

**HB**

**142**

# ALASKA STATE HOUSE OF REPRESENTATIVES

Session

(907)-465-4930  
FAX# 465-3834  
State Capitol  
Room 416



Representative Cheryll Heinze

**ECONOMIC DEVELOPMENT, TRADE AND TOURISM**

**CHAIR**  
**HB 142**

## **SPONSOR STATEMENT**

The majority of eye surgery performed in the United States today is technologically advanced and is safer and more effective than ever before. The most common major eye surgery performed in the United States is cataract surgery; with more than 1.5 million cases a year. Cataract surgery has evolved to such an advanced state that many cases take less than 15 minutes to perform. The speed with which modern cataract surgery can be performed has tended to trivialize the seriousness of this surgery in the public's mind, causing patients to infer that it is risk free. No surgery is risk free, including short cases such as uncomplicated cataract surgery. However, complications do occur and can be serious. Permanent loss of vision and patient death are some of the more serious potential complications. It is important for postoperative care to be managed by an ophthalmologist familiar with the surgery and the potential complications.

Unfortunately, reduction of surgical time for cataract surgery has led to the appearance of so-called "cataract mills" where patients are referred in large numbers by an optometrist and, in return for a "co-management fee", the referring optometrist is then allowed to manage the patient postoperatively. The operating surgeon, in this setting, often meets the patient just minutes prior to surgery and takes no responsibility after surgery. In some cases this surgeon may travel from cataract mill

to cataract mill and is unavailable for any postoperative consultation or advice. The patient's follow-up care is therefore abandoned, by pre-arrangement, to the referring

Optometrist who is not qualified by training or experience to handle any serious complications resulting from the cataract surgery.

Another serious situation may arise as a result of the "cataract mill". Should the patient require hospitalization, the surgeon is unlikely to have local hospital privileges. The patient is then dumped on another ophthalmologist unfamiliar with the patient but now responsible for rendering critical care.

Co-management of eye surgery as currently practiced in Alaska is a recipe for sub-optimal patient care. House Bill 142 addresses the issue of postoperative care for eye surgery in Alaska, taking into account the unusual and sometimes-difficult medical and surgical challenges our state often poses in terms of isolation, limited medical resources and transportation difficulties.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 19, 2003

**SUBJECT:** Sectional Analysis (HB 142)  
**TO:** Representative Cheryll Heinze  
**FROM:** Terri Lauterbach  
Legislative Counsel



You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. Since you have not expressed questions about any particular aspect of the bill, this summary is brief. Let me know if you have specific questions.

Section 1. Places limits on how and when a surgeon who performs eye surgery in this state may delegate responsibility to someone else for post-operative care of the patient.

Secs. 2 - 3. Require compliance with sec. 1 of the bill by certain people who are exempt from licensing as physicians.

Sec. 4. Adds definition of "knowingly," which is a term used in secs. 1 and 3 of the bill.

Secs. 5 and 7. Allow the State Medical Board to begin the regulations process before the rest of the bill takes effect.

Sec. 6. Applies the amendments made by the bill to eye surgery occurring on or after the effective date of secs. 1 - 4 of the bill.

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**Alaska Academy of Ophthalmology**

Carl Rosen, M.D.  
President  
542 W. 2<sup>nd</sup> Ave  
Anchorage, Ak 99501  
907-563-8526

MAR 7 - 2003

3/7/03  
Alaska House of Representatives  
Pouch V  
Juneau, Ak 99801

Dear Representative,

*Representative Wilson*

The Alaska and American Academy of Ophthalmology endorses HB 142(introduced by State Representative Cheryl Heinze), an act relating to provider responsibility for ocular postoperative care in Alaska, to regulate potential abuses of comanagement arrangements.

This legislation closes a patient protection loophole. Ocular care is one of the rare areas where non-physicians inappropriately perform post-operative care.

This legislation would prevent itinerant ophthalmologists from allowing non-medical personnel to provide inappropriate post-operative care after eye surgery.

It is imperative that trained physicians see patients after surgery to check for infections, other diseases, complications that might occur following surgery to prevent potential loss of vision.

It is irresponsible to permit delegation of post-operative care to an optometrist who can neither accurately diagnose nor treat complications and emergencies.

This legislation would have no fiscal impact to consumers or to health care costs. In fact, patients would receive better and safer treatment at no additional costs.

Below, please find our analysis of HB 142. We ask for your support and co-sponsorship of this important legislation.

**BRIEFING: HB 142**

HB 142, an act relating to provider responsibility for ocular postoperative care in Alaska, has been introduced to regulate potential abuses of comanagement arrangements.

- HB 142 recognizes the unique challenges of practicing in Alaska. HB 142 does not prohibit legitimate comanagement. HB 142 would have no effect on responsible surgical practice in Alaska. HB 142 is consistent with the principles of the Joint Position Paper of the American Academy of Ophthalmology and the American Society of Cataract and Refractive surgery on Ophthalmic Postoperative Care.
- HB 142 provides that unless a surgeon enters into a written comanagement agreement with the patient, the bill requires a surgeon to be physically available to a patient for postoperative care in the community in which the operation was performed for 120 hours after the surgery.
- **HB 142 PERMITS COMANAGEMENT** if:
  - the distance the patient would have to travel to the regular office of the operating surgeon would result in an unreasonable hardship for the patient, as determined by the patient;
  - the surgeon will not be available for postoperative care as a result of the surgeon's personal travel, illness, travel to an area of the state for occasional practice of medicine, or travel to an area of a state designated as a physician shortage area; or
  - other justifiable circumstances exist, as determined by the State Medical Board.
- **HB 142 PROTECTS OPHTHALMOLOGISTS AND PATIENTS** by prohibiting comanagement arrangements:
  - in which a fee is paid to the person to whom the care is delegated that does not reflect the fair market value of the services performed by that person;
  - that are entered into as a matter of routine and not on a case-by-case basis;

- that are not clinically appropriate for the patient;
  - that is made with the intent to induce surgical referrals; or
  - that is based on economic considerations affecting the surgeon.
- HB 142 CONTAINS EXTRA FLEXIBILITY for the surgeon by allowing the surgeon to delegate postoperative care of a patient without a written comanagement agreement because of unanticipated circumstances that were reasonably foreseeable before the surgery was performed.

Please feel free to call me at anytime @ 907-563-8526 and I would be glad to answer any question you may have or provide you with more information.

Sincerely,  


Carl Rosen, M.D.  
Alaska Academy of Ophthalmology  
President

OLIVER M. KORSHIN, M. D.  
DISEASES AND SURGERY OF THE EYE

ALASKA MEDICAL PLAZA  
1200 AIRPORT HEIGHTS DRIVE, SUITE 310  
ANCHORAGE, ALASKA 99508  
(907) 276-8838  
FAX (907) 258-0735

March 10, 2003

Representative Pete Kott  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Kott:

I am writing to ask your support of HB 142, a bill to regulate ocular postoperative care in Alaska. The bill is also known as the "co-management bill."

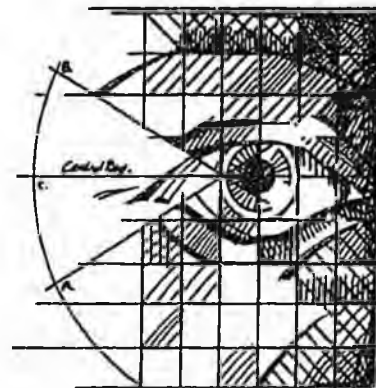
Co-management means that a practitioner other than the operating surgeon provides postoperative care. Because co-management frequently involves splitting of the surgical fee between the surgeon and the provider of postoperative care, co-management arrangements have drawn the attention of the U. S. DHHS Office of the Inspector General in an ongoing national effort to assure that such arrangements do not violate federal anti kick-back statutes.

But co-management not only poses the potential for illegal kickbacks — perhaps more important, it can harm patients. Let me explain.

Eye surgery performed in the United States today has become so technologically advanced that it is safer and more effective than ever before. This applies particularly to cataract surgery, the most common major surgery performed in our country — more than 1.5 million cases a year. Cataract surgery has become so advanced that many cases take less than fifteen minutes, using tiny incisions and foldable intraocular lens implants. Patients go home almost immediately and not infrequently are able to see 20/20 that same day.

The speed with which modern cataract surgery can be performed, as well as its astounding success rate, have unfortunately trivialized the seriousness of this surgery in the public's mind, causing patients to infer that it is risk-free. This is rather like inferring that handling a high-performance jet fighter plane is risk-free. With high-performance jet planes — as with 21<sup>st</sup> century eye surgery — increased speed and increased performance sometimes mean that things can go very wrong very quickly. And they do.

In other words, modern cataract surgery is still subject to complications, some of them serious. Although serious complications occur infrequently, they do occur with statistical regularity. When they occur, often in the first 72 hours following surgery, they must be managed by a qualified ophthalmologist who is familiar with the surgery, its potential complications and how these complications must be managed.



The reduction in the time it takes to perform cataract surgery has led to the appearance of so-called cataract mills, to which patients are referred in large numbers by optometrists, who receive a co-management fee for following the patient after surgery, including the diagnosis and treatment of short- and long-term surgical complications.

Often the surgeon in a cataract mill does not see the patient until a few minutes before surgery. After surgery, the patient may never see the surgeon again. In fact, the surgeon may leave town a shortly after surgery, traveling to another cataract mill location (which may be out-of-state). He may not return for weeks or longer, and then it is not to see his post-operative patients, but to operate on the next wave of referrals. A patient's follow-up care is therefore delegated, by *pre-arrangement*, to the referring optometrist, who is not qualified by training or experience to manage the major complications of cataract surgery, some of which require additional and sometimes complex surgery to treat.

When the co-managing optometrist is presented with a serious complication of cataract surgery that may require admission to a hospital, he must "dump" the patient into the hands of a local ophthalmologist, as the mill surgeon has left town or, if in town, may not have local hospital privileges. The new ophthalmologist is suddenly responsible for rendering critical care a very ill patient fearful of going blind, whom he has never seen before and about whom he knows nothing.

Hence, co-management of eye surgery can be a recipe for sub-optimal postoperative care. House Bill 142 addresses this important patient safety issue while taking into account the unusual and sometimes difficult medical-surgical challenges our state poses in terms of isolation, vast distances and transportation difficulties.

How do I handle cataract surgery in my own practice? I stopped all cataract surgery last year, so I refer my patients who need cataract surgery to other local ophthalmologists. I refuse to co-manage: postoperative care is the *surgeon's* responsibility. I refer only to ophthalmologists who will provide *all* my patients' postoperative care — not just for 120 hours as stipulated in this bill, but for the entire 90-day "global" postoperative period. I believe this represents sound and ethical medical practice. One hundred and twenty hours is the bare minimum.

I urge you to support HB 142.

Sincerely,



Oliver Korshin, M. D.



March 21, 2003

Alaska State Senators and Representatives

Dear Legislators

*Representative Wilson,*

I am writing to ask for your support of HB 142 and companion bill SB 129, legislation to ensure that Alaska citizens have the necessary information regarding postoperative surgical eye care. The enactment of HB 142 and SB 129 is a positive step forward to enhance patient understanding of postoperative surgical eye care treatment.

This legislation sets forward clear rules as to the procedures that an ophthalmologist and optometrists must follow when a comanagement agreement is agreed upon. Just as importantly, this legislation informs the patient as to the type of care he or she will be receiving from each health care provider – the ophthalmologist and the optometrist. Patient protection is this legislation's objective. With enactment of HB 142 and SB 129, the ethical relationship between the ophthalmologist, the optometrist, and patient is once again paramount.

As a working pediatric ophthalmologist in Anchorage who attended the University of Alaska-Fairbanks, I have a perspective of the Alaska health care system both as a citizen and as a physician.

The delivery of quality health care is a challenge due to our state's size and rural nature. For example, I travel to our practice's satellite clinics in Wasila, Codova, Kodiak, and Homer. It is my goal to deliver quality and affordable pediatric ophthalmic care to urban and rural residents of our Great State. I have coordinated several research efforts including the 6 plus years, cooperative, charitable project to vision screen every preschool Alaskan called the "Alaska Blind Child Discovery." We have provided pre-school vision screening to over 14,000 Alaska children free of charge. I have also served as the Eye section Chief at Providence hospital for the last 11 years coordinating emergency eye call for much of the state.

>From my residency training at the Mayo Clinic and my practice in Anchorage with Ophthalmic Associates, I have learned the value of careful, open-referral and consultative medicine. Ophthalmic Associates is a subspecialty eye practice of optometrists (ODs) and ophthalmologists.

I mention referral and consultative medicine because as a legislator you must often feel that ophthalmologists and optometrists do not work well together. This is not the case. For example, Ophthalmic Associates is a subspecialty eye practice of ophthalmologists (MDs) and optometrists (ODs). We can and do work together to deliver quality patient eye care services.

However, there is what I would term a growing pressure for ophthalmologists and optometrists to enter into what is called "co-management" practice pattern in regards to postoperative surgical eye care that is not in the best interest of the patients.

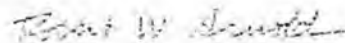
From my professional observation of the increased pressure for these types of agreements, I believe HB 142 and SB 129 are needed and are in the patient's best health care interest.

I am not against all collaborative care arrangements between Alaska's optometrists and ophthalmologists. I have and will continue to collaborate with other optometrists; family physicians and ophthalmologists in the medical and long-term postoperative care of Alaskan citizens, tourists and referred patients from the Russian Far-East (charitable surgical care).

However, you must be made aware that the current practicing environment works to destroy ethical arrangements between optometrists and ophthalmologists and fosters comanagement relationships between optometrists and ophthalmologists that are not in the best long-term interests of patients. That is why I support HB 142 and SB 129.

The enactment of HB 142/SB 129 will ensure that if a physician chooses to comanage a patient, its will be for health care considerations, not for future referrals or some other economic consideration. This legislation is a positive step forward to improve patient understanding of postoperative surgical eye care treatment.

Sincerely Yours,



Robert W. Arnold, M.D.