SB
265

Alaska State Legislature

Out of Session:
PO Box 531
Golovin, Alaska 99762
(907) 443-5599

In Session:
State Capitol, Suite 510
Juneau, Alaska 99801-1182
(800) 597-3707
(907) 465-3707
(907) 465-4821 Fax

SENATOR
DONALD C. OLSON

DISTRICT S

Alakanuk
Ambler
Anaktuvuk Pass
Atqasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomede
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mekoryuk
Mountain Village
Newtok
Nightmute
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktoolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Toksook Bay
Tununak
Unalakleet
Wainwright
Wales
White Mountain

January 31, 2002

MEMORANDUM

To: Senator Cowdery, Chair
Senate Transportation Committee

From: Senator Olson

Re: Committee schedule for SB 265, Physican Assistants and Handicap Parking..

I would appreciate a Transportation committee hearing of SB 265 at your earliest convenience. A sponsor statement and sectional is forthcoming. If you need any other information, please contact me or Dave Gray in my office.

Thank you for consideration of this request.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 265
() Publish Date:

Revision Date/Time (Note if correction):
Title: An Act relating to physician assistants
Sponsor: Senator Olson
Requester: Senate Transportation

Dept. Affected: DCED
BRU: Insurance (116)
Component: Insurance Operations
Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal: [ ]

POSITIONS

POSITIONS						
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill would add physician assistants to the list of health care providers in AS 21.36.090(d). This would have the effect of prohibiting an insurer from refusing to cover a service if it is provided by a physician assistant, if the service is otherwise covered under the group health insurance plan of the patient/insured. No fiscal impact on the Division of Insurance is expected.

Prepared by: Robert A. Lohr, Director
Division: Insurance
Phone: 907-269-7900
Date/Time: 2/15/02 2:45 PM

Approved by: Deborah B. Sedwick, Commissioner
Agency: Department of Community & Economic Development
Date: 2/15/2002

(Revised 9/2001 OMB)

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DISTRICT S

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Ambler
Anaktuvuk Pass
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Barrow
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Browerville
Buckland
Chevak
Deering
Diomede
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mekoryuk
Mountain Village
Newtok
Nightmute
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktoolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Toksook Bay
Tununak
Unalakleet
Wainwright
Wales
White Mountain

SPONSOR STATEMENT

SB 265, Physician Assistants.

I introduced SB 265 at the request of the Alaska Academy of Physician Assistants. Their desire is for the profession of physician assistant to be specifically included in lists of health care providers defined for sections of law pertaining to medical liability and to unfair trade practices in the insurance and health care business.

Section 1 amends AS 09.55.560(1) to add "physician assistant" to the definitional clause for medical liability statutes. Section 2 similarly amends AS 21.36.090(d) to include "physician assistant" as a provider that may not be unfairly discriminated against by a health insurance company, health maintenance organization, or other health delivery organization.

Section 3 responds to a third request of the academy. It is to allow physicians assistants to provide proof of eligibility for a special disabled veterans license plate and for issuance of a parking permit for a handicapped or disabled person. Eligibility is currently provided by only physicians and advanced nurse practitioners.

22-LS1338\C
Lauterbach
2/7/02

CS FOR SENATE BILL NO. 265( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS OLSON, Leman, Wilken

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to physician assistants; providing that a physician assistant is a health**
2 **care provider covered by certain laws relating to medical malpractice actions; adding**
3 **physician assistants to the list of providers against whom unfair discrimination relating**
4 **to health care insurance is prohibited and to the list of providers who can provide proof**
5 **of disablement or handicap for the purpose of motor vehicle registration or for the**
6 **purpose of obtaining a special license plate or a special parking permit; and providing**
7 **for an effective date."**

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 * **Section 1.** AS 09.55.560(1) is amended to read:
10 (1) "health care provider" means an acupuncturist licensed under
11 AS 08.06; an audiologist or speech-language pathologist licensed under AS 08.11; a
12 chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a
13 dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing

1 optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an
2 optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a
3 physical therapist or occupational therapist licensed under AS 08.84; a physician **or**
4 **physician assistant** licensed under AS 08.64; a podiatrist; a psychologist and a
5 psychological associate licensed under AS 08.86; a hospital as defined in
6 AS 18.20.130, including a governmentally owned or operated hospital; an employee
7 of a health care provider acting within the course and scope of employment; an
8 ambulatory surgical facility and other organizations whose primary purpose is the
9 delivery of health care, including a health maintenance organization, individual
10 practice association, integrated delivery system, preferred provider organization or
11 arrangement, and a physical hospital organization;
12 * **Sec. 2.** AS 21.36.090(d) is amended to read:
13 (d) Except to the extent necessary to comply with AS 21.42.365 and
14 AS 21.56, a person may not practice or permit unfair discrimination against a person
15 who provides a service covered under a group health insurance policy that extends
16 coverage on an expense incurred basis, or under a group service or indemnity type
17 contract issued by a health maintenance organization or a nonprofit corporation, if the
18 service is within the scope of the provider's occupational license. In this subsection,
19 "provider" means a state licensed physician, **physician assistant,** dentist, osteopath,
20 optometrist, chiropractor, nurse midwife, advanced nurse practitioner, naturopath,
21 physical therapist, occupational therapist, marital and family therapist, psychologist,
22 psychological associate, [OR] licensed clinical social worker, or certified direct-entry
23 midwife.
24 * **Sec. 3.** AS 28.10.181(d) is amended to read:
25 (d) Vehicles owned by disabled veterans, including persons disabled in the
26 line of duty while serving in the Alaska Territorial Guard, or other persons with
27 disabilities. Upon the request of a person with a disability that limits or impairs the
28 ability to walk, as defined in 23 C.F.R. 1235.2, the department shall (1) register one
29 passenger vehicle in the name of the person without charge; and (2) issue a specially
30 designed registration plate that displays (A) recognition of the disabled veteran if the
31 applicant's disability originated from the applicant's service with the Alaska Territorial

1 Guard or the armed forces of the United States; and (B) the standard symbol of
2 disability (the wheelchair logo). A disabled veteran who is not otherwise qualified
3 under this subsection, but who presents to the department written proof that the person
4 is at least 70 percent disabled or medic lly handicapped as a consequence of service in
5 the Alaska Territorial Guard or the armed forces of the United States, may register one
6 passenger vehicle without charge, and the department shall issue a specially designed
7 registration plate that displays recognition of the disabled veteran that does not display
8 the standard handicap symbol and does not carry with it special parking privileges.
9 For purposes of this subsection, proof of disability may be provided by a person
10 licensed as a physician **or physician assistant** under AS 08.64 or as an advanced
11 nurse practitioner under AS 08.68.
12 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:
14 APPLICABILITY. AS 21.36.090(d), as amended by sec. 2 of this Act, applies to a
15 policy of insurance or group service or indemnity type contract issued or renewed on or after
16 January 1, 2003.
17 * **Sec. 5.** Sections 2 and 4 of this Act take effect January 1, 2003.

alaska academy of physician assistants

P.O. Box 74187 • Fairbanks, AK 99707-4187
(800) 478-8684 • (907) 455-4649
Fax (907) 452-8373 * Email akapa@gci.net

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RESOLUTION

TO AMEND AS 09.55.560 TO INCLUDE PHYSICIAN ASSISTANTS IN MEDICAL LIABILITY STATUTE

WHEREAS, a physician assistant is licensed to practice medicine under AS 08.64.107, AS 08.64.170, and 12 AAC 40.400 through 12 AAC 40.490.

WHEREAS, there are approximately 250 physician assistant licensees in the state of Alaska. Physician assistants have been practicing medicine in Alaska for more than 20 years.

WHEREAS, physician assistants care for over 50,000 Alaskans every month, in a wide variety of institutions. Physician assistants are critical for the provision of medical care in remote areas and villages of Alaska.

WHEREAS, in 1976 the legislature codified the law with regard to medical liability. AS 09.55.530 – AS 09.55.560. The purpose of the statutes was to codify the law of medical malpractice in order to establish that the law in Alaska in this regard is the same as elsewhere. AS 09.55.530.

WHEREAS, the medical liability statutes apply only to "health care providers", as specifically defined by AS 09.55.560. The definition of "health care provider" includes acupuncturists, audiologists, speech-language pathologists, chiropractors, dental hygienists, dentists, nurses, opticians, naturopaths, optometrists, pharmacists, physical therapists, occupational therapists, physicians, podiatrists, psychologists and psychological associates. AS 09.55.560.

WHEREAS, due to a legislative oversight, physician assistants were not included in the definition of "health care provider" under AS 09.55.560. As a result, physician assistants are not covered by the medical liability statutes.

WHEREAS, the law of medical liability should apply uniformly to all health care providers licensed to practice medicine in the state of Alaska, including physician assistants.

Therefore be it resolved that the Alaska Academy of Physician Assistants wishes to amend AS 09.55.560(1) to include the words "physician assistant licensed under AS 08.64" in the definition of health care provider.

...a full disclosure would have a substantially adverse effect on the patient's condition. (§ 37 ch 102 SLA 1976)

NOTES TO DECISIONS

...sician must explain risk in lay terms. — ...y identifying a risk does not necessarily provide ...ent with the information necessary for an in...ed decision. For a trial court to decide on sum...y judgment that doctor has disclosed sufficient ...mation to allow a reasonable patient to make an ...med decision about treatment, the record must ...blish that the physician explained to the patient ...lay terms the nature and severity of the risk and ...likelihood of its occurrence. Korman v. Mallin, 858 ...d 1145 (Alaska 1993).

Expert testimony as to disclosure standards ...t required. — The scope of disclosure required ...r subsection (a) must be measured by what a ...onable patient would need to know in order to ...ke an informed and intelligent decision about the ...posed treatment. Under the reasonable patient ...le, a physician must disclose those risks which are "material" to a reasonable patient's decision concern... treatment. Under this view, expert testimony ...cerning the professional standard of disclosure is not a necessary element of the plaintiff's case because the scope of disclosure is measured from the standpoint of the patient. Korman v. Mallin, 858 P.2d 1145 (Alaska 1993).

Signed informed consent. — The requirements set forth in 7 AAC 12.120 (c) are not inconsistent with this section. The regulations, simply impose a supplemental requirement that the patient's medical record contain a "signed informed consent" before a surgical procedure may begin. Sweet v. Sisters of Providence, 895 P.2d 484 (Alaska 1995).

Validity of regulation. — The trial court in an evidentiary hearing did not adequately investigate the application of 7 AAC 12.120(c) which requires a signed informed consent before a surgical procedure because there was an insufficient factual basis from which to conclude that the regulation either was or was not obscure and whether or not it could be fairly interpreted to set the standard of care. Sweet v. Sisters of Providence, 895 P.2d 484 (Alaska 1995).

Collateral references. — Modern status of views ...to general measure of physician's duty to inform ...tient of risks of proposed treatment, 88 ALR3d ...008.

Duty of medical practitioner to warn patient of subsequently discovered danger from treatment previously given, 12 ALR4th 41.

Liability for failure of physician to inform patient of alternative modes of diagnosis or treatment, 38 ALR4th 900.

Medical practitioner's liability for treatment given child without parents' consent, 67 ALR4th 511.

Malpractice: physician's duty, under informed consent doctrine, to obtain patient's consent to treatment in pregnancy or childbirth cases, 89 ALR4th 799.

This is where we need to add Physician Assistant

Sec. 09.55.560. Definitions. In AS 09.55.530 — 09.55.560,

(1) "health care provider" means an acupuncturist licensed under AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; an employee of a health care provider acting within the course and scope of employment; an ambulatory surgical facility and other organizations whose primary purpose is the delivery of health care, including a health maintenance organization, individual practice association, integrated delivery system, preferred provider organization or arrangement, and a physical hospital organization;

(2) "board" means an arbitration board established under AS 09.55.535;

(3) "panel" means an expert advisory panel established under AS 09.55.536;

(4) "professional negligence" means a negligent act or omission by a health care provider in rendering professional services;

(5) "professional services" means service provided by a health care provider that is within the scope of services for which the health care provider is licensed and that is not prohibited under the health care provider's license or by a facility in which the health care provider practices. (§ 37 ch 102 SLA 1976; am § 24 ch 177 SLA 1978; am § 6 ch 56 SLA 1986; am § 9 ch 131 SLA 1986; § 26 ch 2 FSSLA 1987; am § 9 ch 6 SLA 1990; am § 1 ch 14 SLA 1991; am §§ 26, 27 ch 26 SLA 1997)

NOTES TO DECISIONS

...ed in M.A. v. United States, 951 P.2d 851 (Alas-... 1998).

Sec. 09.55.535. Voluntary arbitration. (a) A patient and any health care provider ...y execute an agreement to submit to arbitration any dispute, controversy, or issue ...ising out of care or treatment by the health care provider during the period that the ...reement is in force or that has already arisen between the parties. Execution of an ...reement under this subsection by a patient may not be made a prerequisite to receipt ...f care or treatment by the health care provider.

(b) An agreement to arbitrate executed before care or treatment is provided must clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the attorney general of the state to assure it fairly informs both parties to the agreement and properly protects their interests.

(c) The agreement must provide that the person receiving health care may revoke the agreement within 30 days after execution by notifying the health care provider in writing. The period for revocation shall be tolled during any period that the person receiving health care is physically unable to execute a revocation. The health care provider may not revoke the agreement after its execution.

(d) An arbitration agreement entered into by the parents or legal guardian of a minor person receiving health care is binding upon the minor person.

(e) An agreement to arbitrate between a patient and a hospital must be reexecuted each time a person is admitted to a hospital. The agreement may be extended by written agreement of all parties to apply to care after hospitalization. A person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital that provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(f) Upon the filing of a malpractice claim that is subject to an agreement to arbitrate, the claim shall be submitted to an arbitration board. The arbitration board shall consist of three arbitrators: one arbitrator designated by the claimant or claimants, one arbitrator designated by the health care provider or providers against whom the claim is made, and a third arbitrator designated by mutual agreement who shall serve as chairperson of the board. If the parties cannot agree on the third person, the court will provide a choice of three or more persons who might serve as chairperson of the arbitration board, which shall be from a list of qualified arbitrators furnished by the attorney general. Claimant or claimants together and health care provider or providers together may each strike one or more names so that after each side has done so at least one name remains, providing a basis for the final selection by the court.

(g) The attorney general shall prepare a list of persons consisting of lawyers or other persons qualified to serve as chairperson of an arbitration board. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at least three names whenever requested to do so by the court along with detailed biographical information on each person listed.

(h) Each member of the arbitration board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall pay the costs of expert witnesses called by the board and the costs of expert witnesses called by the parties to the arbitration up to a maximum of three witnesses for each side and $150 per day for each expert witness.

(i) The arbitration board may appoint an expert advisory panel, with the powers of the expert advisory panel under AS 09.55.536, to advise the board on the medical facts of the case.

(j) The court shall specify the shortest practical deadline for completion of the work of the arbitration board, taking into account all the circumstances and the nature of the case.

(k) The provisions of the Uniform Arbitration Act, AS 09.43.010 — 09.43.180, apply to arbitrations under this section if they do not conflict with the provisions of this section; arbitrations under this section shall be conducted in accordance with procedures established by any rules of court which may be adopted and according to provisions of AS 09.55.540 — 09.55.548 and AS 09.55.554 — 09.55.560, and AS 09.65.090. (§ 33 ch 102 SLA 1976; am § 22 ch 177 SLA 1978; am § 1 ch 105 SLA 1988)

Cross references. — For purpose of 1978 Act, see § 1, ch. 177, SLA 1978, as amended by § 8, ch. 46, SLA 1982, in the Temporary and Special Acts.

Collateral references. — Arbitration of medical malpractice claims, 84 ALR3d 375.

Sec. 09.55.536. Expert advisory panel. (a) In an action for damages due to personal injury or death based upon the provision of professional services by a health care provider, including a person providing services on behalf of a governmental entity, when the parties have not agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within 20 days after filing of answer to a summons and complaint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed, the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties, physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care in issue. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements it receives.

(c) Not more than 30 days after selection of the panel, the panel shall make a written report to the parties and to the court, answering the following questions and other questions submitted to the panel by the court in sufficient detail to explain the case and the reasons for the panel's answers:

(1) Why did the claimant seek medical care?

(2) Was a correct diagnosis made? If not, what was incorrect about the diagnosis?

(3) Was the treatment or lack of treatment appropriate? If not, what was inappropriate about the treatment or lack of treatment?

(4) Was the claimant injured during the course of evaluation or treatment or by failure to diagnose or treat?

(5) If the answer to question 4 is "yes," what is the nature and extent of the medical injury?

(6) What specifically caused the medical injury?

(7) Was the medical injury caused by unskillful care? Explain.

(8) If a medical injury had not occurred, what would have been the likely outcome of the medical case?

(d) In any case in which the answer to one or more of the questions submitted to the panel depends upon the resolution of factual questions that are not the proper subject of expert opinion, the report must so state and may answer questions based upon hypothetical facts that are fully set out in the opinion. The report must include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; must specify any medical or scientific authority relied upon by the panel; and must include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and the signature constitutes the member's adoption of all statements and

[illegible]ions contained in it; however, a member may, instead of signing the report, submit a [con]curring or dissenting report that complies with the requirements of this subsection. A [me]mber may not attest to any portion of the report as to which the member is not [qu]alified to give expert testimony.

(e) The report of the panel with any dissenting or concurring opinion is admissible in [ev]idence to the same extent as though its contents were orally testified to by the person [or] persons preparing it. The court shall delete any portion that would not be admissible [be]cause of lack of foundation for opinion testimony, or otherwise. Either party may [s]ubmit testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of that member's dissenting or concurring opinion.

(f) Discovery may not be undertaken in a case until the report of the expert advisory panel is received or 60 days after selection of the panel, whichever occurs first. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (c) of this section, the court may, upon application, grant the panel an additional 30 days.

(g) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report. If a panel member is called upon as a witness at trial or upon deposition, the member is entitled to payment of an expert witness fee, which may not exceed $150 per day. All expenses incurred by the panel shall be paid by the court. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(h) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

(i) This section applies regardless of whether a party in the action or the health care provider whose professional services are the subject of the action is a governmental entity or in the public or private sector. (§ 33 ch 102 SLA 1976; am § 23 ch 177 SLA 1978; am §§ 22 — 25 ch 26 SLA 1997)

Revisor's notes. — In 1994, "Discovery may not" was substituted for "No discovery may" in (f) of this section to conform the section to the current style of the Alaska Statutes.

Cross references. — For purpose of 1978 Act, see § 1, ch. 177, SLA 1978, as amended by § 8, ch. 46, SLA 1982, in the Temporary and Special Acts.

For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1997 amendment, effective August 7, 1997, in subsection (a), inserted ", including a person providing services on behalf of a governmental entity," in the first sentence; rewrote subsection (c); in subsection (f), added "or 60 days after selection of the panel, whichever occurs first," at the end of the first sentence; and added subsection (i).

Editor's notes. — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

NOTES TO DECISIONS

Chapter 102, SLA 1976, enacted in violation of Alaska Const., art. II, § 14. — Where the free conference committee recommended adoption of a version of ch. 102, SLA 1976, that differed in many respects from the version originally passed by the house; the free conference committee's bill was passed by the senate by a recorded vote; but in the house there was no roll call or recorded vote and the free conference committee bill was passed there by a simultaneous voice vote, this voice vote constituted "final passage" of ch. 102, SLA 1976, and thus violated the recorded vote requirement of Alaska Const., art. II, 14. Plumley v. George E. Hale, M.D., Inc., 594 P.2d 497 (Alaska 1979).

Constitutionality holding is to be applied prospectively. — Although the supreme court held that ch. 102, SLA 1976, was enacted in violation of the recorded vote requirement of Alaska Const., art. II,

§ 14, the supreme court held that its holding in this case should be applied prospectively in light of its conclusions that its decision was one of first impression, that substantial reliance had followed from the legislature's alternative interpretation of law, that undue hardship would have resulted from retroactive application of its holding, and that the rationale of the holding did not compel retroactivity. Plumley v. George E. Hale, M.D., Inc., 594 P.2d 497 (Alaska 1979).

Section was not invalidated. — Since neither ch. 102, SLA 1976, nor any other bill previously enacted into law by voice vote, will be overturned by its interpretation of Alaska Const., art. II, § 14, the supreme court did not invalidate this section. However, in order to effectuate the goals of fairness and intelligent advocacy, the supreme court held that this section would not be applicable in the malpractice actions consolidated for this appeal. Plumley v. George E. Hale, M.D., Inc., 594 P.2d 497 (Alaska 1979).

Lifting ban on discovery before panel report. — Good cause to lift the discovery ban is demonstrated as a matter of law when no report has been issued after 80 days have elapsed from the filing of answer, if the party wishing to begin discovery is not responsible for the delay. Roethler v. Lutheran Hosps. & Homes Soc'y of Am., 709 P.2d 487 (Alaska 1985).

Constitutionality. — This section does not unconstitutionally deprive a litigant of due process of law, does not impair his right to a jury trial, and does not violate separation of powers principles by impermissibly delegating judicial power to members of the panel. Keyes v. Humana Hosp., 750 P.2d 343 (Alaska 1988).

This section does not unconstitutionally deprive medical plaintiffs of their right of access to the courts. Keyes v. Humana Hosp., 750 P.2d 343 (Alaska 1988).

Applied in Kendall v. State, Div. of Cors., 692 P.2d 953 (Alaska 1984).

Quoted in Snyder v. Foote, 822 P.2d 1353 (Alaska 1991).

Cited in Korman v. Mallin, 858 P.2d 1145 (Alaska 1993).

Collateral references. — Validity and construction of state statutory provision relating to limitations on amount of recovery in medical malpractice claim and submission of such claim to pretrial panel, 80 ALR3d 583.

Disclosure of privileged proceedings of hospital medical review or doctor evaluation processes, 60 ALR4th 1273.

Sec. 09.55.540. Burden of proof. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider, the plaintiff has the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing;

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is no presumption of negligence on the part of the defendant. (§ 1 ch 49 SLA 1967; am § 34 ch 102 SLA 1976)

NOTES TO DECISIONS

The language of this section is so clear and unambiguous that the supreme court is foreclosed from broadening the standard contained therein through judicial construction. Poulin v. Zartman, 542 P.2d 251 (Alaska 1975), unmodified on rehearing, 548 P.2d 1299 (Alaska 1976).

Optometrists were not included in this section prior to 1976. Steele v. United States, 463 F. Supp. 321 (D. Alaska 1978).

Requirements of surgeon's report. — It is incumbent upon a surgeon to describe accurately and fully in his report of an operation everything of consequence that he did and which his trained eye observed during an operation. Patrick v. Sedwick, 391 P.2d 453 (Alaska 1964).

To have maximum probative force, the report should be dictated immediately after the operation. Patrick v. Sedwick, 391 P.2d 453 (Alaska 1964).

Informing patient of hazards of operation. — There is good law in support of the argument that a doctor need not inform the patient of all the hazards involved in an operation; that doctors frequently tailor the extent of their preoperative warnings to the particular patient to avoid the unnecessary anxiety and apprehension which such appraisal might arouse in the mind of the patient. Patrick v. Sedwick, 391 P.2d 453 (Alaska 1964).

Absence of surgeon's personal recollection or of recorded facts no defense. — Under the circumstances of the instant case, the court would not permit the absence of a surgeon's personal recollection or of recorded facts to serve as a defense in an action for malpractice. Patrick v. Sedwick, 391 P.2d 453 (Alaska 1964).

Expenses for rearing healthy child following pregnancy misdiagnosis. — Negligent failure to diagnose a pregnancy gives rise to a cause of action for medical malpractice and is compensable to the extent

...damages are ordinarily allowable in malpractice ..., but no recovery may be awarded for expenses of ...ing a healthy child born as a result of the misdi...nosis. M.A. v. United States, 951 P.2d 851 (Alaska 1998).

Prima facie case of negligence. — See Patrick v. Sedwick, 391 P.2d 453 (Alaska 1964).

Failure of trial court to make finding of lack of informed consent was not clearly erroneous. Patrick v. Sedwick, 391 P.2d 453 (Alaska 1964).

"Similar communities" instruction did not convey a standard of conduct more lenient than a national standard instruction. Priest v. Lindig, 583 P.2d 173 (Alaska 1978), remanded on other grounds, 591 P.2d 1299 (Alaska 1979).

Cited in Baker v. Werner, 654 P.2d 263 (Alaska 1982).

Stated in Yako v. United States, 891 F.2d 738 (9th Cir. 1989); Korman v. Mallin, 858 P.2d 1145 (Alaska 1993).

Collateral references. — Qualification of medical expert witness, 33 Am. Jur. POF2d, pp. 179-210.

Proximate cause, 13 ALR2d 11.

Aggravation of injuries as mitigating damages in action against physician or surgeon for malpractice, 60 ALR2d 1055.

Necessity of expert evidence to support an action for malpractice against a physician or surgeon, 81 ALR2d 597.

Competency of physician or surgeon of school of practice other than that to which defendant belongs to testify in malpractice case, 85 ALR2d 1022.

Competency of general practitioner to testify as expert witness in action against specialist for medical malpractice, 31 ALR3d 1163.

Competence of physician or surgeon from one locality to testify, in malpractice case, as to standard of care required of defendant practicing in another locality, 37 ALR3d 420.

Necessity and sufficiency of showing of medical witness' familiarity with particular medical or surgical technique involved in suit, 46 ALR3d 275.

Patient's failure to return, as directed, for examination or treatment as contributory negligence, 100 ALR3d 723.

Propriety, in medical malpractice case, of admitting testimony regarding physician's usual custom or habit in order to establish nonliability, 10 ALR4th 1243.

Standard of care owed to patient by medical specialist as determined by local "like community," state, national, or other standards, 18 ALR4th 603.

Manufacturer's package insert recommendations as evidence of standard of care, 82 ALR4th 166.

Sec. 09.55.546. Advance payments. In an action to recover damages under AS 09.55.530 — 09.55.560, no advance payment made by the defendant health care provider or the professional liability insurer of the defendant to or on behalf of the plaintiff is admissible as evidence or may be construed as an admission of liability for injuries or damages suffered by the plaintiff; however, a final award in favor of the plaintiff shall be reduced to the extent of any advance payment. The advance payment shall inure to the exclusive benefit of the defendant or the insurer making the payment. (§ 35 ch 102 SLA 1976)

Sec. 09.55.547. Pleading of damages. In a cause of action against a health care provider for malpractice, the complaint or any other pleadings may not contain an ad damnum clause or monetary amount claimed against the defendant health care provider, except as necessary for jurisdictional purposes. (§ 35 ch 102 SLA 1976)

Sec. 09.55.548. Awards, collateral source. (a) Damages shall be awarded in accordance with principles of the common law. The fact finder in a malpractice action shall render any award for damages by category of loss. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment must include, if necessary, other provisions to assure that funds are available as periodic payments become due. Insurance from an authorized insurer as defined in AS 21.90.900 is sufficient assurance that funds will be available. Any part of the award that is paid on a periodic basis shall be adjusted annually according to changes in the consumer price index in the community where the claimant resides. In this subsection, "future damages" includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program that by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant that exceed amounts received by the claimant as compensation for the injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory. Evidence of collateral

sources, other than a federal program that must by law seek subrogation and the death benefit paid under life insurance, is admissible after the fact finder has rendered an award. The court may take into account the value of claimant's rights to coverage exhausted or depleted by payment of these collateral benefits by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future. (§ 35 ch 102 SLA 1976; am § 7 ch 30 SLA 1992)

Effect of amendments. — The 1992 amendment, effective May 16, 1992, in subsection (a), deleted "or from the Medical Indemnity Corporation of Alaska" preceding "is sufficient" in the fourth sentence and made a stylistic change in the fifth sentence.

Sec. 09.55.550. Jury instructions. In medical malpractice actions the jury shall be instructed that the plaintiff has the burden of proving the health care provider's negligence or wilful misconduct in accordance with the standard of proof specified in AS 09.55.540. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's negligence or misconduct. (§ 1 ch 49 SLA 1967; am § 36 ch 102 SLA 1976)

NOTES TO DECISIONS

This section specifically rules out any presumptions of negligence in malpractice cases. Poulin v. Zartman, 542 P.2d 251 (Alaska 1975), modified on rehearing, 548 P.2d 1299 (Alaska 1976).

Applied in Priest v. Lindig, 583 P.2d 173 (Alaska 1978).

Collateral references. — Propriety and effect of instruction or argument directing attention to injury to defendant's professional reputation or standing, 74 ALR2d 662.

Propriety and effect of instructions in civil case on the weight or reliability of medical expert testimony, 86 ALR2d 1038.

Sec. 09.55.554. Immunity for oral contracts. A cause of action against a health care provider does not arise for breach of an oral contract to provide a cure or achieve a specific medical result. (§ 37 ch 102 SLA 1976)

Revisor's notes. — In 1994, "A cause of action against a health care provider does not arise" was substituted for "No cause of action against a health care provider arises" to conform the section to the current style of the Alaska Statutes.

Cross references. — For other immunity provisions related to health care providers, see AS 09.65.090, 09.65.091 and 09.65.095.

Sec. 09.55.556. Informed consent. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of the common risks and reasonable alternatives to the proposed treatment or procedure, and that but for that failure the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for medical malpractice based upon an alleged failure to obtain informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that the patient would undergo the treatment or procedure regardless of the risk involved or that the patient did not want to be informed of the matters to which the patient would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider after considering all of the attendant facts and circumstances used reasonable discretion as to the manner and extent that the alternatives or risks were disclosed to the patient because the health care provider reasonably believed

January 22, 2002

To: Senator Donald Olson and Mr. Dave Gray

Re: Addendum for Consideration

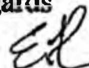
From: Ed Hall PA-C
Alaska Academy of Physician Assistants
(907) 222-7612 wk
(907) 345-9365 hm

Dear Senator Olson and Mr. Gray:

I am sending you a copy of the current Alaska statutes that address, who is eligible to provide proof of disability for issuance of handicapped parking permits. Once again it appears that we as Physician Assistants have been excluded as providers of medical services equivalent to those of Nurse Practitioners. It could be the same problem in that the law was written before PA's became viable providers of medical care in Alaska. Since this is similar to our other resolutions, would it be possible to include this all on the same bill?

We appreciate your help and support in these matters.

Regards



Subject Parking

AS 28.10.181d

(d) Vehicles owned by disabled veterans, including persons disabled in the line of duty while serving in the Alaska Territorial Guard, or other persons with disabilities. Upon the request of a person with a disability that limits or impairs the ability to walk, as defined in 23 C.F.R. 1235.2, the department shall (1) register one passenger vehicle in the name of the person without charge; and (2) issue a specially designed registration plate that displays (A) recognition of the disabled veteran if the applicant's disability originated from the applicant's service with the Alaska Territorial Guard or the armed forces of the United States; and (B) the standard symbol of disability (the wheelchair logo). A disabled veteran who is not otherwise qualified under this subsection, but who presents to the department written proof that the person is at least 70 percent disabled or medically handicapped as a consequence of service in the Alaska Territorial Guard or the armed forces of the United States, may register one passenger vehicle without charge, and the department shall issue a specially designed registration plate that displays recognition of the disabled veteran that does not display the standard handicap symbol and does not carry with it special parking privileges. For purposes of this subsection, proof of disability may be provided by a person licensed as a physician under AS 08.64 or as an advanced nurse practitioner under AS 08.68.

Note this does not auth Chiropractor or Poditrist, It is questionabe maybe poditrist is covered

My Guess that CFR 1235 is the criteria used on the application.

Sec. 28.10.495. Parking permit for vehicle transporting disabled person.

(a) Upon application by a disabled or medically handicapped person, or by an organization that transports disabled or medically handicapped persons, the department shall issue to the applicant, without charge, a special permit bearing the control number of the applicant. The permit issued under this section, when displayed in the front windshield of a parked or standing vehicle, shall provide for special consideration by the public with respect to the parking or standing in designated spaces of a vehicle that is being used for the transportation of a disabled or medically handicapped person.

(b) A person is not entitled to use the special permit provided for in (a) of this section except when providing transportation for a disabled or handicapped person. Upon the death of a disabled or handicapped person to whom a special permit has been issued, the special permit shall be returned to the department. If an organization to which a special permit has been issued ceases transporting disabled or handicapped persons, or ceases operating, it shall return the special permit to the department.

(c) Proof of disablement or medical handicap, for the purpose of this section, shall be the same as that required for the purposes of AS 28.10.181(d).