

HB

260

ALASKA STATE LEGISLATURE

Chair
FISHERIES

Vice-Chair
EDUCATION

Member
HEALTH, EDUCATION AND SOCIAL SERVICES

Member
STATE AFFAIRS



REPRESENTATIVE PAUL SEATON
House District 35

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MEMORANDUM

TO: Senator Ralph Seekins, Chair
Senate Judiciary Committee

FM: Representative Paul Seaton, Chair
House Special Committee on Fisheries

DATE: February 16th, 2004

RE: HB 260 Hearing Request

I respectfully request a hearing on HB 260, "Volunteer Health Care Provider Immunity Act." Attached, you will find all pertinent background material.



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REPRESENTATIVE PAUL SEATON
House District 35

SPONSOR STATEMENT

CS HB 260 (JUD) Version S

“Volunteer Health Care Provider Immunity Act”

Alaska is currently experiencing a shortage of health care providers, and with many of Alaska’s physicians nearing retirement, the state can only expect to see further declines in the availability of affordable health care. CSHB 260 aims to mitigate this problem by encouraging licensed physicians and other health care providers to administer health care services free of charge. By exempting voluntary services from malpractice liability, CSHB 260 would allow health care providers to donate their services without bearing the personal cost of medical malpractice insurance. CSHB 260 will be especially helpful for retiring health care professionals that wish to donate their services but do not still carry malpractice insurance. 43 other states have enacted similar legislation.

Historically, Alaska has had a difficult time recruiting and retaining adequate numbers of physicians and other health care providers. With 186 physicians per 100,000 residents, Alaska currently ranks 49th in the country in per capita physicians. Furthermore, the average age of Alaska’s physicians is over 51 years old. Many of Alaska’s most experienced physicians will be retiring in the next 5 to 10 years.

As licensed physicians in Alaska retire, many of them would like to provide free medical services within their communities. Unfortunately, paying for extremely expensive medical malpractice insurance while providing free services is costly and prohibitive. CSHB 260 would allow health care providers to give free services without this added cost, increasing the volunteer activity among the state’s aging health care providers.



CSHB 260 exempts from malpractice liability only those health care services that are provided for free to individuals that are willing to receive such services. Patients would have to receive advanced written notice of this exemption and give informed consent. CSHB 260 does not in any other way alter medical malpractice laws or liability. Health care providers would still be liable for actions resulting from gross negligence, reckless behavior, or intentional misconduct.

I ask for your support in this effort to broaden the availability of affordable health care in Alaska.

LEGAL SERVICES

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

MEMORANDUM

February 11, 2004

SUBJECT: Blank Senate CS for HB 260
(Work Order No. 23-LS0823\V)

TO: Representative Paul Seaton
Attn: Cameron Yourkowski

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed with this memorandum is a blank Senate committee substitute for HB 260. Section 3 of this draft differs from SCS CSHB 260(HES) by adding language to AS 09.65.300(a)(3) so that it now reads as follows:

(3) services were provided at a medical clinic, medical facility, nonprofit facility, temporary emergency site, or other facility owned or operated by a governmental entity or nonprofit organization and the provider was acting within the scope of the provider's responsibilities in the governmental entity or nonprofit organization;

This language is based on 42 U.S.C. 14503 (Sec. 4 of the Volunteer Protection Act of 1997). This language requires that the provider perform services as a volunteer for a governmental unit or nonprofit organization. I also added a definition for "nonprofit organization" in AS 09.65.300(b) because of the insertion of that term as described above.

While we were on the phone, you asked for an explanation of 42 U.S.C. 14502 (Sec. 3 of the Volunteer Protection Act of 1997). Subsection (a) of that section states that the federal act preempts state laws that are inconsistent with the act, except that the federal act does not preempt "any state law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity." In other words, the federal act does not apply if the state provides more immunity than the federal act. I think that the draft bill provides equal or greater immunity for health care providers when compared to the federal act.

You also asked about the language in AS 09.65.300(b)(1) that is included in sec. 3 of the draft. That paragraph means that a health care provider may not be immune from liability for civil damages that are the result of "gross negligence or reckless or intentional

Representative Paul Seaton
February 11, 2004
Page 2

misconduct." The quoted language is used consistently in the Alaska statutes as an exception to immunity from liability and describes an extraordinary departure from the expected standard of care.¹

If I may be of further assistance, please advise.

DMB:mdr
04-042.mdr

Enclosure

¹ The quoted language is used in AS 09.65.090, 09.65.092, 09.65.097, 09.65.112, 09.65.145, 09.65.200, 09.65.280; AS 13.26.150; AS 14.33.140; AS 34.17.055; and AS 47.35.810.

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MEMORANDUM

January 28, 2004

SUBJECT: Immunity for the Provision of Free Health Care (CSHB 260(JUD))

TO: Representative Paul Seaton
Attn: Cameron Yourkowski

FROM: Jean M. Mischel
Legislative Counsel 

You have asked about the absence of a definition of "gross negligence" in section 3 of CS HB 260(JUD) at page 3, line 2.

I have found approximately 50 references to the term "gross negligence" in the Alaska Statutes, only one of which contains a definition (AS 18.08.086(a) (providing immunity for emergency medical service providers). In this single definition, the term "gross negligence" includes the additional concepts of wilful and reckless misconduct, both of which are explicitly included in HB 260.

In the absence of an express definition, courts will apply the common law definition of this term. The common law definition of "gross negligence," as expressed in Black's Law Dictionary, Seventh Edition is, in pertinent part,

1. A lack of slight negligence or care. 2. A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damage.--Also termed *reckless negligence; wanton negligence; hazardous negligence.*

If I may be of further assistance, please advise.

JMM:mdr
04-027.mdr

23-LS0823V
Bullock
2/12/04

SENATE CS FOR CS FOR HOUSE BILL NO. 269()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES SEATON, Wilson, Gara, Anderson, McGuire, Holm

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to immunity for free health care services provided by certain health
2 care providers; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 SHORT TITLE. This Act may be known as the Volunteer Health Care Provider
7 Immunity Act of 2004.

8 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 FINDINGS. The legislature finds that

11 (1) many of the state's most senior and experienced physicians will be retiring
12 in the next five to 10 years; retiring physicians deciding to reside in Alaska could continue to
13 benefit our local communities by volunteering their medical services;

14 (2) historically, Alaska has had difficulty in attracting and maintaining

1 adequate numbers of qualified physicians; currently, Alaska ranks 49th in the number of
2 physicians per capita, while Alaska's physicians continue to grow older, reaching an average
3 age of 51 years;

4 (3) without civil liability protection, retired physicians would be unwilling to
5 provide free services to the indigent and elderly;

6 (4) 43 states have enacted legislation limiting liability for retired physicians,
7 thus encouraging retired physicians to continue in providing voluntary medical services; and

8 (5) removing liability requirements for retired physicians would be in the best
9 interests of the state; retired physicians unhindered by expensive malpractice insurance would
10 be more inclined to volunteer necessary and important medical services to all Alaskans.

11 * Sec. 3. AS 09.65 is amended by adding a new section to read:

12 **Sec. 09.65.300. Immunity for providing free health care services. (a)**

13 Except as otherwise provided in this section, a health care provider who provides
14 health care services to another person is not liable for civil damages resulting from an
15 act or omission in providing the health care services if the health care

16 (1) provider is licensed in this state to provide health care services;

17 (2) services provided were within the scope of the health care
18 provider's license;

19 (3) services were provided at a medical clinic, medical facility,
20 nonprofit facility, temporary emergency site, or other facility owned or operated by a
21 governmental entity or nonprofit organization and the healthcare provider was acting
22 within the scope of the provider's responsibilities in the governmental entity or
23 nonprofit organization;

24 (4) services were provided voluntarily and without pay to the health
25 care provider for the services, except as provided in (b)(2) and (3) of this section; and

26 (5) provider

27 (A) obtains informed consent from the person receiving the
28 health care services as described under AS 09.55.556, except in the case of an
29 emergency; and

30 (B) provides the person receiving the health care services
31 advance written notice of the immunity provided under this section to a health

1 care provider when providing voluntary health care services as described under
2 this section.

3 (b) This section does not preclude

4 (1) liability for civil damages that are the result of gross negligence or
5 reckless or intentional misconduct;

6 (2) a health care provider from receiving payment or being reimbursed
7 for expenses, including travel and room and board while providing voluntary services;

8 (3) a medical clinic or facility from charging for its services.

9 (c) In this section,

10 (1) "health care provider" means a state licensed physician, physician
11 assistant, dentist, dental hygienist, osteopath, optometrist, chiropractor, registered
12 nurse, practical nurse, nurse midwife, advanced nurse practitioner, naturopath,
13 physical therapist, occupational therapist, marital and family therapist, psychologist,
14 psychological associate, licensed clinical social worker, or certified direct-entry
15 midwife;

16 (2) "health care services" means services received by an individual in
17 order to treat or to prevent illness or injury;

18 (3) "nonprofit organization" means an organization that qualifies for
19 exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code).

20 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 **APPLICABILITY.** This Act applies to a cause of action that accrues on or after the
23 effective date of this Act.

24 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

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SECTIONAL ANALYSIS

CSHB 260 (JUD) Version S

"Volunteer Health Care Provider Immunity Act"

Section 1: Titles CSHB 260 as the Volunteer Health Care Provider Immunity Act of 2003.

Section 2: Lays out the findings of the legislature in drafting CSHB 260.

Section 3: Amends AS 09.65 by adding a new section that gives health care providers immunity from civil damages resulting from medical malpractice, but only if the services are provided without charge and the patient gives informed consent (09.65.290). This section also lays out further provisions that must be met for this immunity to apply and makes it clear that immunity is not granted for civil damages resulting from gross negligence and reckless or intentional misconduct. "Health care provider" and "health care services" are also defined in this section.

Section 4: States that this act applies only to actions occurring after the effective date of this act.

Section 5: Sets the effective date of this act at July 1, 2003.



FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SCS CSHB 260(HES)
(S) Publish Date: 1/30/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Immunity for Providing Free Health Care RDU Occupational Licensing (117)
Component Occupational Licensing
Sponsor House Judiciary
Requester Senate HESS Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
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)

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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 260(JUD) provides immunity for free health care services by certain health care providers. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
Division Occupational Licensing Date/Time 1/22/04 1:57 PM
Approved by: Edgar Blatchford, Commissioner Date 1/22/2004
Agency Department of Community and Economic Development

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 260
 () Publish Date: _____

Revision Date/Time (Note if correction):
 Title Immunity for Providing Free Health Care

Dept. Affected: DCED
 BRU Occupational Licensing (117)
 Component Occupational Licensing

Sponsor Representative Seaton
 Requester Labor and Commerce

Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
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)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 260 provides immunity for free health care services by certain health care providers. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager

Phone (907) 465-2144

Division Occupational Licensing

Date/Time 4/28/03 1:32 PM

Approved by: Edgar Blatchford, Commissioner

Date 4/28/2003

Agency Department of Community & Economic Development

Public Law 105-19
105th Congress

An Act

June 18, 1997
[S. 543]

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Volunteer
Protection Act of
1997.
42 USC 14501
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteer Protection Act of 1997".

42 USC 14501.

SEC. 2. FINDINGS AND PURPOSE.

- X (a) FINDINGS.—The Congress finds and declares that— X
- (1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;
 - (2) as a result, many nonprofit public and private organizations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;
 - (3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;
 - (4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;
 - (5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;
 - (6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and
 - (7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because—
 - (A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

within the scope of the volunteer's responsibilities in the non-profit organization or governmental entity;

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

(4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

(A) possess an operator's license; or

(B) maintain insurance.

(b) **CONCERNING RESPONSIBILITY OF VOLUNTEERS TO ORGANIZATIONS AND ENTITIES.**—Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) **NO EFFECT ON LIABILITY OF ORGANIZATION OR ENTITY.**—Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

(d) **EXCEPTIONS TO VOLUNTEER LIABILITY PROTECTION.**—If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.

(2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

(4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

(e) **LIMITATION ON PUNITIVE DAMAGES BASED ON THE ACTIONS OF VOLUNTEERS.**—

(1) **GENERAL RULE.**—Punitive damages may not be awarded [†] against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed. ^X

(3) **NONECONOMIC LOSSES.**—The term “noneconomic losses” means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(4) **NONPROFIT ORGANIZATION.**—The term “nonprofit organization” means—

(A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or



(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(5) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) **VOLUNTEER.**—The term “volunteer” means an individual performing services for a nonprofit organization or a governmental entity who does not receive—

(A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or

(B) any other thing of value in lieu of compensation, in excess of \$500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

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Primary Health Care

Access to Health Care: Volunteer Health Care Providers and Civil Immunity Laws

Updated March 2000

X **Laws establishing immunity from civil liability for health care providers delivering uncompensated care to indigent populations have been enacted in a majority of the states in the last decade. Viewed as a way to encourage health care providers to provider free care to underserved populations, states have removed the threat of civil suits against providers who are acting in good faith.** X

Laws providing immunity only for services rendered in an accident or emergency situation are not included.

First Letter of State A C D F G H I K L M N O P R S T U V W

State	Description
Alabama	Ala. Code § 6-5-339 provides immunity from civil immunity to medical professionals who volunteer their services at free medical clinics without compensation, and provides that an act or omission of a volunteer medical professional shall be the responsibility of the free medical clinic.
Alaska	-
American Samoa	-
Arizona	Ariz. Rev. Stat. Ann. § 12-571 states that a health professional who provides medical or dental treatment within the scope of their certificate or license at a nonprofit clinic where neither the professional or the clinic receives compensation is not liable in a medical malpractice action unless the health professional was grossly negligent.
Arkansas	Ark. Stat. Ann. § 16-6-105 states that physicians and health care professionals who are licensed under the laws of the state, and who render medical services voluntarily and without compensation to any person at a any free or low-cost medical clinic shall not be liable

for any civil damages for any act or omission resulting from the medical services unless the act or omission was a result of gross negligence or willful misconduct.

Ark. Stat. Ann. § 17-95-108 expands upon the previous law to state that the immunity applies when the patient acknowledges in writing that the physician is immune from civil liability.

California

Cal. Business and Professions Code § 2395.5 states that a physician who serves on an on-call basis to a hospital emergency room and in good faith renders emergency obstetrical services to any person while on-call shall not be liable for any civil damages except in cases of gross negligence, recklessness, or willful misconduct.

Colorado

Colo. Rev. Stat. § 24-10-103 (4) extends governmental immunity from civil damages to any health care practitioner employed by a public entity and to any health care practitioner who volunteers his services at or on behalf of a public entity or as a participant in the community maternity services program.

Connecticut

-

Delaware

Del. Code Ann. Tit. 10 § 8135 grants immunity from civil suits resulting from any negligent act or omission performed during or in connection with an activity of the volunteer while serving the medical clinic to any licensed physician or nurse engaged in an activity for a medical clinic without compensation.

District of Columbia

D. C. Code Ann. § 2-1344 extends limited immunity to health care professionals including physicians, nurses or nurse midwives who in good faith provide health care or treatment at a free health clinic without the expectation of receiving or intending to receive compensation unless the act or omission is an intentional wrong or constitutes a willful or wanton disregard for the health and safety of others.

Florida

Fla. Stat. § 768.13(4) states that any person who is licensed to practice medicine, while acting as a staff member or with professional clinical privileges at a nonprofit medical facility shall not be held liable for any civil damages for any care provided gratuitously.

Georgia

Ga. Code. § 51-1-29 states that no health care provider licensed under Chaps. 11, 26, 30, or 34 who voluntarily and without expectation or receipt of compensation provides professional service, within the scope of their license, for a hospital, public school, nonprofit organization or an agency of the state shall be liable for damages or injuries alleged to have occurred in the rendering of these services.

Guam

-

Hawaii

-

Idaho

Idaho Code § 6-1605 provides immunity for civil liability for nonprofit organization officers, directors, and volunteers who serve

the nonprofit without compensation with the exception of willful, wanton misconduct.

Illinois

Ill. Rev. Stat. ch. 111§ 4400-30 provides immunity from civil damages for physicians who provide medical treatment in good faith at a free medical clinic to medically indigent patients if he or she receives no compensation, excludes willful or wanton misconduct.

Indiana

Ind. Code § 34-412.1-2, 34-4-12-1.5 provides that a health care provider, including a retired physician, who voluntarily provides health care at a medical clinic or health care facility is immune from civil liability arising from the care provided unless the acts constitute a criminal act, gross negligence or willful, wanton misconduct.

Iowa

Iowa Code § 65-135.24 establishes a volunteer physician program and states that physicians providing care under this program will be considered employees of the state and shall be afforded the protection from civil immunity for their services.

Kansas

Kan. Stat. Ann. § 75-6102 provides indemnity to charitable health care providers who have entered into an agreement with the secretary of health and environment and who provides free professional services to medically indigent patients by considering the provider a state employee.

Kentucky

Ky. Rev. Stat. § 304.40-075 states that the Department of Insurance will provide medical malpractice insurance to a charitable health care provider who has registered with the Cabinet for Human Resources. A charitable health care provider is defined as any person, agency, clinic or facility engaged in providing medical care without compensation. This law also applies to health care providers who are not licensed in the state of Kentucky as long as they meet the definition of charitable health care provider.

Louisiana

La. Rev. Stat. Ann. § 40:1299.152 provides state indemnification of health care providers who provide charity care in at least 10% of the provider's patient encounters. Charity care is limited to defined State programs or care provided at federally funded nonprofit clinics. Health care providers can be a person, partnership or corporation. The providers must maintain liability insurance, the law excludes protection for gross negligence or intentional misconduct.

La. Rev. Stat. Ann. § 40:1299.161 provides a state mandated premium discount for health care providers who provide at least 10% or more charity care in their practices.

Maine

Me. Rev. Stat. Ann. Tit. 24, § 2904 states that a licensed physician who voluntarily, and without compensation, provides professional services within the scope of his practice to a nonprofit organization or to an agency of the state shall not be liable for damages or injuries related to those services. The state will be liable unless the damages were caused willfully, wantonly or by gross negligence.

Me. Rev. Stat. Ann. Tit. 14, §315 states that the Board of Medicine

shall issue a license free of charge to any physician who provides medical services to patients with no compensation and is not engaged in the private practice of medicine.

Maryland

Md. Courts & Judicial Proceedings Code Ann. Sec. 5-616 repealed a requirement compelling volunteer health care providers and physicians delivering care at charitable organization to carry a specified amount of insurance to qualify for immunity from specified types of civil liability.

Massachusetts

Mass. Gen. Laws Ann. Ch. 112, § 12C states that no physician rendering immunizations or other protective programs under public programs shall be liable for civil damages.

Michigan

-

Minnesota

-

Mississippi

Miss. Code Ann. § 11-46-1 indemnifies physicians who provide care under an agreement with State government. The physician is considered a State employee.

Miss. Code Ann. § 73-25-18 establishes a special volunteer medical license for physicians who are retired from active practice and with to donate their expertise for the medical care and treatment of indigent and needy people or people in medically underserved areas. The laws provides that the license be issued without charge and that the license shall limit the practice of the physician to a specific location.

Missouri

Mo. Rev. Stat. § 195.711 provides that the state legal defense fund covers payment of claims against physicians, dentists, dental hygienists, nurses and physician assistants who provide primary or preventive care for free at a city or county health department or a tax-exempt nonprofit community health center or who provide such care to students of public, private or parochial elementary or secondary schools, pursuant to a contract with a local health department.

Montana

-

Nebraska

-

Nevada

Nev. Rev. Stat. Ann. § 41.505 provides civil immunity for physicians, including retired physicians, who offer free care and, or provide emergency obstetrical services.

Nev. Rev. Stat. Ann. § 41.485 states that a volunteer of a charitable organization is immune from liability for civil damages as a result of an act or omission. Volunteer includes any person who performs services without compensation.

New Hampshire

N.H. Rev. Stat. Ann. § 329:25-a grants certain retired physicians immunity from civil liability for health education services.

N.H. Rev. Stat. Ann. § 508:17 provides immunity from civil damages for volunteers of a nonprofit organization or government

Texas	Texas Civil Practice and Remedies Code Ann. § 710.001 indemnifies physicians for defined "charity care" if the physician renders the care in at least 10% of his patient encounters during the year a claim is made. Texas Insurance Code Ann. § 5.15-4 states that a physician is entitled to a premium discount for medical professional liability insurance for providing services for selected charity care programs.
U.S. Virgin Islands	-
Utah	Utah Code Ann. § 58-12-23.5 provides qualified immunity for health care providers who render charity care without compensation in a qualified location, excludes gross negligence and willful misconduct.
Vermont	-
Virginia	Va. Stat. Ann. Tit. § 54-1.2:2 states that health care professionals rendering services free of charge at free clinics are exempt from civil liability, excludes acts of gross negligence and willful misconduct.
Washington	-
West Virginia	W. Va. Code § 30-3-10a establishes special volunteer medical licenses for physician wishing to donate their expertise for the medical care and treatment of indigent and needy patients of clinics organized in whole or in part for the delivery of health care services without charge and provides immunity from civil actions for physicians rendering such care.
Wisconsin	Wis. Stat. § 146.89 provides indemnification for volunteer health care providers who submit an application associating them with a nonprofit agency to the state.
Wyoming	-

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 Denver, CO 80230
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Washington Office:
 444 North Capitol Street, N.W., Suite 515
 Washington, D.C. 20001
 Tel: 202-624-5400
 Fax: 202-737-1069

Alaska State Hospital & Nursing Home Association

We're helping people care for people!

April 28, 2003

Representative Tom Anderson
Capitol Building, Room 432
Juneau AK 99801-1182

Dear Representative Anderson:

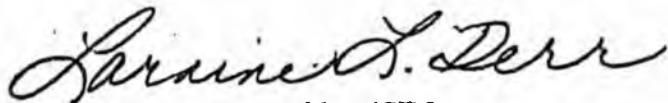
I am writing in support of HB 260 relating to immunity for free health care services provided by certain health care providers.

ASHNHA wholeheartedly supports this legislation. Any efforts to increase the limited medical resources available in Alaska are a positive for the health care community and Alaskans.

The Alaska State Hospital and Nursing Home Association (ASHNHA) is an organization of all but one of the hospitals and nursing homes in Alaska. As such we represent the views of those medical facilities. They are solidly in favor of this legislation.

If you have questions, please contact me.

Sincerely yours,



Laraine L. Derr, President/CEO

426 Main Street, Juneau, Alaska 99801

Phone: 907-586-1790 • Fax: 907-463-3573 • Web: ashnha.com

COVENANT HOUSE ALASKA

The Honorable Paul Seaton
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Seaton:

Thank you for sponsoring HB260. This legislation would be of great benefit to Covenant House programs in two ways. First it would provide us an extra layer of protection for the services we are currently providing to youth without charge. Second, it would increase our abilities to utilize the services of health care providers from the community who are willing to volunteer. We provide free health care services to the youth we serve in all our programs. In one year we have had over 650 visits to our health clinic. A part-time Family Nurse Practitioner currently staffs our clinic.

We have had offers from nurses and physicians to provide volunteer services to our youth. Concerns about liability often keep individuals from being able to provide additional services to our youth. We recently had an offer for assistance from a military doctor, who could not provide direct services because her military malpractice does not cover her in the private sector.

Background Information

Covenant House Alaska is a non-profit social service organization. We have been a "lifeline from the streets" for homeless and runaway youth in Anchorage since 1988.


Covenant House operate multiple programs the include:

- Crisis Center: temporary residential care for youth in need of immediate sanctuary
- Youth Resource Center: offers outreach and walk-in services
- Transitional Living Programs: provides residential care for 24 youth

We provide an opportunity for young Alaskans to leave the streets, finish school, learn a skill, find a job, reunify with their families and begin their lives again. Our annual budget is 3.5 million and we employ 60 full time staff.

I appreciate your efforts and can be contacted at #907-339-4203 if you have additional questions.

Sincerely,


Deirdre A. Phayer
Executive Director

THE ALASKA ASSOCIATION OF NATUROPATHIC PHYSICIANS

11238 EAGLE RIVER ROAD, SUITE 254 • EAGLE RIVER, ALASKA • 99577-7228

PHONE: 907-694-5522 • FAX: 907-694-5524

May 7, 2003

Representative Paul Seaton
Capital Building
Juneau, Alaska 99811

Dear Representative Seaton:

Thank you for sponsoring the Volunteer Health Care Provider Immunity Act (HB 260). We as naturopathic physicians strongly agree that the removal of liability requirements for retired physicians would be in the best interest of the state of Alaska. We agree that removing the hindrance of malpractice insurance for retired physicians would increase the availability of quality volunteer medical care for Alaskans in all parts of the state. Further, we appreciate Section 09.65.290 that provides immunity from civil damages for physicians providing free health care services. Our profession has a tradition of providing volunteer health care for alcohol and drug detox centers, outreach clinics, and other state funded programs.

Licensed naturopathic physicians (N.D.) have completed a minimum of four years of graduate level naturopathic medical school. They are educated in all of the same basic and clinical sciences as a M.D., but with a strong emphasis on disease prevention and health optimization. In addition to the standard medical curriculum, the naturopathic physician is trained in acupuncture, botanical medicine, clinical nutrition, counseling, homeopathic medicine, physical medicine and psychology. Entry into the profession requires rigorous national board exams so that they can be licensed as primary care, general practice physicians. N.D.s know when, and how to refer to medical doctors, or specialists, for patients who require immediate or further medical intervention.

We appreciate that naturopathic physicians have been included and support your sponsorship of HB 260.

Sincerely,

Madeleine Morrison-Young N.D.
AKANP President

Jason Harmon N.D.
Vice President
Anchorage

Scott Luper N.D.
Secretary
Fairbanks

Gigi Schulte N.D.
Treasurer
Anchorage

Daniel J. Young N.D., L.Ac.
Legislative Affairs
Anchorage

The Senner Family, P.O. Box 102264, Anchorage, AK 99510
907-243-8044 (home) ♦ senfam@customcpu.com

May 6, 2003

Honorable Paul Seaton
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Seaton;

On May 9th the House Judiciary Committee is scheduled to hear testimony on HB 260, "An Act relating to immunity for free health care services provided by certain health care providers...". The Alaska Nurses Association is very much in favor of this piece of legislation, but we would like to see one change be made to the bill.

The Alaska Nurses Association along with the Alaska Chapter of the American Red Cross, the Alaska Division of Public Health Nursing, and the Municipality of Anchorage Health Department has established the Alaska Nurse Alert System. This is a registry of nurses willing to volunteer in an event such as an epidemic or disaster.

We would like to see section 09.64.290 (3) of HB 260 amended to include emergency shelters and temporary health facilities set up as part of a disaster response. This would help provide added liability protection to those health care providers who volunteer in response to a public health emergency.

Thank you for your attention to this request, if you have any question please give me a call. We hope that we are able to testify on this bill by teleconference.

Sincerely,

Patricia Senner RN
President, Alaska Nurses Association

April 30, 2003

Dear Representative Seaton, (fax: (907) 465-3472)

I was listening to the House L&C Committee hearing on HB 260 on April 28. I appreciated that you acknowledged that nurses should also be included in Section 2 of your bill. But I was very disappointed to hear that you were not aware of the levels of licensure for the nursing categories named in your bill.

Two weeks ago I sent to every Legislator an informational brochure about the various categories of Advance Practice Nurses in Alaska. Attached is some of the information, in case your staff did not give that to you. I provided this information because legislators usually do not know much about this topic.

Nurses are a most altruistic group of health care providers. While I appreciate that you are carrying this bill on behalf of ASMA, nurses far outnumber MDs and do far more volunteer work in their communities than do MDs.

The defined health care providers in HB 260 is very appropriate, if the purpose of the bill is to provide a more hospitable environment for access to health care for Alaskans of all economic levels. I would encourage you NOT to entertain a reduction of those categories. I don't know if you heard Dr. Hedrick Hanson, who commented that he could not operate a clinic without nurses. Rep. Gara commented that he sees his dental hygienist much more frequently than his dentist.

I support your statement that free health care from volunteer health care providers is certainly vastly more desirable than no health care at all. There are too many Alaskans with no health care at all and that is the need that will be addressed by HB 260.

Thank you for your service to Alaska in the legislature.

Respectfully,



Cathy Glesse, MSN, FNP-CS
Marketing Committee Chair, Alaska Nurse Practitioner Association
12701 Ridgewood Rd
Anchorage, AK 99516

907 345 5470

copy to Representative Wilson (fax: (907) 465-3175)



A N P A

*Alaska Nurse Practitioner Association
2207 E. Tudor Rd. #34
Anchorage, AK 99507
907.222.6847*

Advanced Nurse Practitioners In Alaska

Advanced practice nurses are Registered Nurses (RN) who have masters or other advanced degrees in specialty medical care.

There are 670 advanced practice nurses in the State of Alaska (2002 licensure figures). They are:

- **Advanced Nurse Practitioners (ANP) - 477**
- **Certified Registered Nurse Anesthetists (CRNA) - 93**

Advanced Nurse Practitioners (ANP) hold specialty certifications in:

- family and adult health care
- pediatrics
- gerontology
- women's health and midwifery
- school health
- psychiatric
- oncology
- cardiology

Advanced Nurse Practitioners:

- provide independent primary health care services
- provide professional consulting services
- are post-secondary and graduate level educators
- are administrators for health care facilities
- conduct professional research

ANP health care services include:

- health histories, physical examinations and diagnosis
- ordering of lab and x-ray testing
- prescription of medications and other treatments
- management of illnesses
- promotion of prevention and proactive health counseling

Advanced Nurse Practitioners can be found in:

- Alaska's large cities and rural communities
- clinics ANPs own and operate
- collaborative practices with physicians or other health care providers
- hospitals, nursing homes and long term care settings

w w w . a l a s k a n p . o r g

ANP continuing education:

- License renewal every 2 years
- Continuing education required for license renewal
- National specialty certification
- Periodic peer review

Advanced Nurse Practitioners are very active in community and state-wide issues:

- employing a lobbyist in Juneau
- participating in political campaigns for candidates of their choice
- voting

Advanced Nurse Practitioners contribute to the quality of life in Alaska as active members of their community and state, providing professional, caring and affordable health services for all ages.

For more information contact:

**Alaska Nurse Practitioner Association
2207 East Tudor Rd, Suite #34
Anchorage, AK 99507
907 222 6847**

**Cathy Glessel, MSN, FNP-CS
cglessel@mac.com**

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

04/24/2003

Honorable Paul Seaton
State of Alaska
House
State Capitol, Room 428
Juneau, AK 99801 - 1182

Transmitted by Fax:
907-465-3472

Re: HB 260 - Volunteer Health Care Provider Immunity Act of 2003

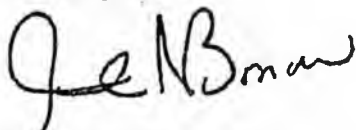
Dear Representative Seaton:

The Alaska State Medical Association (ASMA) represents Alaska's patients and the physicians who care for them.

ASMA supports the Volunteer Health Care Provider Immunity Act of 2003 (HB 260). HB 260 provides the vehicle for tapping into this experienced physician resource to provide free care.

Physicians provide significant amounts of free care during their active careers. The Volunteer Health Care Provider Immunity Act will allow that practice to be carried into the retirement years.

Sincerely,



By: Jeanne Bonar, MD
President
For: Alaska State Medical Association



Honorable Tom Anderson, Chair
House Labor and Commerce Committee
Alaska Capital, Room 432
Juneau, AK 99801-1182

April 28, 2003

RE: HB 260 (Seaton)—Support

Dear Chair Anderson:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support HB 260, authored by Representative Paul Seaton, and co-sponsored by Representatives Peggy Wilson, Les Gara, and you.

As you know, several states have programs that provide immunity to health care professionals who volunteer their services to help citizens in need. As Alaska attempts to provide care for the 20% of us who have no health insurance, volunteerism among health care workers is one option that is being explored to help fill the gap.

We believe HB 260 will help encourage volunteerism while still maintaining consumer access to damages if there was a case of gross negligence or reckless intentional conduct. AARP believes this is a "win-win" bill for citizens who need access to health care as well as the health professionals who are willing to volunteer their services in the highest tradition of their professions.

We look forward to your support of this bill in the House Labor and Commerce Committee and we sincerely thank you in anticipation of that support. AARP recommends an "AYE" vote on HB 260.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.588.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
3008 Northwood Street
Anchorage, AK 99517-1871
907.245.5259 voice
907.245.5279 fax
ffmas@aurora.uaf.edu

cc: Vice-Chair Bob Lynn
Representative Nancy Dahlstrom
Representative Carl Gatto
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg
Representative Paul Seaton
Representative Peggy Wilson
Representative Les Gara
Marie Darlin
Patrick Luby



Lung & Sleep Clinic
of Alaska, Inc.

William Lucht MD. FCCP.

April 17, 2003

Honorable Tom Anderson
House of Representatives
Chairman Labor and Commerce
State Capitol, Room 432
Juneau, AK 99801-1182

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in Pulmonary, Critical Care Medicine, and Sleep Medicine.

Like many of my colleagues, I have plans to eventually retire in Alaska, and would like to continue to benefit the community by providing occasional free healthcare services to the elderly and indigent. HB260 will alleviate one of my major concerns about providing this free healthcare.

Currently, it is not realistic for retired physicians to pay large medical malpractice insurance premiums to provide free services. HB260 would provide some needed civil liability protection.

Please note that the bill will also encourage many other types of healthcare providers to offer their services free of charge to many of the most needy in Alaska.

Alaska has always had trouble attracting and maintaining adequate numbers of physicians to care for its geographically dispersed population. HB260 would to some extent help alleviate this problem.

I urge you to support the bill. HB260 will encourage Alaska's healthcare providers to care for those Alaskans most in need, and allow some of Alaska's most senior and experienced physicians to continue to practice even after they retire.

Sincerely,

Bill Lucht, MD

JOHN B. DEKEYSER, M.D., P.C.
Obstetrics & Gynecology

Alaska Medical Plaza
1200 Airport Heights Drive, #280A
Anchorage, Alaska 99508-2955
(907) 339-9717 (800) 818 2229
Fax (907) 339-9720

April 18, 2003

Honorable Tom Anderson
House of Representatives
Chairman Labor and Commerce
State Capital, Room 432
Juneau, AK. 99801-1182

Re: HB260 - The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in Obstetrics & Gynecology.

Like many of my colleagues, I have plans to eventually retire in Alaska, and would like to continue to benefit the community by providing occasional free healthcare services to the elderly and indigent. HB260 will alleviate one of my major concerns about providing this free healthcare.

As you are aware, we are in the midst of both a medical liability insurance crisis along with a Medicare availability shortage. HB260 is a partial answer to both of these issues. I strongly urge you to support HB260.

Sincerely,



John B. DeKeyser, M.D.

tjl



"Prompt, Thorough, Concerned"

Diplomates American Board of Family Practice

2211 EAST NORTHERN LIGHTS BOULEVARD, ANCHORAGE ALASKA 99508

F. LELAND JONES, M.D.
KENNETH S. LAUFER, M.D.
R. MATISON WHITE, JR., M.D.
RICHARD R. TAYLOR JR., M.D.
CHARLES L. AARONS, M.D.

GLENN J. SCHULTES, M.D.
GARY L. CHILD, D.O.
TIMOTHY COALWELL, M.D.
MARIO A. LANZA, M.D.
DARREN B. LEWIS, M.D.
TIMOTHY NOAH LAUFER, M.D.

Honorable Tom Anderson
House of Representatives
Chairman Labor and Commerce
State Capitol, Room 432
Juneau, AK 99801-1182

April 18, 2003

Re: HB260 - The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in Family Practice.

Like many of my colleagues, I have plans to eventually retire in Alaska, and would like to continue to benefit the community by providing occasional free healthcare services to the elderly and indigent. HB260 will alleviate one of my major concerns about providing this free healthcare.

Currently, it is not realistic for retired physicians to pay large medical malpractice insurance premiums to provide free services. HB260 would provide some needed civil liability protection.

Please note that the bill will also encourage many other types of healthcare providers to offer their services free of charge to many of the most needy in Alaska.

Alaska has always had trouble attracting and maintaining adequate numbers of physicians to care for its geographically dispersed population. HB260 would to some extent help alleviate this problem.

I urge you to support the bill. HB260 will encourage Alaska's healthcare providers to care for those Alaskans most in need, and allow some of Alaska's most senior and experienced physicians to continue to practice, even after they retire.

Sincerely,

Charles L. Aarons, M.D.

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

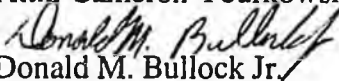
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 27, 2004

SUBJECT: Volunteer physicians and non-profit entities
(SCS CSHB 260 ()) (Work Order No. 23-LS0821V)

TO: Representative Paul Seaton
Attn: Cameron Yourkowski

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

The blank SCS CSHB 260 proposes to immunize health care providers who provide free health care services for liability for negligence while acting within the scope of the provider's responsibilities for a nonprofit organization. You asked whether the nonprofit organization would be liable for the negligence of a volunteer physician or nurse and who would be liable if a nurse employed by the organization followed the negligent order of a volunteer physician.

Vicarious liability is a legal mechanism by which a person incurs liability for the actions of another. For example, an employer is liable for the intentional or negligent tortious conduct of an employee under the doctrine of respondeat superior.¹

An organization may also be responsible for a volunteer acting on its behalf. In a case involving a volunteer child-care provider working in a church nursery, the Alaska Supreme Court found the church had a duty to determine whether the volunteer was a proper person for the position by doing such things as interviewing the person and performing a background check. The church had argued that it had no liability because the person was a volunteer; however, the court, citing *Restatement (Second) of Agency* §§ 220, 225 (1958), wrote that a volunteer may be a servant if subject to the control of another, in this case of the church.² *Restatement (Second of Agency)* §225 states, "One who volunteers services without an agreement for or expectation of reward may be a servant of the one accepting such services."

Under the Alaska case and the Restatement, a volunteer physician could be the "servant" of a nonprofit organization and a court could find the organization responsible for the

¹ See, *Taranto v. North Slope Borough*, 909 P.2d 354 (Alaska 1996).

² *Broderick v. King's Way Assembly of God Church*, 808 P.2d 1211, 1221 n.25 (Alaska 1991).

negligent acts of the physician under its control. The actual outcome would require a finding that the physician was in the position of a "servant" for the organization.

In a 2002 California appellate case, the court discussed whether a lay board of a hospital could subject physicians to control for the purposes of the doctrine of respondeat superior.³ The court noted that for many years the traditional rules of respondeat superior did not apply to highly skilled professionals such as physicians. Courts found that, because of their skill and training in their highly technical field, physicians were not subject to control by a lay board. Under this approach, physicians were treated as independent contractors with the result that the hospitals were not liable for their actions. However, the California court found that times had changed and new rules applied. The court described this evolution as follows:

Courts soon realized, however, that the traditional emphasis on the master's ability to control the servant was unrealistic in the context of the modern health care system. In an often cited passage, a New York court explained:

The conception that the hospital does not undertake to treat the patient, does not undertake to act through its doctors and nurses, but undertakes instead simply to procure them to act upon their own responsibility, no longer reflects the fact. Present-day hospitals, as their manner of operation plainly demonstrates, do far more than furnish facilities for treatment. They regularly employ on a salary basis a large staff of physicians, nurses and interns, as well as administrative and manual workers, and they charge patients for medical care and treatment, collecting for such services, if necessary, by legal action. Certainly, the person who avails himself of "hospital facilities" expects that the hospital will attempt to cure him, not that its nurses or other employees will act on their own responsibility.

In light of this modern reality, the overwhelming majority of jurisdictions employed ostensible or apparent agency to impose liability on hospitals for the negligence of independent contractor physicians.⁴

Although the California case involved paid physicians, I believe the discussion about whether a lay board could be considered to control a physician would be applicable to a

³ *Maria del Carmen Meijia v. Community Hospital of San Bernardino*, 99 Cal. App. 4th 1448 (2002).

⁴ 99 Cal. App. 4th at 1453 (citations omitted).

Representative Paul Seaton
February 27, 2004
Page 3

volunteer physician as well. In both situations the respondeat superior issue is whether the organization can be considered in control of the physician.

The situation of a nurse is the same under the doctrine of respondeat superior. If the nurse is a volunteer, the nurse would enjoy the immunity provided under the proposed legislation. The nurse could also be individually liable, absent immunity, for failing to provide the standard of care applicable to a nurse. Whether the nurse was a paid employee or a volunteer of the nonprofit organization, the organization could be liable for the nurse's negligence under the doctrine of respondeat superior.

In the situation where a nurse or doctor were providing free services for a government entity, the liability of the government entity would depend on the extent to which the entity waived its sovereign immunity and the relationship between the volunteer and the government. The doctrine of respondeat superior may apply, but the government could have immunity under the circumstances in which the negligent act occurred or may be immune from suit.

If I may be of further assistance, please advise.

DMB:mdr
04-072.mdr

February 23, 2004

Senator Ralph Seekins
Chair, Senate Judiciary

Re: support for HB 260

Dear Senator Seekins,

I am writing in support of HB 260, related to immunity from liability for healthcare providers who are volunteering their services.

This legislation would open the way for retired physicians and nurses to volunteer their skills to emergency clinics as well as community clinics. There are so many skills embodied in our retired licensed healthcare provider population but the cost of liability insurance creates a barrier for them to offer their services as volunteers.

HB 260 would allow these experienced, licensed healthcare providers to offer volunteer services in clinics such as the one being proposed in Anchorage, designed to increase access to low income people. The providers will still be required to be licensed by their regulatory boards, ensuring safe practice.

HB 260 has been thoroughly scrutinized and revised. I hope you will find it worthy to pass out of Senate Judiciary to the Senate floor.

Respectfully,

Cathy Giessel

Cathy Giessel, MS, FNP-CS
12701 Ridgewood Rd
Anchorage, AK 99516
907 345 5470
cgiessel@mac.com

Alaska Board of Nursing
Alaska Nurse Practitioner Association Legislative Affairs Representative
American Academy of Nurse Practitioners, State Representative
Anchorage Health and Human Services Commission