a patient by telehealth, there is a doctor-patient relationship and the doctor presents a billing for services.

SENATOR KIEHL referenced a question about the development of malpractice law. He related his understanding that medical malpractice has developed more by case law than by legislative action. The new development from the Minnesota Supreme Court is a step in the wrong direction. This bill would put a legislative marker down in Alaska to say that Alaska is not going in that direction.

SENATOR VON IMHOF said she wanted to make sure that the committee does not confuse the definition of telehealth. Telehealth is different than the electronic transfer of health information, like emailing lab results or an x-ray that a doctor elsewhere would review. She said she appreciates that Senator Begich spoke about compensation for the consultation. If there is a transfer of information electronically and another doctor reviews it to provide consultation [at no cost], it is not telehealth.

SENATOR KIEHL agreed. The consulting doctor would be the one protected in the bill. That doctor could review an EKG under this bill as long as the consulting doctor does not determine treatment for the patient.

SENATOR GIESSEL said another way to describe the distinction of curbside versus telehealth is that someone cannot be compensated for something that is not documented. If the consulting physician gets a lab result and actually writes a report, which is then sent back to the person who asked for the consultation, that clinician can bill for the time to write the report. That is the process a telehealth clinician uses for telehealth documents and for payment. She viewed curbside consultations as ones between health care providers who might discuss a patient with a heart murmur, who has a sore throat, and what that might mean. Someone is giving informal advice and not billing for it. It is very different from telehealth.

SENATOR KIEHL said these physicians want to be able to continue to have unpaid consultations, which plays a role in health care for Alaskans.

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CHAIR WILSON suggested that the bill sponsor and committee chair may want to consider drafting amendments or a committee substitute to address the concerns. He held SB 229 in committee.

SENATOR GIESSEL noted that she had submitted a series of questions about the Nurse Licensure Compact in SB 179.

CHAIR WILSON said he would continue to work to obtain that information.

[2:18:02 PM](#)

There being no further business to come before the committee, Chair Wilson adjourned the Senate Health and Social Services Standing Committee at 2:18 p.m.