

**SB**

**184**

August 12, 2005

Faith Myers  
Dorrance Collins  
801 Airport Hts. #35  
Anchorage, AK 99508

Dear Ms. Myers and Mr. Collins,

I wholeheartedly support your efforts to amend AS47.30.840 to include a section acknowledging the right of psychiatric patients to choose the gender of staff providing intimate care. How sad that you and others have to fight for something that simple human respect and common sense would dictate should be done.

Recent empirical studies provide evidence that many common practices in psychiatric settings - such as those at issue here, cause patients chronic stress and put them at risk for iatrogenic psychiatric morbidity such as PTSD and Depression. They also very likely increase avoidance of helpful treatments.<sup>1</sup> Yet, it is often difficult to influence change in professional practice, or in established procedures. The medical dictum to "do no harm" frequently does not guide decision making.

Legislators often have good common sense. It should be clear to them for example that no one in their circle of family or friends would accept routinely being bathed, touched intimately, toileted etc. by someone of the opposite sex that they did not know.

But with patients in a psychiatric setting, the issue is much more serious. First, many psychiatric patients (51% - 98%) have histories of sexual and/or physical abuse.<sup>2,3,4</sup> This makes them especially vulnerable to "re-traumatization" by procedures such as being stripped, bathed, touched, and toileted by a staff of the same gender as their childhood perpetrator. Such a practice replicates and "triggers" feelings from the original abuse experiences and engenders feelings of fear, helplessness, distress, humiliation and loss of trust in staff.<sup>2</sup> When individuals are continually re-traumatized in this way, they are subject to chronic stress<sup>5</sup> which in turn worsens serious mental illness and results in symptom relapses and repeated re-hospitalization<sup>6,7,8,9</sup>.

Thank you for your efforts on behalf of persons with mental health issues. In this instance of unconscionable resistance to changing practices experienced as harmful by patients, the right to choose a preferred or same-sex provider must be legislatively mandated, and enforced.

Sincerely,



Ann F. Jennings, Ph.D.  
Trauma-Informed Systems Consultant  
The Anna Foundation  
21 Ocean Street  
Rockland, ME 04841

## References:

1. Mueser, K.T., Rosenberg, S.D. (2003) Treating the trauma of first episode psychosis: A PTSD perspective. *Journal of Mental Health*. 12, 2, 103-108
2. Cusack, K.J., Frueh, B.C., Hiers, T., Suffoletta-Maierle, S., and Bennett, S. (2003). Trauma within the psychiatric setting: A preliminary empirical report. *Administration and Policy in Mental Health*, 30, 453-460.
3. Mueser, K., Goodman, L.A., Trumbetta, S.L., Rosenberg, S.D., Osher, F.C., Vidaver, R., Auciello, P., & Foy, E.W. (1998). Trauma and posttraumatic stress disorder in severe mental illness. *Journal of Consulting and Clinical Psychology*, 66, 493-499.
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6. Bebbington, P., Knipers, L. (1992) Life events and social factors. In: Kavanagh, D.J. (Ed.). *Schizophrenia: An Overview and Practical Handbook*. Chapman and Hall, London. 126-144
7. Butzlaff, R.L., Hooley, J.M. (1998). Expressed emotion and psychiatric relapse. *Archives of General Psychiatry* 55, 547-552
8. Goodwin, F.K., Jamison, K.R. (1990) Manic-depressive Illness. Oxford University Press, New York.

TESTIMONY FOR HB220/SB 184 -- Faith Myers

My name is Faith Myers. I am a mental health patient who has been in Alaskan mental institutions and the institutions of other states over the last five years. I support the passing of committee substitute of House Bill 220.

Over the last 4 years I have testified on the issue of psychiatric patients not having the right to gender choice for hands-on intimate care in Alaska.

I have traveled to Fairbanks, Juneau, and in Anchorage and I have testified in front of all relevant Boards and committees. And in Feb '04 I testified in front of the Joint Commission on Accreditation of Hospital Organizations. They stated we had a good complaint letter but outside the scope of their authority. One of their suggestions was to approach the legislature and we did. House Bill 220 is a patients' rights bill. It is necessary.

Fifty-one to ninety eight percent of all the psychiatric patients in Alaska's mental hospitals have been sexually and or physically abused as children or adults. It is difficult to know which gender abused them, which is why it is important to let the patient choose the gender of the staff they feel most safe and comfortable with performing intimate care. This is why gender choice of staff is more preferable than same sex of staff for intimate care in legislative wording of the bill.

There is an out for the institutions. On page 1, line 14 of HB 220 it states the institutions must only make a "reasonable and good faith effort." On page 2, line 2 it simply says that institutions will document in the patient's record that they were unable to comply with the patient's request. That gives the institutions an out for any contingency.

Some of the 9 support letters submitted in favor of a bill have been written by people who either had the experience of being in an Alaskan psychiatric institution or have had family members in an Alaskan psychiatric institution.

House Bill 220 is based on a Bangor, Maine policy and it is do-able.

I support Committee Substitute House Bill 220 and ask that it be passed.

Thank you,  
Faith Myers  
801 Airport Hts #35  
Anchorage, Ak. 99508  
(907) 929-0532

*Faith Myers*

March 1, 2005

Faith Myers,  
Dorrance Collins  
330 E. 14<sup>th</sup> Ave., Apt E  
Anchorage, Alaska 99501

Re; Psychiatric Staff Gender Rights

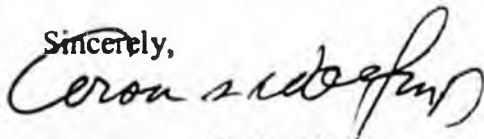
Dear Ms Myers and Mr. Collins,

I would very much support your efforts to amend AS47.30.840 to include a section acknowledging the right of Psychiatric patients to choose the gender of staff providing intimate care.

This is a very important issue as my Psychiatric inpatients already have significant issues with both sexuality and trust.

I believe that as a Physician this would be a significant step forward in providing the best and most therapeutic care for psychiatric patients throughout the State of Alaska. Please contact me if I can be of further assistance.

Sincerely,



Aron S. Wolf MD, MMD  
Distinguished Life Fellow American Psychiatry Association

Alaska Counseling, Inc.  
Parkway Professional Building II  
4120 Laurel St., Suite 102, Anchorage, Alaska 99508  
907.569.8600



**NAMI Anchorage**

*Anchorage's Voice on  
Mental Illness*

There is hope.

Trish McDonald  
Executive Director

Yvonne Akai Evans  
President

Eileen Davey  
Vice President

Roger Branson  
Secretary

Alina Blasiak  
Treasurer

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Yvonne Akai Evans  
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501 3 (c) non-profit  
corporation in  
Alaska since 1984

Faith Myers  
Dorrance Collins  
330 E. 14<sup>th</sup> Ave., Apt. E  
Anchorage, Alaska 99501

27 February 2005

Dear Faith and Dorrance:

We here at the National Alliance for the Mentally Ill, Anchorage Affiliate (NAMI-Anch) have received and support your request for psychiatric patients to have the ability, through existing law and the most basic of privacy rights, to request gender specific intimate care. We further feel that these rights need to be clearly enunciated and that an addition to AS 47.30.840 reflecting such is in order.

We concur with and support the position Disability Law Center has taken in their letter to you dated December 22, 2004 and support their further involvement in resolving this matter of extreme importance.

It is telling to us that we rarely hear of this issue in private facilities where patients and their families have the freedom and ability to select other service providers. We understand that public institutions operate on limited resources, however this most basic of human rights, the right to personal dignity, is one that cannot carry a price tag but must be provided for in public as well as private facilities.

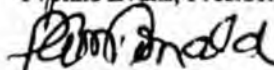
It is further troubling for us to realize that the staff making the majority of these decisions involving this most intimate of care are those who are the least trained. These staff members may well view their employment in the psychiatric care field as being transitory in nature and feel they have nothing or little to lose should a complaint regarding them be found to have merit. Our highest concern is that these individuals wield excessive physical and emotional power over these vulnerable persons and can too easily abuse the discretion given them to include suppressing complaints against them.

It is important to note that as State laws are currently being interpreted these basic rights to control who views and perhaps even touches our naked bodies may well be, and likely are being, violated without rising to the level of being a sexual assault or breaking any other laws. However, in this context, sexual assaults may well be, and quite possibly are being, committed with the vulnerable victim having little to no recourse, hope or even prayer of justice.

We urge our lawmakers to pass legislation which will protect individuals receiving this care.

Sincerely,

  
Yvonne Evans, President

  
Trish McDonald, Executive Director

Cc Ron Adler  
David Fleurant



## **Alaska Mental Health Consumer Web**

**1248 Gambell St.  
Anchorage, ALASKA 99501**

**Phone: 907.222.2980  
Fax: 907.222.2981**

March 2, 2005

**Faith Myers  
Dorrance Collins  
330 E. 14<sup>th</sup> Ave., Apt. E  
Anchorage, Alaska 99501**

Dear Faith and Dorrance:

We at Alaska Mental Health Consumer Web would like to express our full support for your efforts to ensure the right of Alaskans undergoing mental health evaluation and treatment to choose the gender of their caregivers. Specifically, we wholeheartedly endorse the amendment of AS47.30.840 to include the right of Psychiatric patients to choose the gender of those that provide their care. It is our collective belief that this is not only a core human right, but also a matter of basic human dignity. For many years Alaskans have received care without regard to the gender of the provider. This practice has potentially violated the rights of thousands of Alaskan citizens and may have breached the boundaries of people who may have issues of sexuality and trust.

We again applaud your efforts and if I can be of further assistance please do not hesitate to contact me.

Sincerely,

**Carl Ipock  
Executive Director  
Alaska Mental Health Consumer Web**



**NAMI Alaska**

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February 28, 2005

Faith Myers  
Dorrance Collins  
330 E. 14<sup>th</sup> Avenue. Apt. E  
Anchorage Alaska 99501

Re: Psychiatric Staff Gender Rights

Dear Ms. Myers and Mr. Collins,

NAMI Alaska supports your efforts to amend AS47.30.840 to include a section requiring the right of psychiatric patients to choose the gender of staff providing intimate care.

Many persons with mental health issues already have significant problems with trust and issues pertaining to their bodies. To give them the opportunity to select a same sex care provider may keep from re-traumatizing someone who has been physically violated or inappropriately touched in the past.

The right to chose a same-sex care provider while in a vulnerable mental state should be a state mandated right to provide the best possible care for psychiatric patients in Alaska.

Sincerely,

*Beth LaCrosse*  
*by Tracy Barber*

Beth LaCrosse, President



December 22, 2004

Faith Myers  
Dorrance Collins  
330 E. 14<sup>th</sup> Ave., Apt. E  
Anchorage, Alaska 99501

Dear Faith and Dorrance:

I am in receipt of your letter wherein you request support from the Disability Law Center, Alaska's Protection and Advocacy agency for individuals with disabilities, in your efforts to secure "more rights" for patients at the Alaska Psychiatric Institute ["API"]. Specifically, you are advocating for a change in AS 47.30.840 that would, in effect, provide Alaskans undergoing mental health evaluation or treatment the right to choose the gender of the person providing them hands-on intimate care, such as toileting, bathing, diapering and dressing. You have asked the Disability Law Center to both confirm the legality of the requested statutory change and to voice support for your effort.

A review of statutory and judicial authority reveals a strong foundation of support for your legislative goal. In fact, securing the change in statute would not be bestowing 'more rights' onto patients, but would be a codification of an existing constitutional right that is not being acknowledged and protected. Based on this research, as well as common sense and decency, the Disability Law Center fully supports your effort.

It is clear that the State anticipates that some individuals admitted to API will require assistance with intimate care activities. The brief job description for a psychiatric nursing assistant that appears on the State's website describes the duties as follows:

*Assist patients in occupational, recreational, and industrial therapy and school programs. Assist patients with daily routine activities such as oral hygiene, preparing for meals, toileting, or preparing for bed. Help with feeding of patients unable to feed themselves.*

(Emphasis supplied). Acknowledging the need by some patients for this intimate assistance during a hospitalization, must these individuals submit themselves to care by a staff member of API's choosing, or do they have the right to choose the gender of the person viewing and touching their bodies? Do patients at API have a right to privacy?

Article I, Section 22 of the Constitution of Alaska provides that: "The right of the people to privacy is recognized and shall not be infringed." The specific enumeration of this right in Alaska's Constitution has been interpreted to

## ANCHORAGE

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SYSTEMS

mean that Alaska's right to privacy is broader than that afforded by the United States Constitution. *Messerli v. State*, 626 P.2d 81 (Alaska 1980).

Federal courts have clearly enunciated that encompassed within the right to privacy is the right to shield one's unclothed body from view. As the Ninth Circuit Court of Appeals held over forty years ago, "We cannot conceive of a more basic subject of privacy than the naked body. The desire to shield one's unclothed figure from view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity. *Story v. York*, 324 F.2d 450, 455 (9<sup>th</sup> Cir. 1963).

Many of the cases discussing this aspect of the right to privacy arose in the context of employment discrimination complaints against correctional facilities. These facilities were sued for restricting the gender of certain guard positions, in part, to protect the privacy rights of prisoners. The courts have held that this right is not destroyed simply because one is institutionalized. *Turner v. Safley*, 482 U.S. 78, 84. (1987) ("Prison walls do not form a barrier separating prison inmates from the protections of the Constitution."); *Robino v. Iranon*, 145 F.3d 1109, 1111 (9th Cir. 1998) ("[A] person's interest in not being viewed unclothed by members of the opposite sex survives incarceration.")

Most people, however, have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating. When not reasonably necessary, that sort of degradation is not to be visited upon those confined in our prisons.

*Lee v. Downs*, 641 F.2d 1117, 1119 (4th Cir. 1981).

There are a few cases that address the employment of gender specific individuals in psychiatric hospitals. Courts have recognized that, unlike prison guards, hospital staff can infringe significantly on a patient's privacy rights. "Treatment assistants at a state psychiatric hospital intrude on patients' privacy by performing duties involving intimate personal care such as 'assisting patients with toileting, disrobing, showering and cleaning their genitals,' as well as stripping patients before placing them into restraints and conducting bed checks of patients who sleep naked or whose nightwear comes off during sleep. *Olsen v. Marriott International, Inc.*, 75 F. Supp.2d 1052, 1062 (Ariz. 1999) quoting *Jennings v. New York State Office of Mental Health*, 786 F. Supp. 376, 382 (S.D.N.Y. 1992).

Obviously most people would find it a greater intrusion of their dignity and privacy to have their naked bodies viewed (or any number of personal services performed) by a member of the opposite sex. Although there will be a certain relinquishment of privacy by necessity when anyone is admitted to a hospital or mental health facility, this is not to say that a patient has forfeited all rights to privacy.

*Local 567 American Federation of State, County & Municipal Employees v. Michigan Council 25, American Federation of State, County & Municipal Employees*, 635 F.Supp. 1010, 1013-14 (E.D. Mich. 1986) (footnote omitted).

The court in *Jennings* distinguished the privacy rights of patients from that of prisoners.

The patients at OMH are not convicted criminals but instead are there as a result of civil commitments. Thus, their right to privacy may not be abrogated by virtue of their confinement in a state-run facility unlike a prison inmate who has forfeited some rights in repayment to society. The patients at OMH are just that, patients. They are vulnerable and mentally ill. Basic decency demands that their privacy be respected to whatever degree feasible.

*Jennings v. New York State Office of Mental Health*, 786 F. Supp. At 384. The federal district court in Michigan held that not only should the psychiatric hospital respect the privacy rights of their patients, but should assist in protecting those rights.

It is obvious that the law recognizes the privacy rights of these patients or residents and that the defendants had the right to protect these rights, possibly even more so in the case of mental health patients who are far more reliant on the protection of the defendants than patients in hospitals. Moreover the failure to recognize their privacy rights is contrary to the concept of normalization which recognizes that mentally handicapped persons have a right to lives as close as possible to that which is typical for the general population.

*Local 567 American Federation of State, County & Municipal Employees v. Michigan Council 25, American Federation of State, County & Municipal Employees*, 635 F.Supp. at 1013. See also *Jennings v. New York State Office of Mental Health*, 786 F. Supp. at 383 ("[T]he fact that a person does not assert his or her constitutional right does not mean that state run facilities are still not obligated to respect these same rights.") "It would be a strange doctrine . . . that would decree that the sanctity of the right of privacy in the performance of the excretory functions, fully respected in a public restroom, is forfeited by the fact of falling ill and becoming hospitalized." *Local 567*, 635 F.Supp. at 1014.

Sensitivity towards the privacy rights of patients would also seem to further the treatment goals for many individuals. A large number of women and men have been sexually abused and live with the devastating aftermath of such experiences. Many with histories of maltreatment are extremely sensitive to issues of privacy and violation of their privacy. Early on in their lives their sense of body integrity was invaded by the behaviors of their perpetrators. Being exposed to the invasion of privacy while dressing, showering, or using the toilet can cause flashbacks in some individuals of prior abuse experiences. In others it can cause embarrassment and a sense of shame, even if they have no history of prior maltreatment. The need for a safe place where one is not exposed to the dominate

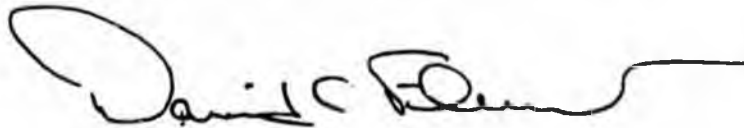
and submission process is imperative. The only way to make that possible is for people to have choices. Without choice there is a potential for the reenactment of trauma.

It is therefore possible that being viewed naked by staff of the opposite gender can cause significant harm to patients. A serious risk of harm violates the Eighth Amendment of the U.S. Constitution, even if no harm has yet occurred. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Helling v. McKinney*, 509 U.S. 25 (1993).

For the reasons set forth above, the Disability Law Center of Alaska enthusiastically supports your efforts to protect the privacy rights of patients at API through the legislative process. Please do not hesitate to contact me if there is anything this agency can do to assist you with your advocacy.

Sincerely,

DISABILITY LAW CENTER OF ALASKA

A handwritten signature in black ink, appearing to read "David C. Fleurant", with a long horizontal flourish extending to the right.

David C. Fleurant  
Executive Director

cc Ron Adler

# PsychRights

LAW PROJECT FOR

PSYCHIATRIC RIGHTS, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501

(907) 274-7686 Phone ~ (907) 274-9493 Fax

<http://psychrights.org>

January 3, 2005

Faith Myers  
Dorrance Collins  
330 E. 14th Ave., Apt. E  
Anchorage, Alaska 99501

Re: Psychiatric Staff Gender Rights

Dear Ms. Myers and Mr. Collins:

The Law Project for Psychiatric Rights (PsychRights) unreservedly supports your efforts for legislative acknowledgment of the right for psychiatric patients to choose the gender of staff providing intimate care. We are outraged such a choice is not provided now. It is well known that many psychiatric patients (male as well as female) have been sexually assaulted or otherwise physically abused and that the failure to be sensitive to this issue is re-traumatizing and counter-therapeutic. Since the Alaska Psychiatric Institute is unwilling to recognize this and change its policy, a legislative directive is certainly in order.

PsychRights also concurs in the Disability Law Center's conclusion that Alaska patients already have such rights under the Alaska Constitution at least. If the 2005 Alaska Legislature fails to correct this outrage, I would encourage the Disability Law Center to pursue this through the courts.

Yours truly,



James B. (Jim) Gottstein, Esq.

cc: Ron Adler  
David Fleurant

## TESTIMONY SUPPORTING HB220 / SB184

My name is Dorrance Collins. I support the passing of HB 220 and SB 184. I also ask that the committee read the 9 support letters submitted. The letters were written by professionals in the psychiatric field and by patients' rights organizations.

The National Alliance for the Mentally Ill, Anchorage has 7 people on their Board. They voted to write a letter of support for a gender choice for intimate care bill.

NAMI, Ak.'s Board voted to support.

Alaska Mental Health Consumer Web's Board voted to support.

Psychiatric Rights submitted a letter of support and has a Board of Directors.

Disability Law—their decision to write a four page support letter was made in a staff meeting.

We are also honored to have individual signers of support—Dr. Aron Wolf, MD, psychiatrist who has over 30 years of experience treating children and adults.

Ann F. Jennings, PhD, who has an educational background in trauma / PTSD and a knowledge of psychiatric facilities has also submitted a support letter.

And a letter from my colleague, Faith J. Myers.

Including the executive Directors and all the Board members, there are approximately 45 people involved in requesting legislative action on this issue. They are the voice for several hundred of their members and they are quite articulate giving their reasons for pragmatically supporting this legislative action.

HB 220 is based on a Bangor, Maine policy. Significant changes were brought about in Maine first by court action, then legislative action.— Historically, it's never been the strong point of mental institutions anywhere to guarantee patients' rights. Patients' rights have traditionally come from the legislature and the courts such as AS 47-30-840.

House Bill 220 is fair to the psychiatric patients, many of which have been sexually abused—not always by the opposite gender, which is why gender choice of staff for intimate care is very important.

House Bill 220 is fair to the institutions. It gives them an out. On page 1 of the Bill it says the institutions only have to make a good faith effort, then document in the patient's records that gender choice was not given. That is a huge loophole for any contingency for the institutions.

Defeating this bill is only a matter of convenience to the mental institutions—And what the last 100 years has taught us is the institutions will fight for convenience. It is much more to the patients. It's about not being degraded or humiliated and maintaining some control over your life and your body. It is important and it is do-able.

We ask that House Bill 220 be passed.

Thank you.

*Dorrance Collins*

Dorrance Collins  
801 Airport Hts #35  
Anchorage, Ak. 99508  
(907) 929-0532

Dear Sen. Fred Dyson—Chair, HESS Committee,

2/26/06

We support the Committee Substitute Senate Bill 184 with the changes we were told would be added.

One change in CS-SB184, Line 19/20 that we agree with is "A hospital is exempt from the requirements under (a) of this section if the patient's treating hospital psychiatrist determines and makes a notation in the patient records that compliance would adversely affect patient treatment." -- That addition opens the door to responsibly giving psychiatric patients the right to gender choice of staff for hands-on intimate care.

We would be opposed to any bill that only offered same gender of staff for intimate care. Men have sexually abused men; women have sexually abused women, etc. According to Ann F. Jennings, PhD., a bill supporter, "Many psychiatric patients (51% - 98%) have histories of sexual and / or physical abuse." Bill supporter, Ann F. Jennings, PhD. points out that gender choice for intimate care is necessary as does Disability Law, Psych / Rights, Dr. Aron Wolf M.D., etc.

We are not attorneys, but we have read legal opinions (paraphrasing):

When a person enters prison, it is expected they will lose some rights;

But a person entering a locked psychiatric facility should not lose rights; their rights should remain intact to the greatest extent possible.

People in the general population (society) expect to receive their gender choice of staff for hands-on intimate care. That same right should be enjoyed by psychiatric patients to the greatest extent possible.

There is a systemic pattern of operating psychiatric hospitals for convenience and bottom line, ignoring patient rights. Major psychiatric facilities don't offer a policy or assistance in choosing the gender of a doctor performing an intimate examination. Nor do they have a policy assisting the patients to receive the requested gender of gynecologist. In the major cities there is no reason why that accommodation cannot be made, especially with the availability of advanced nurse practitioners, physicians assistants, etc. When a patient complains, they find out in AS47.30.847 that there is no due process—that hospitals can answer when they want to. There are a number of hospitals (some private) in Alaska that can do civil commitments. They operate on bottom line and convenience.

We have examined a Bangor, Maine psychiatric hospital policy and it has 3 pages of procedure on how their gender policy will be carried out. For instance, the head nurse has to schedule male / female ratios on different shifts—if the correct gender is not available to give the patient a bath, then the staff is required to go to the next unit to try to get the correct gender—or someone can work overtime.

Alaska major psychiatric facilities have stated they will not put procedures into policy; they feel it will cost too much money. But when a person considers the human misery and the exacerbation of Post Traumatic Stress Disorder, procedure is cheap.

The only way to force psychiatric hospitals to put procedure into policy is for the legislature to be definite / specific in statute. The statute's language has to stay away from vague words like—"when feasible," or "when possible." It leaves too much leeway for hospital abuse.

We hope this Committee Substitute Senate Bill 184 will be looked on favorably and passed by the HESS Committee and that this state of Alaska will move forward in granting and protecting psychiatric patient rights.

Thank You,

Faith Myers / Dorrance Collins  
801 Airport Heights # 35  
Anchorage, Ak. 99508  
(907) 929-0532

*Faith Myers*  
*Dorrance Collins*

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB184SS-DHSS-DBH-03-01-06  
 ( ) Publish Date: \_\_\_\_\_  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction): \_\_\_\_\_

Title: MENTAL HEALTH PATIENTS RIGHTS AND CHOICE OF THE SEX OF STAFF PROVIDING CARE

RDU: Behavioral Health

Component: Alaska Psychiatric Institute

Sponsor: DAVIS

Requester: SENATE (HES)

Component No.: 311

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The intent of SS SB 184 is to put into law the right of a patient who receives mental health treatment to request the gender of the staff person who will provide the patient's intimate care. In those cases where the patient is incapacitated, the intimate care is to be provided by a staff member who is the same sex as the patient as provided in (c)(2) of the proposed bill.

The Department has determined that passage of this bill will have zero fiscal impact on its budget.

Prepared by: Cristy Willer, Director  
 Division: Behavioral Health  
 Approved by: Karley Jackson, Commissioner  
 Agency: Department of Health and Social Services

Phone: 269-3410  
 Date/Time: 02/27/2006  
 Date: 03/01/2006

# Alaska State Legislature

Twenty-Fourth Legislature-Second Session

January-May 2006

***Senator Bettye Davis***

Senate Bill 184

""An Act relating to mental health patient rights and to a hospital's duty to provide choice of the sex of staff providing intimate care to a mental health patient."

## Possible testifiers for Senate Bill 184

Andrea Schmook, Co-Chair, Alaska Mental Health Board  
(Off-net)

Faith Meyers, mental health advocate

Dorrance Collins, Mental health advocate

# ALASKA STATE LEGISLATURE

Senate  
Labor & Commerce  
Committee  
•  
Senate  
State Affairs  
Committee

While in Session  
State Capitol  
Juneau, Alaska 99801  
(907) 465-3822  
Fax: (907) 465-3756  
•

While in Anchorage  
716 West 4th Avenue  
Anchorage, Alaska 99501  
(907) 269-0144  
Fax: (907) 269-0148

## SENATOR BETTYE DAVIS

Senator\_Bettye\_Davis@legis.state.ak.us  
www.akdemocrats.org

### Senate Bill 184

"An Act relating to mental health patient rights and to a hospital's duty to provide choice of the sex of staff providing intimate care to a mental health patient."

### Sponsor Statement

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***The purpose of Senate Bill 184 is to insure the right of mental health patients to have care provided by a staff member who is the same sex as the patient. Mental health service recipients should suffer no loss of basic human or civil rights. Because of the exceptional circumstances under which such patients are treated, however, the exercise of some rights may require special safeguards. This bill is intended to keep recipients' rights paramount, to assure that individual rights will be both recognized and protected during the course of service delivery, and to ensure treatment consistent with ethical and professional standards.***

# Alaska State Legislature

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## Senator Bettye Davis

### Sectional Analysis Senate Bill 184

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#### Section 1.

Establishes a list of rights pertaining to same sex care by a staff member for patients 18 years of age or older who are receiving mental health treatment and intimate care at a hospital.

# PsychRights<sup>®</sup>

Law Project for  
Psychiatric Rights, Inc.

Alaska Legislature  
Alaska State Capitol  
Juneau, Alaska 99801

January 30, 2006

Re: Psychiatric Rights Legislation

This is to support the proposals by Faith Myers and Dorrance Collins to amend Alaska law to enhance certain rights given to people diagnosed with serious mental illness and held at inpatient facilities.

For example, the wording "patients must be given reasonable opportunity" gives some facilities license to deny patients the rights the statute is intended to ensure. Some facilities turn these rights on their head and make them "privileges." To address this, it is recommended that something like the following be added to AS 47.30.840:

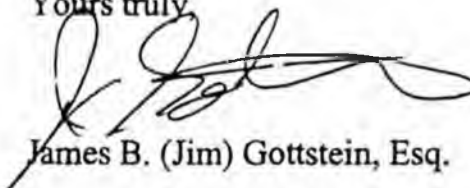
At no time shall the rights set forth in this chapter be treated as privileges that the recipient must earn by meeting certain standards of behavior.

Of course these rights are meaningless if there is no effective enforcement process. It is therefore suggested that AS 47.30.847 be amended to specify a time limit in which grievances/complaints must be answered and that patients 18 and older have a right to appoint a representative of their choice to help them file and pursue grievances/complaints.<sup>1</sup> Such representatives should have the right to "reasonable access to all living and program areas and to staff involved in the treatment of the patient in order to assist the patient in the protection of his or her rights."

In addition the state Ombudsman or some other state oversight authority should have the right to go into any facility holding people because being diagnosed with mental illness. The Ombudsman's Office is presently excluded from all but state hospitals and would have to be granted a different authority to enter other facilities.

I have known Faith Myers and Dorrance Collins for a number of years and they are absolutely spot on with their suggestions. Alaska citizens deserve the type of consideration Faith and Dorrance are asking for and I urge you to act favorably upon their suggestions.

Yours truly,



James B. (Jim) Gottstein, Esq.

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<sup>1</sup> For patients under 18, their guardian would retain that right.



**ANCHORAGE**

3330 Arctic Boulevard  
Suite 103  
Anchorage, AK 99503  
(907) 565-1002  
FAX (907) 565-1000  
1-800-478-1234

January 30, 2006

Faith Myers  
Dorrance Collins  
330 E. 14<sup>th</sup> Ave., Apt. E  
Anchorage, Alaska 99501

Dear Faith and Dorrance:

You have requested a letter of support from the Disability Law Center of Alaska for your effort to revise the grievance rights of psychiatric patients in Alaska. In essence, your proposed revisions seek to ensure that psychiatric patients are afforded basic due process rights when filing a grievance.

The Disability Law Center of Alaska supports your efforts to ensure that psychiatric patients in Alaska are afforded basic due process rights. Your recommendations, including permitting psychiatric patients the right to obtain the assistance of a self-designated representative and establishing specific time frames for certain actions, are very appropriate means of assuring that rights can both be exercised and are protected.

Please let me know if there is anything we can do to assist you in this effort.

Sincerely,

DISABILITY LAW CENTER OF ALASKA

David C. Fleurant  
Executive Director

MEMBER OF THE  
NATIONAL  
ASSOCIATION OF  
PROTECTION &  
ADVOCACY  
SYSTEMS



24-LS0935VF  
Mischel  
3/3/06

**CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 184( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): SENATOR DAVIS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to a mental health patient's right to choose the sex of hospital staff**  
2 **providing intimate care to the mental health patient and to the duties of hospital staff in**  
3 **caring for patients receiving mental health treatment ."**

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

5 **\* Section 1. AS 18.20 is amended by adding a new section to read:**

6 **Sec. 18.20.095. Mental health patient's right to select staff; duties of**  
7 **hospital staff. (a) Except as provided in (d) of this section, a patient 18 years of age or**  
8 **older who is receiving mental health treatment and being provided intimate care at a**  
9 **hospital shall have a right to have care provided by a staff member who is the sex that**  
10 **the patient requests.**

11 **(b) A supervisor or manager employed by a hospital shall**

12 **(1) post a notice of the right provided under (a) of this section in a**  
13 **conspicuous place; and**

14 **(2) if, after reasonable and good faith efforts to comply, the hospital is**

1           unable to comply with the requirement under (a) of this section,

2                           (A) document in the patient record that intimate care was  
3                           provided by a licensed staff member of the sex opposite to the sex requested by  
4                           the patient under (a) of this section; or

5                           (B) if a licensed staff member is not on duty at the time of the  
6                           patient's request under (a) of this section, document in the patient record that  
7                           the care was provided by an unlicensed staff member of the sex opposite to  
8                           that requested under (a) of this section.

9           (c) Staff members employed by a hospital shall, in regard to patients receiving  
10           mental health treatment,

11                           (1) provide privacy for each patient, especially for patients who are the  
12                           opposite sex and especially when patient care involves intimate bodily functions,  
13                           unavoidable intimate touching, or nudity;

14                           (2) except when necessitated by a medical emergency that is  
15                           documented in the patient's record, avoid entering patient care areas for a person of the  
16                           opposite sex and areas specified for persons of the opposite sex; and

17                           (3) only conduct routine safety checks and rounds of bedrooms,  
18                           bathrooms, and shower areas of a patient who is the same sex as the staff member.

19           (d) A hospital is exempt from the requirements of (a) of this section if the  
20           treating psychiatrist for the patient at the hospital determines that compliance would  
21           adversely affect patient treatment and the psychiatrist documents the determination in  
22           the patient's record.

23           (e) In this section,

24                           (1) "intimate care" means hygienic care, including bathing, dressing,  
25                           changing, and toileting, that involves a patient's perineal area and, for a female patient,  
26                           the patient's breasts; "intimate care" does not include activities done in preparation for  
27                           medical procedures;

28                           (2) "licensed staff member" means a person who is employed by the  
29                           hospital to provide direct patient care and who is licensed or certified in the state as a  
30                           physician or physician assistant under AS 08.64, direct-entry midwife under AS 08.65,  
31                           nurse or nurse aide under AS 08.68, or physical therapist or occupational therapist

1 under AS 08.84;

2 (3) "mental health treatment" means admission to a hospital primarily  
3 for electroconvulsive treatment or treatment with psychotropic medication, or  
4 admission to and retention in a health care institution for other mental health  
5 treatment;

6 (4) "staff member" means a person employed by a hospital to provide  
7 direct patient care.

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

*Advisory Board on Alcoholism and Drug Abuse  
Alaska Mental Health Board*

*Frank H. Murkowski, GOVERNOR*

*P.O. BOX 110608  
JUNEAU, AK 99811-0608  
PHONE: (907) 465-8920  
FAX: 465-4410*

March 3, 2006

Senator Bettye Davis  
Alaska Senate  
Alaska State Legislature

Dear Representative Davis:

Thank you for introducing SB 184, Mental Health Patient Rights: Staff Gender.

The Alaska Mental Health Board (AMHB) strongly supports the notion that patients in psychiatric hospitals should have the right to choose the gender of the person providing them intimate care. This type of choice will allow the individual to retain their dignity during a time of extreme distress and vulnerability, and will afford a modicum of choice and control in a fundamentally uncontrollable situation. Therefore, the AMHB supports CSSB 184, rather than the Sponsor Substitute that mandated that the patient be served by someone of the "same sex."

This bill has been criticized as "unnecessary" because hospitals should be allowed to handle this issue administratively through internal policies and procedures. The AMHB was instrumental in convincing API to promulgate such a policy, and applauds their efforts. But the Board believes a single, isolated policy is not sufficient to safeguard the rights of all individuals who find themselves in an acute psychiatric facility. Placing this provision into statute will ensure that patients in API and the State of Alaska's Designated Evaluation and Treatment beds, as well as those in private psychiatric facilities, will be afforded this basic right.

The AMHB is also sensitive to the argument that the bill's provisions will create a financial burden on psychiatric hospitals by forcing them to staff so as to have both genders available for patient care at all times. But the language found in the CS clearly provides a method for dealing with this issue – if the patient cannot be served by someone of the gender they choose, the hospital must simply document that a request was made and that it was not able to be honored. As such, this bill will not impact the "bottom line" for hospitals.

Finally, the bill offers a balance between the rights of the patient for privacy and choice and the physician's duty to provide sound and responsible care. If the treating psychiatrist determines that the choice made by the patient is not in the best interest of the patient's treatment, he or she may override a patient's choice.

The AMHB believes that putting gender choice into statute is the correct and responsible way to ensure that all psychiatric patients retain their basic dignity while being treated for acute or ongoing psychiatric disabilities. The Board urges all members of the Senate Health and Social Services Committee to support the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Salerno". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Angela Salerno, ACSW  
Advocacy Coordinator  
AMHB

Dear Sen. Fred Dyson,

3/7/06

We attended Senate Bill 184 hearing at the LIO, March 6<sup>th</sup>. The question was raised, if gender choice was not supplied, can a note be put in the patient's records. The answer is yes- by putting the notation in the patient's Progress Notes.

Mr. Ronald Adler, CEO of API made the statement that only medical notes can be added to medical records. But Mr. Adler failed to mention Progress Notes. There are from 1 to 6 pages of Progress Notes produced for each patient per day.

**Who produces the Progress Notes?** Psychiatric Nurse Assistants, Nurses, Psychiatrist, Medical Doctor, Social Worker, Management of the Hospital.

**What goes into Progress Notes?** If a patient requests a glass of water, loses a shoe, yells, if the husband calls and talks to the Social Worker, that entire conversation can go in. In a general way, the patient's legal status. A toothache, an argument, of course, Dr's appointments, illnesses, but not the details. General details of the patient's day.

**What does not go into Progress Notes?** If a male or female patient states they are traumatized by being bathed by the undesired gender, that will not go in. If a female patient is upset by having a male staff walk into her bedroom while she is undressed for a routine matter. If you are getting dressed and you request a female to help and a male helps instead, making you upset. In general patient complaints are not put in or are sanitized.

The point is that the hospital will document that you asked for a glass of water, but the hospital will not document that the patient is complaining that they are being traumatized by something the hospital is doing. The hospital controls the pen, they will simply document that the patient is out of control or non-compliant.

We believe it is not too much to ask to have a small notation in the Progress Notes that gender choice was not provided.

Thank you for your help.

Faith Myers / Dorrance Collins  
801 Airport Hts. Spc #35  
Anchorage, Ak. 99508  
(907) 929-0532

CC: Sen. Gary Wilken

Sen. Lyda Green

Sen. Kim Elton

Sen. Donny Olson

*Faith Myers*  
*Dorrance Collins*

TESTIMONY SUPPORTING COMMITTEE SUBSTITUTE SENATE BILL 184

Thank you Mr. Chair,

My name is Dorrance Collins. I support passing Committee Substitute Senate Bill 184.

In 1992, the legislative bodies, in a general sort of way, directed psychiatric facilities to produce a grievance procedure for their patients. Most did, but most left out little things like due process or reasonable due process, emergency grievances, written replies, etc. I believe the issue will be re-visited by the legislature next year.

Historically it has never been a strong point of psychiatric facilities anywhere to guarantee patient rights. Patient rights have traditionally come from the legislature and the courts.

Some of the major patient rights organizations have brought this issue to their Board of Directors. They voted to support a gender choice bill. And they are the voice for several hundred of their members. Disability Law stated, in their opinion, patients have a legal right to gender choice. Dr. Aron Wolf, a psychiatrist, has 30 years experience treating children and adults. Ann F. Jennings, PhD has an extensive knowledge and experience of patient trauma. They support a gender choice bill.

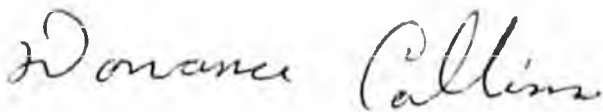
I believe if the hospitals in the state cannot provide the requested gender choice to the patient and go against the patient's wishes, they have an obligation to use a licensed staff member. A licensed staff member can be a psychiatric nurse assistant with a GED who has had 4 to 6 weeks of on the job training becoming a CNA.

Defeating this bill is only a matter of convenience to the psychiatric institutions. It is much more to the patients. Its about not being degraded or humiliated and maintaining some control over your life and your body. It is important and it is do-able.

We ask that Committee Substitute Senate Bill 184 be passed.

Thank you.

Dorrance Collins  
801 Airport Hts, Spc. # 35  
Anchorage, Ak. 99508  
(907) 929-0532



## TESTIMONY SUPPORTING COMMITTEE SUBSTITUTE SENATE BILL 184

Thank You Mr. Chair and members of the Senate HESS Committee:

My name is Faith Myers. I support Committee Substitute Senate Bill 184.

Committee Substitute Senate Bill 184 is a patient's rights bill; it only requires that the institutions make a reasonable and good faith effort to supply gender choice to patients and make a notation in the patient's records when it cannot be supplied.

The Bill also states that the treating psychiatrist is the final authority, thus responsibly giving gender choice to the psychiatric patient.

As a patient, I've been in acute care psychiatric facilities in Alaska, Nevada, and Washington. The total amount of time combined is approximately 1 year. Psychiatric institutions are sometimes brutal by necessity, but they're also sometimes brutal or callous by habit and for convenience.

For the last 5 years I have volunteered as a patient advocate. I have spoken to numerous patients in and out of psychiatric institutions and experts in the field of trauma. I've traveled to Anchorage, Juneau, and Fairbanks and testified in front of all relevant boards and committees. I've also spoken to management of acute care psychiatric facilities.

One of the issues I support is that patients should have the right to gender choice of staff for hands-on intimate care. I also support page 2 of the Committee Substitute Sec (C ) which directs hospitals to provide privacy for each patient, (outside of psychiatric emergencies, ) especially for patients who are the opposite sex and in routine matters.

As a matter of course, people outside the psychiatric institutions in society have a right to choose the gender of staff who perform their intimate care; similarly a psychiatric patient's rights should remain intact inside the psychiatric institution to the greatest extent possible. Fifty-one to ninety-eight percent of all the psychiatric patients in Alaska's psychiatric hospitals have been sexually and or physically abused as children or adults. It is difficult to know which gender abused them, which is why it is important to let the patient choose the gender of the staff they feel most safe and comfortable with performing their intimate care.

It states in the Committee Substitute Senate Bill 184, a licensed staff member should perform the intimate care if the requested gender is not available. I agree. A licensed staff member would have more training and is more likely to be viewed as professional by the patient.

(Con.)

Presently, there are 9 support letters submitted to the Senate HESS Committee from the major patients rights organizations in Alaska stating that a gender choice bill should be passed, including the Alaska Mental Health Board.

I am asking that the HESS Committee pass the Committee Substitute Senate Bill 184.

Thank you,

*Faith Myers*

Faith Myers  
801 Airport Hts, #35  
Anchorage, Ak. 99508  
(907) 929-0532

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3/7/06

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CC: Sen. Gary Wilken

Sen. Lyda Green

Sen. Kim Elton

Sen. Denny Olson

*Faith Myers*  
*Dorrance Collins*  
P.S. Please allow Senate  
Bill 184 into the H&SS  
Committee for a fair hearing.  
*Faith*