

SB

8

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

DATE: April 30, 2007

TO: Leg. Legal

FROM: Cindy Smith, Senator French

A handwritten signature in cursive script, appearing to read "Cindy Smith", written over the printed name.

RE: As passed JUD CS for SB8

Please draft a final Judiciary CS for SB 8, with the following change:

On page 1, at line 7, after the word "patient" delete "18" and insert "16".



April 30, 2007

Senator Hollis French
State Capitol, Room 417
Juneau, AK 99801-1182

Re: Senate Bill 8

Senator French:

The Disability Law Center supports SB 8. Unfortunately, we are not able to attend the committee meeting this afternoon. Attached you will find the testimony I provided to the HESS committee when they considered the bill. If you have any questions, please do not hesitate to contact me or someone from my office.

Thank you,

Holly Johanknecht
Staff Attorney

ANCHORAGE

3330 Arctic Boulevard
Suite 103

Anchorage, AK 99503

(907) 565-1002

FAX (907) 565-1000

1-800-478-1234

www.dlcrak.org

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April 18, 2007
Testimony of Holly Johanknecht (Disability Law Center of Alaska)
Senate Bill 8

The Disability Law Center supports Senate Bill 8 and recommends its passage.

This bill would codify existing rights of individuals receiving mental health treatment that are not currently acknowledged or protected.

Alaska's constitution clearly recognizes that the right to privacy is an important one. Alaska Const. Art. 1, § 22. Additionally, the 9th Circuit has held that the right to shield ones unclothed body from view - particularly from the opposite sex - is encompassed within the right to privacy

- *Story v. York*, 324 F.2d 450, 455 (9th Cir. 1963).

Although there will be a certain relinquishment of privacy by necessity when anyone is admitted to a mental health facility, that does not mean that a patient has forfeited all rights to privacy.

- *Local 567 American Federation of State, County & Municipal Employees v. Michigan Council 25 et al.*, 635 F. Supp. 1010, 1013-1014 (E.D. Mich. 1986).

Courts in other states and circuits have held that the privacy rights of individuals receiving mental health treatment should be protected to whatever degree feasible

- *Jennings v. NY State Office of Mental Health*, 786 F. Supp. 376 (S.D. N.Y. 1992).
- *Local 567 v. Michigan Council 25*, 635 F. Supp. at 1013

Furthermore, sensitivity towards the privacy rights of individuals receiving mental health treatment might further the treatment goals of some individuals.

Unfortunately, a large number of individuals with mental illness have a history of physical or sexual abuse. Many such individuals are extremely sensitive to issues of privacy. Being exposed to an invasion of privacy while dressing, showering or in another intimate care situation may re-traumatize the individual and may have an impact on their illness and the treatment they receive. A way to protect people from such an occurrence is to offer them a choice regarding the gender of their staff providing intimate care.

It should be noted that in many circumstances, the type of privacy protections provided in Senate Bill 8 are already available to individuals incarcerated in correctional institutions.

- *E.g. Turner v. Dasley*, 42 U.S. 78 (1987); *Robino v. Iranor*, 145 F.3d 1109 (9th Cir. 1998).

Individuals receiving mental health treatment should be entitled to at least the same degree of privacy protections as prisoners. A federal district court in New York, when deciding a similar issue, stated:

"The patients ... 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 ... are just that, patients. They are vulnerable and mentally ill. Basic decency demands that their privacy be respected to whatever degree feasible."

- *Jennings v. NY State Office of Mental Health*, 786 F. Supp. at 384.

Given the privacy protections provided in both the Alaska State and US Constitutions, and the sensitive nature of mental health treatment, a mental health patient should be afforded the right to choose the gender of the staff providing their intimate care.

Letters

Attn:

Sen. Hollis French, Ch.
Judiciary Committee

Testimony supporting
Senate Bill 8.

Dear Editor,

We would like to make readers aware of Senate Bill 8, which when passed would

require inpatient psychiatric facilities to make a good faith effort at providing patients receiving intimate care their choice of gender of staff performing that care. We believe if the bill does pass it would eventually carry over into senior care facilities.

The Alaska facilities we have surveyed do not schedule for gender. For example, if there are five men working on one shift at a facility and five women working on the other shift, all of the facilities we have surveyed do not have policies that require the nurse making up the work schedule to make an attempt to see to it there is proper gender on each shift to provide gender choice of staff for intimate care.

We fully understand not hiring for gender, but in Alaska they refuse to schedule the work force for gender.

Also, in larger facilities where there is more than one unit, there is no policy that requires staff to go to the next unit to get the requested gender to give someone a bath.

These are things that they do in other states and it doesn't cost money, but Alaska facilities we surveyed refused to do it.

Providing gender choice of staff for intimate

care reduces traumatization and passing Senate Bill 8 will force psychiatric institutions to write good gender choice policies.

Faith Myers and Dorrance Collins
Anchorage

929 0532

We would like to hear from you

Send letters to the editor to Senior Voice, 325 E. Third Ave., Suite 300, Anchorage AK 99501. Maximum length is 250 words. Senior Voice reserves the right to edit for content and length.

Space may be made available for longer opinion piece essays up to 500 words. Please contact the managing editor at seniorvoice@gci.net to discuss this.

Copy deadline is the 15th of the month prior to publication.

Testimony supporting Senate Bill 8 by Dorrance Collins—April 30, 2007

Mr. Chair, Committee members,

My name is Dorrance Collins. I support the passing of Senate Bill 8 as written.

Post traumatic stress disorder is one of the most prevalent and costly mental illnesses in America. Not giving gender choice of staff for intimate care in inpatient settings is traumatic to many psychiatric patients and can add to the illness.

In other states some psychiatric facilities take providing gender choice of staff for intimate care seriously. These facilities have policies that require the facility to schedule a portion of their work force by gender. As an example, if there are 5 male staff on one unit and 5 female staff on another unit, policy would require the head nurse, when scheduling, to see to it that there are sufficient men and women staff on each shift to provide gender choice.

Also, in the larger hospitals with multiple units—if the required gender is not available for intimate care, facility policy would require staff to go to the next unit to try and find the requested gender. Units are often just separated by a door.

These are all policies that we have been informed that the Alaska psychiatric hospitals and facilities will not adopt, even when it is pointed out that adopting such policies does not cost money and it reduces trauma.

In a recent Alaska Supreme Court decision, the justices stated there is a clear, unavoidable tension between hospitals seeking convenience/ economics and patient rights, which can manifest itself in patient abuse.

The justices saw it as a given that psychiatric hospitals and units were going to take shortcuts and would without regulation deny psychiatric patients their rights. It is laws passed by the legislature and action taken by the courts that will force psychiatric hospitals to do the right thing.

Almost without exception those patients entering an acute care psychiatric facility have dementia and trauma in their background. And to a lesser extent those patients entering evaluation facilities. Many have been victimized, some from childhood through adulthood. The percentage that has been sexually abused and physically abused is much higher than the rate in general society. When psychiatric patients are not given gender choice, they feel they are being re-victimized all over again.

As a civilized society, we can't leave psychiatric patient's protection up to guesswork. We need to pass statutes.

Passing Senate Bill 8 will give back to psychiatric patients' a small amount of dignity and control they lost when entering a psychiatric facility.

Senate Bill 8 only asks that psychiatric institutions make a good faith effort at providing gender choice of staff for intimate care. Adding more loopholes for psychiatric facilities to utilize will make the Bill useless.

In closing, I am asking you to pass Senate Bill 8 as written.

Thank you,

Dorrance Collins
(907) 929-0532

Dorrance Collins

Mr. Chair, Committee members,

My name is Faith Myers. I support the passing of Senate Bill 8 as written.

I have an avocation in Mental Health Advocacy. In the past I have been in acute care psychiatric facilities in Alaska, Washington and Nevada. Also, as an advocate, I have contacted psychiatric hospital administrators in Maine, Maryland, Nevada, Alaska and Washington looking for best practices.

There is such a thing as unnecessary traumatization of psychiatric patients in a psychiatric facility, especially in facilities in states that look for shortcuts. It is the rules and statutes of the state that reduce the amount of trauma and recidivism.

We fully understand the idea of a psychiatric emergency when gender choice may not be able to be provided—What we want to reduce is the unnecessary traumatization of a psychiatric patient who is reasonably cooperative.

The percentage of women in acute care psychiatric facilities who have a history of sexual abuse and/or physical abuse in their past is somewhere between 51% and 98% respectively. The figure for men is a little bit less. To a person with mental illness, it is certain he/she feels re-victimized when he / she is given intimate care against their will by the gender of the person who sexually abused him or her in the past.

There are 3 or 4 hospitals that do civil commitments, and there are numerous other ones that do 3 day evaluations that stretch out into 7 days. This issue cannot be dealt with by working to change each hospital's policy. Change needs to be done by state statute.

I would like to briefly explain the support letters in favor of a bill for gender choice of staff for intimate care. The following letters of support should have been provided to you.

1. Ann F. Jennings, PhD., Trauma-Informed Systems Consultant has background knowledge of trauma in acute-care psychiatric institutions. She also has a personal connection. Her daughter was in and out of psychiatric institutions from the age of 13 to 32 when her daughter committed suicide in a psychiatric institution.
2. Aron S. Wolf, MD, MMD. Dr. Wolf has over 30 years of experience in treating psychiatric patients from children to adults.
3. NAMI, Anchorage —Their Board members have personally been in psychiatric institutions and had family members in psychiatric institutions.

4. Alaska Mental Health Consumer Web—Their Board members also have a wide range of experience with psychiatric facilities.
5. The Alaska Mental Health Board, whose Board members are appointed by the Governor—again, their Board members have a wide range of experience in advocating for better treatment in psychiatric facilities.
6. Disability Law Center submitted a 4 page legal opinion, stating that gender choice of staff is a right that should be given to a civilly committed psychiatric patient.
7. Psychiatric Rights—an organization dedicated to furthering the rights of psychiatric patients—Psychiatric Rights also concurs with Disability Law's legal opinion that gender choice is a right of civilly committed psychiatric patients.

All told there are probably 50 or more Board members that voted that a gender choice of staff for intimate care bill should be passed, many of them experts in the field.

Senate Bill 8 only requires psychiatric institutions to make a good faith effort at giving gender choice of staff.

In closing, I am asking you to pass Senate Bill 8.

Thank you,

Faith Myers
(907) 929-0532

Faith Myers

Alaska State Legislature

Interim (May - Dec)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148



Session (Jan - May)
State Capitol, Suite 30
Juneau, AK 99801-1182
Phone: (907) 465-3822
Fax: (907) 465-3756
Toll free: (800) 770-3827

[Senator Bettye Davis@legis.state.ak.us](mailto:Senator_Bettye_Davis@legis.state.ak.us)
<http://www.akder.org>

Senator Bettye Davis

April 23, 2007

Senator Hollis French, Chairman
Senate Judiciary Committee
State Capitol Building, Rm 417
Juneau, Alaska 99801

RE: Request for Hearing – SB 8

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

Dear Senator French,

As sponsor of SB 8 I respectfully request a hearing before Senate Judiciary Committee as the next stop on this bill which was passed out of the HESS Committee on April 23, 2007.

Attached in order are the following:

1. Sponsor Statement
2. The unchanged original SB 8, 25-LS0101\A
3. Sectional analysis
4. Additional Documentation
5. People anticipated to testify include Dorrance Collins, Faith Meyers, citizen mental health advocates, Andrea Schmook, Chair, Alaska Mental Health Board, *et al.*

Sincerely,

Handwritten signature of Bettye Davis in cursive script.
Senator Bettye Davis

Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148



Session: (Jan. - May)
State Capitol, Suite 30
Juneau, AK 99801-1182
Phone: (907) 465-3822
Fax: (907) 465-3756
Toll free: (800) 770-3822

[Senator Bettye Davis@legis.state.ak.us](mailto:Senator_Bettye_Davis@legis.state.ak.us)
<http://www.akdemocrats.org>

Senator Bettye Davis

Senate Bill 8

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

Sponsor Statement

SB 8 provides that a mental health patient 18 years of age or older who is receiving mental health treatment and being provided intimate care at a hospital shall have the right to have care provided by a staff member who is the gender that the patient requests. Many of these patients have been traumatized by sexual and/or physical abuse in the past and they are very sensitive to being touched or assisted by hospital staff who provide intimate care, because the experience may trigger from original abuse feelings of fear, helplessness, distress, humiliation, and loss of trust in staff. The supervisor or manager employed by a hospital shall post notice of this right in a conspicuous place, so patients know they may exercise this right when they are concerned about the gender of staff responsible for their personal intimate care.

While it is understandable that a hospital may not always be able to comply with the requirement of choice of gender in all situations and requests due to staffing schedules and shortages on particular shifts or duty units, the bill requires that the facility document the non-compliance in the patient record that the intimate care was provided by a licensed or unlicensed staff member of a gender opposite that requested by the patient. This information might otherwise be ignored or lost. The information is also useful not only for confirming the good faith effort on the part of the institution to comply with the wishes of the patient, but for medical purposes as well in evaluating the effect on patient outcome, because individuals re-traumatized in this way are subject to chronic stress which can worsen serious mental illness and result in symptomatic relapses and repeated re-hospitalizations. Lastly, this bill will preserve information for inquiry into grievance procedures at mental health facilities under Title 47, which have been described as unduly burdensome by some patients, and easily circumvented or limited because the language is too broad.

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 6, 2007

SUBJECT: Sectional Summary (SB 8)

TO: Senator Bettye Davis
Attn: Tom Obermeyer

FROM: Jean M. Mischel
Legislative Counsel 

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

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Establishes a right to staff choice for the provision of intimate care for patients 18 years of age or older who are receiving mental health treatment and intimate care at a hospital. Also requires certain actions of hospital staff to provide privacy and to accommodate staff choice except as otherwise described.

JMM:med
07-078.med

STATE OF ALASKA

Sarah Palin, GVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

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

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

April 16, 2007

Senator Bettye Davis, Chair
Health, Education and Social Services Committee
Alaska State Legislature

Dear Representative Davis:

Thank you for introducing SB 8, 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.

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 cursive script, appearing to read "Andrea Schmook".

Andrea Schmook, Chair,
Alaska Mental Health Board

04-16-2007 09:08 MYERS COLLINS 907 283 8332

CALASKA COUNSELING INC.

March 1, 2005

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

Re: Psychiatric Staff Gender Rights

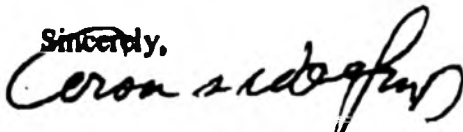
Dear Ms Myers and Mr. Collins,

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

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When you don't know where to turn . . .

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.¹ 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.^{2,3,4} 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.² When individuals are continually re-traumatized in this way, they are subject to chronic stress⁵ which in turn worsens serious mental illness and results in symptom relapses and repeated re-hospitalization^{6,7,8,9}.

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.
4. Switzer, G.E., Dew, M.A., Thompson, K., Goycoolea, J.M., Derricott, T., & Mullins, S.D. (1999). Posttraumatic stress disorder and service utilization among urban mental health center clients. *Journal of Traumatic Stress*, 12, 25-39.
5. Mueser, K.T., Rosenberg, S.D., Goodman, L.A., Trumbetta, S.L. (2002). Trauma, PTSD, and the course of severe mental illness: an interactive model. *Schizophrenia Research* 53, 123-143
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.



December 22, 2004

Faith Myers
 Dorrance Collins
 330 E. 14th 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
 3330 Arctic Boulevard
 Suite 103
 Anchorage, AK 99503
 (907) 545-1002
 FAX (907) 545-1000
 1-800-478-1234

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mean that Alaska's right to privacy is broader than that afforded by the United States Constitution. *Masserli 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 (9th 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

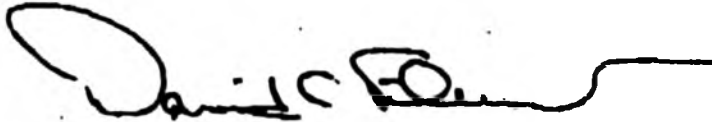
and submission process is imperative. The only way to make that possible is for people to have choices. Without choice there is a potential for the reenactment of trauma.

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



NAMI Anchorage

*Anchorage's Voice on
Mental Issues*

There is hope.

Trish McDonald
Executive Director

Yvonne Akai Evans
President

Eileen Davy
Vice President

Roger Branson
Secretary

Allia Blasiah
Treasurer

Gene Daly
Member at Large

Pat Kouris
Member at Large

Megan Wilts
Member at Large

907.272.0227

P.O. Box 94808
Anchorage, AK
99584

Yvonne Akai Evans
907.272.0222 direct

yvonn@gci.net

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

Faith Myers
Dorrance Collins
330 E. 14th 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 47.30.940 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.

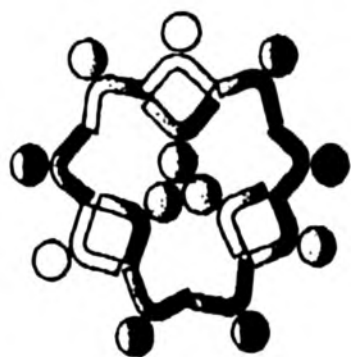
We urge our lawmakers to pass legislation which will protect individuals receiving this care.

Sincerely,


Yvonne Evans, President


Trish McDonald, Executive Director

Co Ron Adler
David Fleurant



Alaska Mental Health Consumer Web

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

**Phone: 907.222.2990
Fax: 907.222.2981**

March 2, 2005

**Faith Myers
Dorrance Collins
330 E. 14th 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 AS47.30.340 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 broached 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

PsychRights

LAW PROJECT FOR

PSYCHIATRIC RIGHTS, INC.

408 G Street, Suite 208, Anchorage, Alaska 99501

(907) 274-7688 Phone - (907) 274-8493 Fax

<http://psychrights.org>

January 3, 2005

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

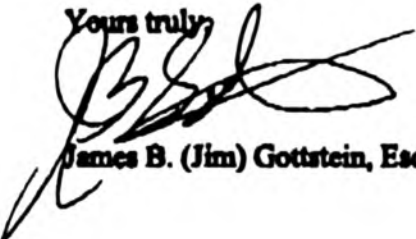
Re: Psychiatric Staff Gender Rights

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 Senate Bill 8 by Dorrance Collins—February 11, 2007

Madam Chair, Committee members,

My name is Dorrance Collins. I support the passing of Senate Bill 8 as written.

Post traumatic stress disorder is one of the most prevalent and costly mental illnesses in America. Not giving gender choice of staff for intimate care in inpatient settings is traumatic to many psychiatric patients and can add to the illness.

In other states some psychiatric facilities take providing gender choice of staff for intimate care seriously. These facilities have policies that require the facility to schedule a portion of their work force by gender. As an example, if there are 5 male staff on one unit and 5 female staff on another unit, policy would require the head nurse, when scheduling, to see to it that there are sufficient men and women staff on each shift to provide gender choice.

Also, in the larger hospitals with multiple units—if the required gender is not available for intimate care, facility policy would require staff to go to the next unit to try and find the requested gender. Units are often just separated by a door.

These are all policies that we have been informed that the Alaska psychiatric hospitals and facilities will not adopt, even when it is pointed out that adopting such policies does not cost money and it reduces trauma.

In a recent Alaska Supreme Court decision, the justices stated there is a clear, unavoidable tension between hospitals seeking convenience/ economics and patient rights, which can manifest itself in patient abuse.

The justices saw it as a given that psychiatric hospitals and units were going to take shortcuts and would without regulation deny psychiatric patients their rights. It is laws passed by the legislature and action taken by the courts that will force psychiatric hospitals to do the right thing.

Almost without exception those patients entering an acute care psychiatric facility have dementia and trauma in their background. And to a lesser extent those patients entering evaluation facilities. Many have been victimized, some from childhood through adulthood. The percentage that has been sexually abused and physically abused is much higher than the rate in general society. When psychiatric patients are not given gender choice, they feel they are being re-victimized all over again.

As a civilized society, we can't leave psychiatric patient's protection up to guesswork. We need to pass statutes.

Passing Senate Bill 8 will give back to psychiatric patients' a small amount of dignity and control they lost when entering a psychiatric facility.

Senate Bill 8 only asks that psychiatric institutions make a good faith effort at providing gender choice of staff for intimate care. Adding more loopholes for psychiatric facilities to utilize will make the Bill useless.

In closing, I am asking you to pass Senate Bill 8 as written.

Thank you,

Dorrance Collins
(907) 929-0532

Dorrance Collins

Sen. Bettye Davis
Chair - HESS Committee

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Thank you,

Dorrance Collins
(907) 929-0532

Dorrance Collins

Mr. Chair, Committee members,

My name is Faith Myers. I support the passing of Senate Bill 8 as written.

I have an avocation in Mental Health Advocacy. In the past I have been in acute care psychiatric facilities in Alaska, Washington and Nevada. Also, as an advocate, I have contacted psychiatric hospital administrators in Maine, Maryland, Nevada, Alaska and Washington looking for best practices.

There is such a thing as unnecessary traumatization of psychiatric patients in a psychiatric facility, especially in facilities in states that look for shortcuts. It is the rules and statutes of the state that reduce the amount of trauma and recidivism.

We fully understand the idea of a psychiatric emergency when gender choice may not be able to be provided—What we want to reduce is the unnecessary traumatization of a psychiatric patient who is reasonably cooperative.

The percentage of women in acute care psychiatric facilities who have a history of sexual abuse and/or physical abuse in their past is somewhere between 51% and 98% respectively. The figure for men is a little bit less. To a person with mental illness, it is certain he/she feels re-victimized when he / she is given intimate care against their will by the gender of the person who sexually abused him or her in the past.

There are 3 or 4 hospitals that do civil commitments, and there are numerous other ones that do 3 day evaluations that stretch out into 7 days. This issue cannot be dealt with by working to change each hospital's policy. Change needs to be done by state statute.

I would like to briefly explain the support letters in favor of a bill for gender choice of staff for intimate care. The following letters of support should have been provided to you.

- 1. Ann F. Jennings, PhD., Trauma-Informed Systems Consultant has background knowledge of trauma in acute-care psychiatric institutions. She also has a personal connection. Her daughter was in and out of psychiatric institutions from the age of 13 to 32 when her daughter committed suicide in a psychiatric institution.**
- 2. Aron S. Wolf, MD, MMD. Dr. Wolf has over 30 years of experience in treating psychiatric patients from children to adults.**
- 3. NAMI, Anchorage —Their Board members have personally been in psychiatric institutions and had family members in psychiatric institutions.**

4. **Alaska Mental Health Consumer Web**— Their Board members also have a wide range of experience with psychiatric facilities.
5. **The Alaska Mental Health Board**, whose Board members are appointed by the Governor—again, their Board members have a wide range of experience in advocating for better treatment in psychiatric facilities.
6. **Disability Law Center** submitted a 4 page legal opinion, stating that gender choice of staff is a right that should be given to a civilly committed psychiatric patient.
7. **Psychiatric Rights**—an organization dedicated to furthering the rights of psychiatric patients—Psychiatric Rights also concurs with Disability Law's legal opinion that gender choice is a right of civilly committed psychiatric patients.

All told there are probably 50 or more Board members that voted that a gender choice of staff for intimate care bill should be passed, many of them experts in the field.

Senate Bill 8 only requires psychiatric institutions to make a good faith effort at giving gender choice of staff.

In closing, I am asking you to pass Senate Bill 8.

Thank you,

Faith Myers
(907) 929-0532

Faith Myers

Letters

require inpatient psychiatric facilities to make a good faith effort at providing patients receiving intimate care their choice of gender of staff performing that care. We believe if the bill does pass it would eventually carry over into senior care facilities.

The Alaska facilities we have surveyed do not schedule for gender. For example, if there are five men working on one shift at a facility and five women working on the other shift, all of the facilities we have surveyed do not have policies that require the nurse making up the work schedule to make an attempt to see to it there is proper gender on each shift to provide gender choice of staff for intimate care.

We fully understand not hiring for gender, but in Alaska they refuse to schedule the work force for gender.

Also, in larger facilities where there is more than one unit, there is no policy that requires staff to go to the next unit to get the requested gender to give someone a bath.

These are things that they do in other states and it doesn't cost money, but Alaska facilities we surveyed refused to do it.

Providing gender choice of staff for intimate

care reduces traumatization and passing Senate Bill 8 will force psychiatric institutions to write good gender choice policies.

Faith Myers and Dorrance Collins
Anchorage

We would like to hear from you

Send letters to the editor to Senior Voice, 325 E. Third Ave., Suite 300, Anchorage AK 99501. Maximum length is 250 words. Senior Voice reserves the right to edit for content and length.

Space may be made available for longer opinion piece essays up to 500 words. Please contact the managing editor at seniorvoice@gci.net to discuss this.

Copy deadline is the 15th of the month prior to publication.

Dear Editor,

We would like to make readers aware of Senate Bill 8, which when passed would

PsychRights[®]

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:

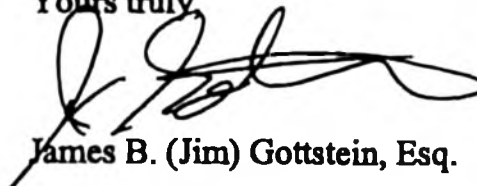
At no time shall the rights set forth in this chapter be treated as privileges that the recipient must earn by meeting certain standards of behavior.

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.¹ 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.

¹ For patients under 18, their guardian would retain that right.



January 30, 2006

Faith Myers
Dorrance Collins
330 E. 14th 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

NAMI Anchorage
144 W. 5th Avenue
Anchorage, AK 99501

Support For New Grievance
Procedures

(907) 272-0227
(phone and fax)

Tom

February 17, 2007

Alaska State Legislature
Juneau, Alaska

RECEIVED
FEB 20 2007

Re: Request for Amendment to AS 47.30.847
Psychiatric Grievance Procedures

Honorable Senators and Representatives:

NAMI Anchorage provides support, education and advocacy to persons experiencing a mental illness and their families. This letter is about the grievance rights of patients in mental health facilities. Those rights are set out in broad terms in AS 4.30.847. See copy attached.

We have received reports that patients have been unduly burdened by hospital procedures in their efforts to bring grievances. For example, the facility may repeatedly require the patient to confer with members of the very same treatment team that have aggrieved the patient as a pre-condition to filing a formal grievance. It can be traumatizing to a patient to be required to seek redress from the same caregivers with whom the patient has a dispute.

It has also been reported to NAMI that patients are not always being provided a written statement of the grievance procedure upon admission to the facility. The ability of the patient or patient's representative to advocate for themselves requires knowledge of the "what" and "how" of the grievance procedure *prior* to treatment. NAMI believes that self-advocacy is one of the building blocks for real and lasting recovery.

These examples demonstrate that the due process rights of patients can be easily limited or circumvented because the language of AS 47.30.847 is too broad. The statute does not say precisely what the mental health facilities must do, giving them considerable latitude in interpreting the law and developing the grievance procedures as they wish. The statute needs to be amended to state the following specific requirements:

- the written grievance procedure will be provided to the patient at the time of admission.
- the patient's written complaint will be accepted and delivered to the "impartial body" required in subsection (a) without requirement of further consultation with or approval by the treatment team or other precondition.
- the patient will be allowed the assistance of a self-designated representative and will not be limited to a representative as defined by the facility.
- the complaint will be addressed and resolved within specific time frames to be set out in the amended statute.

Anchorage's Voice on Mental Illness

NAMI Anchorage is the Local Affiliate of the National Alliance on Mental Illness

Additional specific provisions may be required as investigation continues. NAMI Anchorage is prepared to assist in this important revision process as requested. In the meantime, we ask the legislators and the administrators of mental health facilities to bear in mind the trauma that hospitalization by itself causes a patient, on top of the underlying problem resulting in the hospitalization. In such a situation, the balancing of administrative inconvenience with the health and welfare of the patient should weigh in favor of the patient.

Thank you for this opportunity to comment.

NAMI Anchorage

Pat Kouris / by Harbour

Pat Kouris

President, NAMI Anchorage Board of Directors

attachment: AS 47.30.847

cc: Representative Sharon Cissna
James B. Gottstein, Esq.
Faith Myers and Dorrance Collins
David Fleurant, Disability Law Center

Anchorage's Voice on Mental Illness

NAMI Anchorage is the Local Affiliate of the National Alliance on Mental Illness