ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
10828 HOUSE JUDICIARY

CHANGES MADE IN
CS HB 260 \ VERSION Q

TO: CSHB 260(L&C)

Page 2, line 22:

Delete "without charge for the services"

Insert "voluntarily and without pay to the health care provider for the services, except as provided under (b)(3) and (4) of this section"

Page 2, line 28:

Delete all material.

Insert "advance written notice of the immunity provided under this section to a health care provider when providing voluntary health care services as described under this section"

Page 2, line 31:

Delete "or"

Page 3, line 1, following "abortion":

Insert ";

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

(4) preclude a medical clinic or facility from charging for its services"

ALASKA STATE LEGISLATURE

Chair
FISHERIES

Vice-Chair
EDUCATION

Member
HEALTH, EDUCATION AND SOCIAL SERVICES

Member
STATE AFFAIRS

REPRESENTATIVE PAUL SEATON
House District 35

Session:
State Capitol Building
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345 W. Sterling Highway
Suite 102B
Homer, Alaska 99603
Phone 907-235-2921
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MEMORANDUM

TO: Representative Lesil McGuire
Madam Chair, House Judiciary

FM: Representative Paul Seaton PKS

DATE: April 29th, 2003

RE: Hearing Schedule, HB 260

Please schedule HB 260, "Volunteer Health Care Provider Immunity Act of 2003," for a hearing in the House Judiciary Committee at your earliest convenience. Attached you will find the information to be included in the committee packets. Thank you for the committee's time during this busy part of session. If you have any questions, please contact my aide, Cameron Yourkowski, x3306.

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SPONSOR STATEMENT

CS HB 260 (L&C)

"Volunteer Health Care Provider Immunity Act"

Alaska is currently experiencing a shortage of physicians and many of the physicians that do work in the state will be retiring soon. This lack of physicians may decrease future medical care available to Alaskans. CSHB 260 addresses this problem by extending the ability of licensed physicians and other health care providers to administer health care services free of charge. By exempting such services from malpractice liability, CSHB 260 would allow health care providers do donate their professional services at a lower personal cost. CSHB 260 will be especially helpful for retiring health professionals that wish to donate their services but do not still carry medical malpractice insurance. 43 other states have enacted similar legislation.

Historically, Alaska has had a hard time recruiting and keeping adequate numbers of physicians and other heath care providers. Currently, with 186 physicians per 100,000 residents, Alaska ranks 49th in the country in per capita physicians. The average age of Alaska's physicians is over 51 years old. Many of Alaska's most senior and experienced physicians will be retiring in the next 5 to 10 years.

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

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

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

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SECTIONAL ANALYSIS

CSHB 260

"Volunteer Health Care Provider Immunity Act"

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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

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

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

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

Sponsor: Representative Seaton
Requester: Labor and Commerce

Component No.: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

Prepared by: Jennifer Strickler, Administrative Manager
Phone (907) 465-2144
Division: Occupational Licensing
Date/Time 4/28/03 1:32 PM

Approved by: Edgar Blatchford, Commissioner
Date 4/28/2003
Agency: Department of Community & Economic Development

(Revised 9/2002 OMB)

Public Law 105–19
105th Congress

An Act

June 18, 1997
[S. 543]

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

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

Volunteer Protection Act of 1997.
42 USC 14501 note.

SECTION 1. SHORT TITLE.

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

42 USC 14501.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;

(2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;

(5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;

(6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and

(7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because—

(A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

(B) the citizens of the United States depend on, and the Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers;

(C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(D)(i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and

(ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

(b) PURPOSE.—The purpose of this Act is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.

SEC. 3. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY. 42 USC 14502.

(a) PREEMPTION.—This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.

(b) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This Act shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this Act shall not apply, as of a date certain, to such civil action in the State; and

(3) containing no other provisions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS. 42 USC 14503.

(a) LIABILITY PROTECTION FOR VOLUNTEERS.—Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—

(1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

(2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken

within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

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

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

(A) possess an operator's license; or

(B) maintain insurance.

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

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

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

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

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

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

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

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

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

(2) CONSTRUCTION.—Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

(f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

(1) IN GENERAL.—The limitations on the liability of a volunteer under this Act shall not apply to any misconduct that—

(A) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

(D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

(E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to effect subsection (a)(3) or (e).

SEC. 5. LIABILITY FOR NONECONOMIC LOSS. 42 USC 14504.

(a) GENERAL RULE.—In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with subsection (b).

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant who is a volunteer, shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

SEC. 6. DEFINITIONS. 42 USC 14505.

For purposes of this Act:

(1) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) HARM.—The term "harm" includes physical, nonphysical, economic, and noneconomic losses.

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

(4) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means—

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

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

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

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

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

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

SEC. 7. EFFECTIVE DATE.

(a) IN GENERAL.—This Act shall take effect 90 days after the date of enactment of this Act.

(b) APPLICATION.—This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act but only if the harm that is the subject of the claim or the conduct that caused such harm occurred after such effective date.

Approved June 18, 1997.

LEGISLATIVE HISTORY—S. 543 (H.R. 911):

HOUSE REPORTS: No. 105–101, Pt. 1 (Comm. on the Judiciary) accompanying H.R. 911.

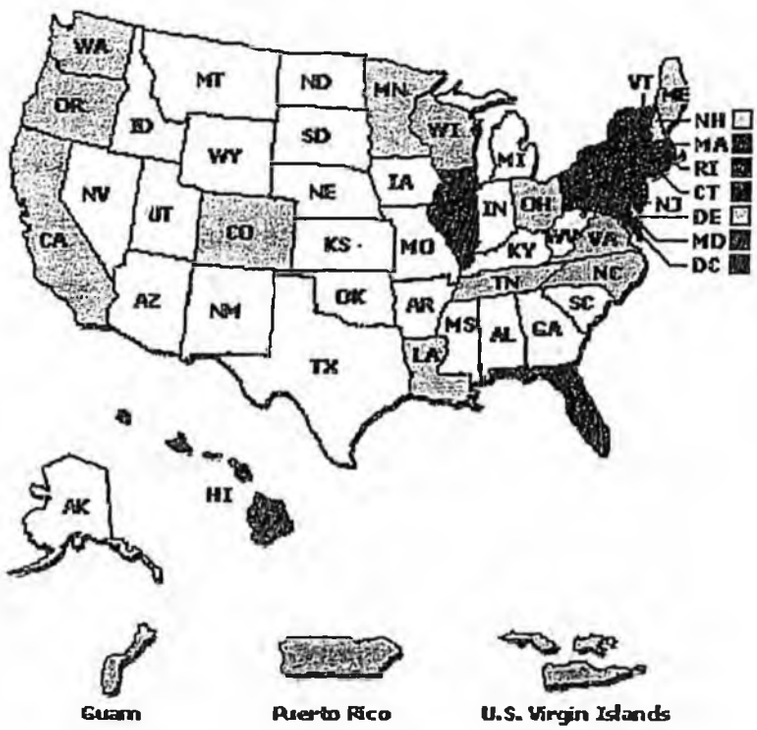
CONGRESSIONAL RECORD, Vol. 143 (1997):

May 1, considered and passed Senate.

May 21, considered and passed House, amended, in lieu of H.R. 911. Senate concurred in House amendment.

○

Rate of Nonfederal Physicians per 100,000 Civilian Population, 1999



- ☐ Less than 225
- ☐ 225 to 255
- ☐ 256 to 282
- ■ More than 282
- ☒ No data available/NSD

Rate of Nonfederal Physicians per 100,000 Civilian Population, 1999

Sort by: Rank

Rate of Nonfederal Physicians per 100,000 Civilian Population, 1999

Rank	State	#
	United States	285
1	District of Columbia	811
2	Massachusetts	454
3	New York	423
4	Maryland	413
5	Connecticut	397
6	Rhode Island	372
7	Vermont	362
8	New Jersey	327
9	Pennsylvania	321
10	Hawaii	306
11	Florida	290
12	Illinois	287
13	Minnesota	282
14	California	280
15	Colorado	274
16	New Hampshire	273
17	Washington	272
18	Louisiana	270
19	Tennessee	269
19	Virginia	269
21	Maine	268
22	Oregon	266
23	Delaware	264
24	North Carolina	262
25	Ohio	261
26	Wisconsin	256
27	Missouri	250
28	Michigan	249
29	Nebraska	247
30	North Dakota	246
31	New Mexico	243
32	Arizona	240
33	West Virginia	239
34	South Carolina	234
35	Kansas	232
35	Kentucky	232
37	Georgia	230
38	Montana	228
39	Utah	225

40	Texas	222
41	Indiana	219
42	Alabama	217
43	Arkansas	214
44	South Dakota	211
45	Iowa	200
46	Nevada	199
47	Wyoming	198
48	Oklahoma	187
49	Alaska	186
50	Mississippi	180
51	Idaho	179
NR	Guam	NA
NR	Puerto Rico	NA
NR	Virgin Islands	NA
NR	Residence Unknown	NA

Notes: Nonfederal physicians are employed in the private sector of the US physician population. They represent 98% of total physicians.
The US total excludes physicians and population in the possessions.

Sources: Physician Characteristics and Distribution in the US, 2001-2002 Edition, American Medical Association, copyright 2001, Table 5.20, p. 348.

FARMERS MARKET IN A BOWL

Capture the essence of autumn in the fields with a steaming bowl of minestrone. As the summer turns to fall, the last of the Valley crops come to town, and this classic Italian soup presents a fine way to enjoy the harvest. *See* **Wednesday's Life & Taste.**

LIFE & Health

ANCHORAGE DAILY NEWS • www.adn.com TUESDAY, SEPTEMBER 3, 2002

A CRISIS COULD BE COMING

BILL LAVRAKAS / Anchorage Daily News

Dr. Keith Brownsberger, 69, begins an annual physical with longtime patient Lois Kiehl. Brownsberger met Kiehl more than 30 years ago when they both worked in Sitka. Brownsberger is one of many older doctors in Alaska. Experts are concerned the state will face a doctor shortage in the near future.

Shingle Shortage?

Dr. Keith Brownsberger, 69, begins an annual physical with longtime patient Lois Klehl. Brownsberger met Klehl more than 30 years ago when they both worked in Sitka. Brownsberger is one of many older doctors in Alaska. Experts are concerned the state will face a doctor shortage in the near future.

Shingle Shortage?

State statistics point to a coming medical crunch as aging doctors retire

By ANN POTEMPA
Anchorage Daily News

One of the youngest states in the nation has an aging problem: Its doctors are growing older.

Jim Jordan, executive director of the Alaska State Medical Association, wanted to know just how old Alaska's doctors had become. His staff studied a list of physicians and guessed their ages from the dates they graduated from medical school. Based on his study, about half are older than 50.

His guess was right. Leslie Gallant, executive administrator of the state medical board, verified Jordan's research with her own database, complete with ages. Today, 48 percent of Alaska's licensed doctors have passed the half-century mark.

Gallant's data shows a sharp drop-off in practicing physicians as the decades mount up: Almost 650 retain their licenses in their 50s, but less than half that many remain licensed into their 60s. Slightly more than 100 of the state's 2,170 doctors are 70 or older.

That statistic foreshadows a pending crisis.

"Within the next 10 years, we could lose as many as half of Alaska's doctors," said Dr. Harold Johnston, a family practice physician who's older than 50.

When these doctors retire or cut back their practices, more doctors will have to move here and fill in. But that's not happening.

"They're not coming to Alaska," Johnston said.

At least not with the frequency they did in the past.

"There's going to be a problem, and we see it coming," said Dr. Tom Nighswander, who turns 60 this year. "And the time to be working on it is now."

Doctors used to come to Alaska for many reasons. Physicians came here to flee states that had health maintenance organizations.

> "There's going to be a problem, and we see it coming. And the time to be working on it is now."
>
> – Dr. Tom Nighswander

"They were what I termed to be 'managed care refugees,'" Jordan said.

But Johnston said managed care is changing, and fewer doctors are moving here for that reason now.

Decades ago, the government signed up doctors to come north and work with the military and the U.S. Public Health Service. In the early 1970s, Nighswander came to Alaska to fulfill a two-year contract with the U.S. Public Health Service.

"That is where the Indian Health Service got all their manpower," he said.

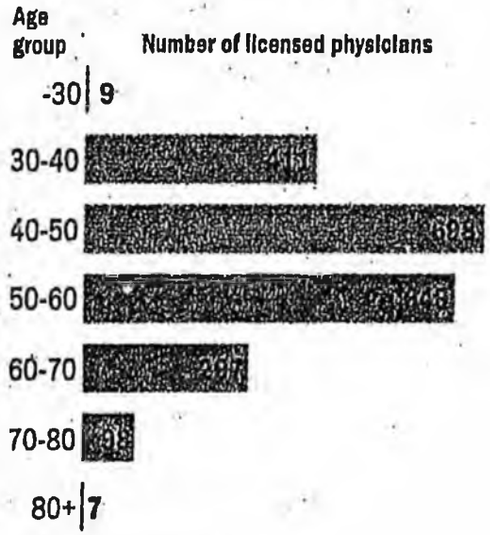
Thirty years later, he's still here. Other physicians who came to Alaska through the health service finished their contracts and elected to stay, too.

Nighswander said the public health service's role in Alaska has changed since those days. It no longer brings doctors to Alaska to serve the Native population. Instead, the tribes have taken over and directly recruit their own physicians to care for Alaska

See Page E-2, DOCTORS

ALASKA'S AGING PHYSICIANS

State officials are concerned about Alaska's ability to serve the medical needs of residents as the state's physicians get older. Records show a sharp drop in the state's number of physicians who continue to practice beyond the age of 60. Almost half the state's licensed physicians are more than 50 years old.



Source: Alaska State Medical Board 2002

Primary Health Care

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

Updated March 2000

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

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

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

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

	for any civil damages for any act or omission resulting from the medical services unless the act or omission was a result of gross negligence or willful misconduct. **Ark. Stat. Ann. § 17-95-108** expands upon the previous law to state that the immunity applies when the patient acknowledges in writing that the physician is immune from civil liability.
California	**Cal. Business and Professions Code § 2395.5** states that a physician who serves on an on-call basis to a hospital emergency room and in good faith renders emergency obstetrical services to any person while on-call shall not be liable for any civil damages except in cases of gross negligence, recklessness, or willful misconduct.
Colorado	**Colo. Rev. Stat. § 24-10-103 (4)** extends governmental immunity from civil damages to any health care practitioner employed by a public entity and to any health care practitioner who volunteers his services at or on behalf of a public entity or as a participant in the community maternity services program.
Connecticut	-
Delaware	**Del. Code Ann. Tit. 10 § 8135** grants immunity from civil suits resulting from any negligent act or omission performed during or in connection with an activity of the volunteer while serving the medical clinic to any licensed physician or nurse engaged in an activity for a medical clinic without compensation.
District of Columbia	**D. C. Code Ann. § 2-1344** extends limited immunity to health care professionals including physicians, nurses or nurse midwives who in good faith provide health care or treatment at a free health clinic without the expectation of receiving or intending to receive compensation unless the act or omission is an intentional wrong or constitutes a willful or wanton disregard for the health and safety of others.
Florida	**Fla. Stat. § 768.13(4)** states that any person who is licensed to practice medicine, while acting as a staff member or with professional clinical privileges at a nonprofit medical facility shall not be held liable for any civil damages for any care provided gratuitously.
Georgia	**Ga. Code. § 51-1-29** states that no health care provider licensed under Chaps. 11, 26, 30, or 34 who voluntarily and without expectation or receipt of compensation provides professional service, within the scope of their license, for a hospital, public school, nonprofit organization or an agency of the state shall be liable for damages or injuries alleged to have occurred in the rendering of these services.
Guam	-
Hawaii	-
Idaho	**Idaho Code § 6-1605** provides immunity for civil liability for nonprofit organization officers, directors, and volunteers who serve

	the nonprofit without compensation with the exception of willful, wanton misconduct.
Illinois	**Ill. Rev. Stat. ch. 111§ 4400-30** provides immunity from civil damages for physicians who provide medical treatment in good faith at a free medical clinic to medically indigent patients if he or she receives no compensation, excludes willful or wanton misconduct.
Indiana	**Ind. Code § 34-412.1-2, 34-4-12-1.5** provides that a health care provider, including a retired physician, who voluntarily provides health care at a medical clinic or health care facility is immune from civil liability arising from the care provided unless the acts constitute a criminal act, gross negligence or willful, wanton misconduct.
Iowa	**Iowa Code § 65-135.24** establishes a volunteer physician program and states that physicians providing care under this program will be considered employees of the state and shall be afforded the protection from civil immunity for their services.
Kansas	**Kan. Stat. Ann. § 75-6102** provides indemnity to charitable health care providers who have entered into an agreement with the secretary of health and environment and who provides free professional services to medically indigent patients by considering the provider a state employee.
Kentucky	**Ky. Rev. Stat. § 304.40-075** states that the Department of Insurance will provide medical malpractice insurance to a charitable health care provider who has registered with the Cabinet for Human Resources. A charitable health care provider is defined as any person, agency, clinic or facility engaged in providing medical care without compensation. This law also applies to health care providers who are not licensed in the state of Kentucky as long as they meet the definition of charitable health care provider.
Louisiana	**La. Rev. Stat. Ann. § 40:1299.152** provides state indemnification of health care providers who provide charity care in at least 10% of the provider's patient encounters. Charity care is limited to defined State programs or care provided at federally funded nonprofit clinics. Health care providers can be a person, partnership or corporation. The providers must maintain liability insurance, the law excludes protection for gross negligence or intentional misconduct. **La. Rev. Stat. Ann. § 40:1299.161** provides a state mandated premium discount for health care providers who provide at least 10% or more charity care in their practices.
Maine	**Me. Rev. Stat. Ann. Tit. 24, § 2904** states that a licensed physician who voluntarily, and without compensation, provides professional services within the scope of his practice to a nonprofit organization or to an agency of the state shall not be liable for damages or injuries related to those services. The state will be liable unless the damages were caused willfully, wantonly or by gross negligence. **Me. Rev. Stat. Ann. Tit. 14, §315** states that the Board of Medicine

	shall issue a license free of charge to any physician who provides medical services to patients with no compensation and is not engaged in the private practice of medicine.
Maryland	**Md. Courts & Judicial Proceedings Code Ann. Sec. 5-616** repealed a requirement compelling volunteer health care providers and physicians delivering care at charitable organization to carry a specified amount of insurance to qualify for immunity from specified types of civil liability.
Massachusetts	**Mass. Gen. Laws Ann. Ch. 112, § 12C** states that no physician rendering immunizations or other protective programs under public programs shall be liable for civil damages.
Michigan	-
Minnesota	-
Mississippi	**Miss. Code Ann. § 11-46-1** indemnifies physicians who provide care under an agreement with State government. The physician is considered a State employee. **Miss. Code Ann. § 73-25-18** establishes a special volunteer medical license for physicians who are retired from active practice and with to donate their expertise for the medical care and treatment of indigent and needy people or people in medically underserved areas. The laws provides that the license be issued without charge and that the license shall limit the practice of the physician to a specific location.
Missouri	**Mo. Rev. Stat. § 105.711** provides that the state legal defense fund covers payment of claims against physicians, dentists, dental hygienists, nurses and physician assistants who provide primary or preventive care for free at a city or country health department or a tax-exempt nonprofit community health center or who provide such care to students of public, private or parochial elementary or secondary schools, pursuant to a contract with a local health department.
Montana	-
Nebraska	-
Nevada	**Nev. Rev. Stat. Ann. § 41.505** provides civil immunity for physicians, including retired physicians, who offer free care and, or provide emergency obstetrical services. **Nev. Rev. Stat. Ann. § 41.485** states that a volunteer of a charitable organization is immune from liability for civil damages as a result of an act or omission. Volunteer includes any person who performs services without compensation.
New Hampshire	**N.H. Rev. Stat. Ann. § 329:25-a** grants certain retired physicians immunity from civil liability for health education services. **N.H. Rev. Stat. Ann. § 508:17** provides immunity from civil damages for volunteers of a nonprofit organization or government

Texas	**Texas Civil Practice and Remedies Code Ann. § 110.001** indemnifies physicians for defined "charity care" if the physician renders the care in at least 10% of his patient encounters during the year a claim is made. **Texas Insurance Code Ann. § 5.15-4** states that a physician is entitled to a premium discount for medical professional liability insurance for providing services for selected charity care programs.
U.S. Virgin Islands	-
Utah	**Utah Code Ann. § 58-12-23.5** provides qualified immunity for health care providers who render charity care without compensation in a qualified location, excludes gross negligence and willful misconduct.
Vermont	-
Virginia	**Va. Stat. Ann. Tit. § 54-1.2:2** states that health care professionals rendering services free of charge at free clinics are exempt from civil liability, excludes acts of gross negligence and willful misconduct.
Washington	-
West Virginia	**W. Va. Code § 30-3-10a** establishes special volunteer medical licenses for physician wishing to donate their expertise for the medical care and treatment of indigent and needy patients of clinics organized in whole or in part for the delivery of health care services without charge and provides immunity from civil actions for physicians rendering such care.
Wisconsin	**Wis. Stat. § 146.89** provides indemnification for volunteer health care providers who submit an application associating them with a nonprofit agency to the state.
Wyoming	-

Return to Legislative Summary Table of Contents

National Conference of State Legislatures
INFO@NCSL.ORG (autoresponse directory)

Denver Office:
7700 East First Place
Denver, CO 80230
Tel: 303-364-7700
Fax: 303-364-7800

Washington Office:
444 North Capitol Street, N.W., Suite 515

Washington, D.C. 20001
Tel: 202-624-5400
Fax: 202-737-1069

Alaska State Medical Association

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

04/24/2003

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

Transmitted by Fax:
907-465-3472

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

Dear Representative Seaton:

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

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

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

Sincerely,

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

AARP Alaska

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

April 28, 2003

RE: HB 260 (Seaton)--Support

Dear Chair Anderson:

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

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

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

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

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

3601 C Street, Suite 1420 | Anchorage, AK 99503 | 907-341-2277 | 907-341-2270 fax | 1-877-434-7598 TTY
James G. Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
3009 Northwood Street
Anchorage, AK 99517-1871
907.245.5259 voice
907.245.5279 fax
ffmas@aurora.uaf.edu

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

April 30, 2003

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

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

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

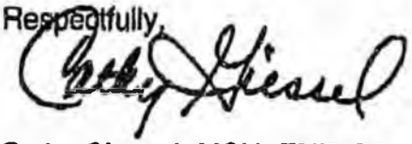
Nurses are a most altruistic group of health care providers. While I appreciate that you are carrying this bill on behalf of ASMA, nurses far outnumber MDs and do far more volunteer work in their communities than do MDs.

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

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

Thank you for your service to Alaska in the legislature.

Respectfully,



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

907 345 5470

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

ANPA

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

Advanced Nurse Practitioners in Alaska

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

There are **570 advanced practice nurses** in the State of Alaska (2002 licensure figures). They are:

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

Advanced Nurse Practitioners (ANP) hold specialty certifications in:

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

Advanced Nurse Practitioners:

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

ANP health care services include:

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

Advanced Nurse Practitioners can be found in:

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

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

ANP continuing education:

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

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

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

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

For more information contact:

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

Cathy Giessel, MSN, FNP-CS
cgiessel@mac.com

LSC
Lung & Sleep Clinic
of Alaska, Inc.
William Lucht MD. FCCP.

April 17, 2003

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

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative Anderson:

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

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

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

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

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

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

Sincerely,

Bill Lucht, MD

2751 De Barr Road • Suite B-360 • Anchorage, AK 99508 • (907) 646-2230 • Fax: 646-2232

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

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

April 18, 2003

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

Re: HB260 - The Retired Physicians Immunity Bill

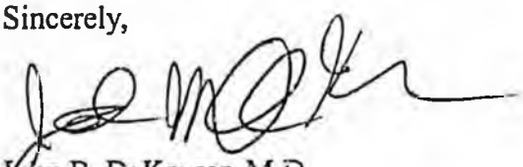
Dear Representative Anderson:

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

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

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

Sincerely,



John B. DeKeyser, M.D.

tjl

MEDICAL PARK FAMILY CARE, Inc.
"Prompt, Thorough, Concerned"

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TIMOTHY NOAH LAUFER, M.D.

Diplomates American Board of Family Practice

2211 EAST NORTHERN LIGHTS BOULEVARD, ANCHORAGE ALASKA 99508

April 18, 2003

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

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in Family Practice.

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

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

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

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

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

Sincerely,

Charles L. Aarons, M.D.

PHONE (907) 279-8486 • FAX (907) 257-8193 (UPSTAIRS) • FAX (907) 257-8180 (DOWNSTAIRS)

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Diplomates American Board of Family Practice

2211 EAST NORTHERN LIGHTS BOULEVARD, ANCHORAGE ALASKA 99508

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

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Sincerely,

Timothy Coalwell, M.D.

PHONE (907) 279-8486 • FAX (907) 257-8193 (UPSTAIRS) • FAX (907) 257-8180 (DOWNSTAIRS)

April 18, 2003

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

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in Gastroenterology and Liver Disease.

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

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

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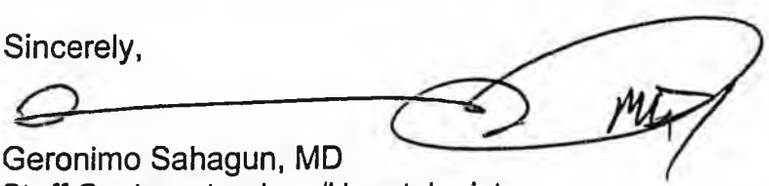

Geronimo Sahagun, MD
Staff Gastroenterology/Hepatologist
Internal Medicine Associates (2841 DeBarr Rd-50, Anchorage, AK 99508)

MEDICAL PARK FAMILY CARE, Inc.
"Prompt, Thorough, Concerned"

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Diplomates American Board of Family Practice

2211 EAST NORTHERN LIGHTS BOULEVARD, ANCHORAGE ALASKA 99508

April 18, 2003

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

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in Family Practice.

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

Sincerely,

Kenneth S. Laufer, M.D.

PHONE (907) 279-8486 • FAX (907) 257-8193 (UPSTAIRS) • FAX (907) 257-8180 (DOWNSTAIRS)

CREED MAMIKUNIAN, M.D.
2401 EAST 42ND AVENUE, SUITE 206
ANCHORAGE, ALASKA 99508
(907) 562-1860 • FAX (907) 562-1865

Otolaryngology
Head and Neck Surgery

Facial Plastic and
Reconstructive Surgery

April 17, 2003

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

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative:

I am an Anchorage based physician specializing in Otolaryngology.

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

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Sincerely,

Creed K. Mamikunian, MD

John D. Erkmann, M.D.

A PROFESSIONAL CORPORATION

Diplomate American Board Obstetrics & Gynecology

1200 Airport Heights Drive, Suite 200
ANCHORAGE, ALASKA 99508-2954
(907) 339-9700

April 21, 2003

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

Re: HB260 - The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in OB/GYN.

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Sincerely,

John Erkmann

John D. Erkmann, M.D.

tjl

MEDICAL PARK FAMILY CARE, Inc.
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Diplomates American Board of Family Practice

2211 EAST NORTHERN LIGHTS BOULEVARD, ANCHORAGE ALASKA 99508

April 18, 2003

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

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative Anderson:

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Sincerely,

F. Leland Jones, M.D.

PHONE (907) 279-8486 • FAX (907) 257-8193 (UPSTAIRS) • FAX (907) 257-8180 (DOWNSTAIRS)

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

May 5, 2003

Honorable Lesil McGuire
State Capitol, Room
Juneau, Alaska 99801-1182

Dear Representative McGuire;

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

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

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

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

Sincerely,

Patricia Senner RN
President, Alaska Nurses Association

CREED MAMIKUNIAN, M.D.
2401 EAST 42ND AVENUE, SUITE 206
ANCHORAGE, ALASKA 99508
(907) 562-1860 • FAX (907) 562-1865

Otolaryngology
Head and Neck Surgery

Facial Plastic and
Reconstructive Surgery

April 17, 2003

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

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative:

I am an Anchorage based physician specializing in Otolaryngology.

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

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

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

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

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

Sincerely,

Creed K. Mamikunian, MD

John D. Erkmann, M.D.

A PROFESSIONAL CORPORATION

Diplomate American Board Obstetrics & Gynecology

1200 Airport Heights Drive, Suite 280
ANCHORAGE, ALASKA 99508-2954
(907) 339-9700

April 21, 2003

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

Re: HB260 - The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in OB/GYN.

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

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

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

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

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

Sincerely,

John Erkmann

John D. Erkmann, M.D.

tjl

JOHN SCHULTZ, D.O.
DIPLOMATE OF THE AMERICAN BOARD OF DERMATOLOGY
4048 LAUREL STREET, SUITE 301
ANCHORAGE, ALASKA 99508

TELEPHONE (907) 562-2510

April 17, 2003

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

Re: HB260 - The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician.

Like many of my colleagues, I have plans to eventually retire in Alaska, and would like to continue to benefit the community by providing occasional free healthcare services to the elderly and indigent. HB 260 will alleviate one of my major concerns about providing this free healthcare.

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

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

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

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

Sincerely,

John Schultz, D.O.

Richard A. Anschuetz, MD, FACC
James A. Baldauf, MD, FACC
Leo B. Bustad, MD, FACC
John C. Finley, MD, FACC
Seth L. Krauss, MD, FACC
William F. Mayer, MD, FACC
Paul A. Peterson, MD, FACC
Mark A. Selland, MD, FACC
David W. Sonneborn, MD, FACC

Krzysztof W. Bolanowski, MD
Mario Binder, MD
Steven J. Compton, MD, FACC, FACP
Thomas K. Kramer, MD, FACC
William A. Knudsen, MD, FACC
Mark W. Moroneli, MD
George S. Rhyner, MD, FACC
Alan E. Skolnick, MD, FACC

Margaret Barnett, ANP *Janet E. Campana, ANP* *Laurel K. Racenet, ANP*
Vicki L. Vermillion, ANP *Mary Weppler, MSN, NP*

April 23, 2003

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

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative Anderson:

The Alaska Heart Institute, LLC, is an Anchorage based physician group that specializes in Cardiology. We have 17 Board Certified physicians and 5 Nurse Practitioners.

Many of these physicians will eventually retire in Alaska. We believe that providing a process where retired physicians are able to provide occasional free healthcare services to the elderly and indigent would alleviate some of the uninsured and access issues.

It is not realistic for a retired physician to pay a large medical malpractice insurance premium just to provide free services. HB260 would provide some needed civil liability protection.

Additionally, this bill will also encourage other types of healthcare providers to offer their services free of charge to many of the most needy in Alaska.

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

Sincerely,

William Mayer, MD
President

23 April, 2003

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

RE: HB260—The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in anesthesia.

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

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

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

Alaska has always had trouble attracting and retaining adequate numbers of physicians to care for its geographically dispersed population. We have the fourth lowest number of physicians per capita in the nation. HB260 may help alleviate this problem.

I urge you to support the bill. HB260 will help Alaska's healthcare providers to care for those Alaskans most in need. It will allow us to continue to practice and serve our communities after retirement.

Sincerely,

Barbara M. Chen, MD

Barbara M. Chen, M.D.

3300 Providence Drive, Suite 207 • Anchorage, AK 99508-4619 • (907) 561-0005 • fax (907) 563-9140

ANCHORAGE
WOMEN'S CLINIC
AT PROVIDENCE
PRIMARY and SPECIALTY CARE FOR WOMEN

April 17, 2003

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

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative Anderson:

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

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

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

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

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

Sincerely,

Karen A McCreary MD

Karen A. McCreary, M.D.

PETER ADAMS, M.D. • HEDRIC HANSON, M.D. • EUI GYUN KIM, M.D. • JEFFREY LAWRENCE, M.D. • TINA TOMSEN, M.D. & ASSOCIATES
PROVIDENCE TOWERS • 3260 PROVIDENCE DRIVE • SUITE 425 • ANCHORAGE, ALASKA 99508 • PHONE 907-561-7111 • FAX 907-561-1304

Alaska Physicians & Surgeons, Inc.
4120 Laurel Street, Suite 206
Anchorage, Alaska 99508
Phone: 907-561-7705 Fax: 907-561-7704
E-mail: akphys@alaska.net
Website: www.apsdoctors.org

April 24, 2003

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

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am the Executive Director of Alaska Physicians & Surgeons, representing approximately 170 Anchorage based physicians. My association strongly supports HB260's goal of expanding healthcare access to indigent and elderly Alaskans by encouraging retired and other physicians to provide free service.

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

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

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

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

Sincerely,

Michael Haugen, JD, MBA
Executive Director

PRIMARY CARE ASSOCIATES
4100 Lake Otis Parkway, Ste 322
Anchorage, AK 99508
Voice 907-562-1234
Fax 907-561-8550

PRIMARY CARE ASSOCIATES
10928 Eagle River Road, Ste 150
Anchorage, AK 99577
Voice 907-694-7223
Fax 907-696-5123

Health Works

April 17, 2003

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

RE: HB260-The retired physicians immunity bill.

Dear Representative Anderson:

I am a 64-year-old family practice physician in Anchorage. Like many of my colleagues, I have plans to eventually retire in Alaska, and I would like to continue to benefit the community by providing occasional free healthcare services to the elderly and indigent. HB260 will alleviate one of the major concerns about providing this free healthcare.

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

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

Alaska has always had trouble attracting and maintaining adequate numbers of physicians to care for its geographically dispersed population. HB260 would, to some extent, help alleviate this problem. I urge you to support the bill. HB260 will encourage Alaska's healthcare providers to care for those Alaskans most in need, and allow some of Alaska's most senior and experienced physicians to continue to practice even after they retire.

Your attention to this matter is greatly appreciated.

Cordially,

Stanley N. Smith, M.D.

SNS/ILHS/xm.KB

Subject: [Fwd: hOUSE BILL 260]
Date: Thu, 01 May 2003 17:08:09 -0800
From: Lesil McGuire <Representative_Lesil_McGuire@Legis.state.ak.us>
Organization: Alaska State Legislature
To: Vanessa Tondini <Vanessa_Tondini@legis.state.ak.us>

Hey V! Lesil wanted you to see the following. Thanks!

Subject: hOUSE BILL 260
Date: Wed, 30 Apr 2003 13:41:43 -0800
From: "Dolly Lefever" <dolly@corecom.net>
To: <Representative_Lesil_McGuire@legis.state.ak.us>

Please support to broad definition of Health Care Providers in the Good Samaritan law. I have been a Nurse Practitioner in Alaska for 30 years first as State public health nurse working in the expanded role as the most trained medical provider in many villages(before health aides), than as a Nurse Midwife/ Family Nurse Practitioner. We provide sound care, well trained in diagnosing and treating minor illness with the knowledge to discriminate illness that need the care of Physicians. There are many illness like vaginitis, bladder infections etc that do not require MD care- just look at what is happening in Bush Alaska where lay people get training to treat these problems. In the event of a catastrophic event like an earthquake, major fire NP will be an invaluable assets to caring for the injured. The State licenses a number of health care providers - these should be included in the expanded definition for this Samaritan law.

Alaska Nurses Association

v/ 907-274-0827
f/ 907-272-0292

2207 East Tudor Rd, Suite 34
Anchorage, AK 99507-1069
www.aknurse.org
aknurse@aknurse.org

May 9, 2003

Honorable Paul Seaton
Alaska State Legislator
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: HB 260 – Liability waiver for Volunteer Health Care Providers

Dear Representative Seaton;

The Alaska Nurses Association appreciates your sponsorship of House Bill 260, a waiver of liability for health care providers who are volunteering their services.

This bill is very important to the continued participation of nurses as volunteers, especially in connection with disaster preparedness and response. Since launching the Alaska Nurse Alert System in April, we have had over 150 Licensed Practical Nurses, Registered Nurses, and Advanced Nurse Practitioners volunteer to train and provide services in immunization clinics, Red Cross Shelters and the Anchorage Medical Reserve Corps.

By providing a limited informed consent liability waiver, the State would enable more health care providers to consider donating their much needed skills in times of need, without the volunteers having to face frivolous lawsuits.

Our one concern about this bill is that the current language appears to limit the coverage to traditional settings of healthcare delivery and does not appear to cover non-traditional situations that are possible during a disaster response. We would like the bill to clarify that it also covers a health care provider who volunteers services at such sites as a Red Cross Shelter or a temporary trauma unit (for example if a hospital was incapacitated and a temporary trauma unit was needed.)

Thank you, again, for your support on this critical matter. We hope for speedy passage of HB 260.

Sincerely,

Camille Soleil

Camille Soleil
Executive Director

THE ALASKA ASSOCIATION OF NATUROPATHIC PHYSICIANS
11238 EAGLE RIVER ROAD, SUITE 254 • EAGLE RIVER, ALASKA • 99577-7228
PHONE: 907-694-5522 • FAX: 907-694-5524

May 7, 2003

Representative Paul Seaton
Capital Building
Juneau, Alaska 99811

Dear Representative Seaton:

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

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

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

Sincerely,

Madeleine Morrison-Young N.D.
AKANP President

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

May 6, 2003

Honorable Paul Seaton
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Seaton;

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

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

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

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

Sincerely,

Patricia Senner RN
President, Alaska Nurses Association

HB 260

COVENANT HOUSE ALASKA

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

Dear Representative Seaton:

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

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

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

Covenant House operate multiple programs the include:

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

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

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

Sincerely,
Deirdre Phayer

Deirdre A. Phayer
Executive Director

MAILING: P.O. BOX 104640, ANCHORAGE, ALASKA 99510-4640
(907) 272-1255

Alaska State Hospital & Nursing Home Association

We're helping people care for people!

April 28, 2003

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

Dear Representative Anderson:

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

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

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

If you have questions, please contact me.

Sincerely yours,

Laraine L. Derr

Laraine L. Derr, President/CEO

426 Main Street, Juneau, Alaska 99801
Phone: 907-586-1790 • Fax: 907-463-3573 • Web: ashnha.com

Alaska Nurses Association

t/ 907-274-0827
f/ 907-272-0292

2207 East Tudor Rd, Suite 34
Anchorage, AK 99507-1069
www.aknurse.org
aknurse@aknurse.org

Honorable Tom Anderson
Chair of House Labor and Commerce Committee
Alaska State Legislator
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: HB 260 – Liability waiver for Volunteer Health Care Providers

Dear Representative Anderson;

The Alaska Nurses Association supports the passage of House Bill 260, a waiver of liability for health care providers who are volunteering their services. This bill is very important to the continued participation of nurses as volunteers, especially in connection with disaster preparedness and response.

Our one concern about this bill is that the current language appears to limit the coverage to traditional settings of healthcare delivery and does not appear to cover non-traditional situations that are possible during a disaster response. We would like the bill to clarify that it also covers a health care provider who volunteers services at such sites as a Red Cross Shelter or a temporary trauma unit (for example if a hospital was incapacitated and a temporary trauma unit was providing services.)

Thank you for your work on this critical matter. We hope for, and will support, speedy passage of this bill.

Sincerely,

Camille Soleil

Camille Soleil
Executive Director

cc: House Labor and Commerce Committee Members

AARP Alaska

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

April 28, 2003

RE: HB 260 (Seaton)–Support

Dear Chair Anderson:

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

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

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

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

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

3601 C Street, Suite 1420 | Anchorage, AK 99503 | 907-341-2277 | 907-341-2270 fax | 1-877-434-7598 TTY
James G. Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
3009 Northwood Street
Anchorage, AK 99517-1871
907.245.5259 voice
907.245.5279 fax
ffmas@aurora.uaf.edu

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

Justification for amendment to HB 260

The reason for adding Dental Hygienists to those covered by the protection offered in this legislation is the following:

- Dental Hygienists are also health care providers by the insurance definition
- While they are covered by the dentists malpractice insurance if they are practicing under his license, there are instances where they would be required to carry their own malpractice insurance, and are also eligible to carry their own malpractice insurance above what is covered by the supervising dentist.
- Instances this would apply to an RDH:
    - A nursing home setting
    - Administering fluoride
    - Placing sealants
    - Conducting oral health screenings
    - Providing cleanings or periodontal therapy

Remote areas are currently the most underserved with regards to dental health care. Dental Hygienists provide a number of preventive and therapeutic services different than restorative dentistry. I believe the addition of this profession to the list of those covered will encourage their charitable participation.

HB

273

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 16, 2004 FURTHER REFERRALS:

Date of Committee Action: March 22, 2004

The JUDICIARY Committee considered: SSHB 273

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 273 LIABILITY:RECREATIONAL ACTIVITY

"An Act relating to the right of a parent to waive a child's claim of negligence against a provider of sports or recreational activities."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* SSHB 273 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [X] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW				✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	SAMUELS	✓			
	Holm	✓			
	Greenberg			✓	
	Ogg	✓			
Chair:	McGuire	✓			
Chair:					

HOUSE COMMITTEE REPORT

5-7-03

(7)

Date Referred to Committee: April 16, 2003 **FURTHER REFERRALS: Judiciary**

Date of Committee Action: _____

The TRANSPORTATION Committee considered: **HB 273**

HOUSE BILL NO. 273 **LIABILITY:RECREATIONAL ACTIVITY/BOATS/AIR**

"An Act relating to civil liability for boat owners, for commercial recreational activities, and for guest passengers on an aircraft or watercraft; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

waived

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Chair:					
Chair:					

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB273-LAW-T&WC-3-21
Bill Version: HB273
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act relating to the rights of a parent to waive a child's claim of negligence against a provider of sports..."
RDU CIVIL
Component Torts & Workers' Compensation
Sponsor Representative McGuire
Requester House Judiciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill allows a parent to waive prospective claims of negligence by a child against providers of sports or recreational activities in Alaska. It excepts cases that allege willful, wanton, reckless, or grossly negligent acts or omissions.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhetee, Director
Phone 465-3673
Division Administrative Services
Date/Time 3/21/04 10:58 AM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 3/21/2004
Agency Department of Law

(Revised 12/2003 OMB)

Alaska State Legislature

Session
State Capitol Building, Room 118
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax 9907) 269-0249

Chair, Judiciary Committee

Vice-Chair, House Committee on
Economic Development,
Trade and Tourism

Member
Oil & Gas Committee

Representative Lesil McGuire

House District 28

Sponsor Statement
SSHB 273

"An Act relating to the right of a parent to waive a child's claim of negligence against a provider of sports or recreational activities."

Children in the State of Alaska should enjoy the maximum opportunity to participate in sports or recreational activities, despite the presence of risk in such activities. Public, private, and nonprofit entities that provide sports or recreational activities to children need and deserve a measure of protection against lawsuits, and without that measure of protection, may be unwilling or unable to provide such activities. Parents have a fundamental right and responsibility to make decisions concerning the care, custody, and control of their children. The law has long presumed that parents are in the best position to determine what is in the best interests of their children. Parents are accustomed to making conscious choices on behalf of their children every day regarding the benefits and risks of various activities available to their children. Such parental choices, when made voluntarily upon consideration of appropriate information, should not be ignored, but rather should be afforded the same dignity and legal effect as other parental choices, including choices regarding education and medical treatment. SSHB 273 furthers these truisms and encourages the availability and affordability of sports and recreational activities to children by recognizing the right of a parent to choose to release, on behalf of his or her child, prospective negligence-based claims that the child may accrue against the provider of such activities.

As a result of a recent Colorado Supreme Court case, Cooper v. Aspen Skiing Co., wherein the Court refused to uphold or recognize the mother of a seventeen year old skier's signature on a release document used in a juvenile race camp program, the outdoor industry has been trying to respond to the myriad problems and potentially severe ramifications created by this holding. The faulty rationale behind Colorado and other western states' decisions has been the legal premise that, since a minor is not capable of releasing his or her own rights to sue because a minor is not legally competent to contract and release documents that are contractual in nature, that a parent should not be capable of releasing on behalf of the minor child.

This erroneous rationale is contrary to a body of authority derived from Midwestern and Eastern states, which find that parents do specifically have the legally binding right to sign release documents on behalf of their minor children. In these states, the courts have articulately stated that prohibiting a parent's right to release or waive on behalf of a minor child would detrimentally chill school, scouting, athletic, and similar type programs from being able to offer

athletic, recreational, and other extra-curricular programs. There exists a well-settled legal history of recognizing parental rights regarding making decisions on behalf of minor children regarding education and medical treatment. To not extend the same logic to recreational activities in Alaska would be legally illogical and unfair.

The practical consequences of not recognizing this parental authority are profound. If an outdoor recreation company is found to have been operating without a valid release/waiver document, either insurance coverage will not be offered or will be voided. Very few programs will stay in business without proper insurance in place. As an outdoor recreation-oriented and supported state, Alaska simply cannot stand by and watch this type of result. The Alaska Supreme Court has gone in the direction of requiring pre-recreational release/waiver documents to be clearly and unambiguously drafted and has expressed concerns over the specificity of the language used in those documents. Given the Court's careful focus on this subject, along with the developing line of authority in the western states, it is important that the legislature address this matter before the court system is called upon to rule on whether it is legal for a parent or legal guardian to sign a release document on behalf of a minor child.

In addition, it is important to note that HB 273 would not defeat in any way a parent or guardian's right to sue an operator that is not providing a safe service or program. An ordinary release/waiver document provides only a release to causes of action sounding in negligence. Claims of gross negligence, reckless, or intentional misconduct are never released in a release/waiver document. It is also crucial to remember that, with respect to pre-recreation releases, these documents regard activities that are totally voluntary in nature; they are activities that regard personal choice for the participant. As such, participants and parents of participants should have the freedom to decide which sports or recreational activities they want to participate in or that they want to have their children participate in and should have the freedom to contract regarding these activities. That fundamental right to make choices regarding a child's activities is what is being protected here; the bill does not negate a parent's rights, it in fact strengthens them.

23-LS0966\I
Bullock
3/19/04

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 273( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MCGUIRE

A BILL

FOR AN ACT ENTITLED

"An Act relating to the right of a parent to waive a child's claim of negligence against a provider of sports or recreational activities."

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

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

FINDINGS AND INTENT. (a) The legislature finds that

(1) children of this state should enjoy the maximum opportunity to participate in sports or recreational activities despite the presence of risk in those activities;

(2) public, private, and nonprofit entities that provide sports or recreational activities to children of the state need and deserve a measure of protection against lawsuits and, without that measure of protection, may be unwilling or unable to provide the activities;

(3) parents have a fundamental right and responsibility to make decisions concerning the care, custody, and control of their children;

(4) the law has long presumed that parents are in the best position to determine

what is in the best interests of their children;

(5) parents are accustomed to making conscious choices on behalf of their children every day regarding the benefits and risk of various activities available to their children; and

(6) parental choices, when made voluntarily upon consideration of appropriate information, should not be ignored, but should be afforded the same dignity and legal effect as other parental choices, including choices regarding education and medical treatment.

(b) It is the intent of this Act to

(1) encourage the availability and affordability of sports or recreational activities to children in this state by recognizing the right of a parent to choose to release, on behalf of the parent's child, prospective negligence-based claims that the child may accrue against the provider of a sports or recreational activity;

(2) encourage the broad construction of the Act to shield providers of sports or recreational activities from liability for the negligence-based claims of a child that were released through a waiver or release-style document executed by the child's parent;

(3) ensure that this Act is not construed to permit a parent to release or waive claims of a child against a provider of a sports or recreational activity that allege wilful, wanton, reckless, or grossly negligent acts or omissions.

*** Sec. 2.** AS 09.65 is amended by adding a new section to read:

Sec. 09.65.292. Parental waiver of child's negligence claim against provider of sports or recreational activity. (a) Except as provided in (b) of this section, a parent may, on behalf of the parent's minor child, release or waive the child's prospective claim for negligence against the provider of a sports or recreational activity in which the child participates. The release or waiver must be in writing and shall be signed by the child's parent.

(b) A parent may not release or waive a minor child's prospective claim against a provider of a sports or recreational activity for wilful, wanton, reckless, or grossly negligent acts or omissions.

(c) In this section,

(1) "parent" means

(A) the child's natural or adoptive parent;

(B) the child's guardian;

(C) a person who is acting in the place of the child's natural or adoptive parent, including a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare;

(D) the child's surrogate parent who has been appointed under AS 14.30.325; or

(E) a representative of the Department of Health and Social Services if the child is in the legal custody of the state;

(2) "provider" has the meaning given in AS 09.65.290;

(3) "sports or recreational activity" has the meaning given in AS 09.65.290.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to acts or omissions that occur on or after the effective date of sec. 2 of this Act.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB273-LAW-T&WC-3-21
Bill Version: HB273
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act relating to the rights of a parent to waive a child's claim of negligence against a provider of sports..."
RDU CIVIL
Component Torts & Workers' Compensation
Sponsor Representative McGuire
Requester House Judiciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill allows a parent to waive prospective claims of negligence by a child against providers of sports or recreational activities in Alaska. It excepts cases that allege willful, wanton, reckless, or grossly negligent acts or omissions.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhetee, Director
Phone 465-3673
Division Administrative Services
Date/Time 3/21/04 10:58 AM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 3/21/2004
Agency Department of Law

(Revised 12/2003 OMB)

1 of 1 DOCUMENT

Amanda Osborn, Joan Osborn, and Richard Osborn, Plaintiffs-Appellants, Unity Health Plans and Wisconsin Physicians Service Insurance Corp., Subrogated-Plaintiffs, v. Cascade Mountain, Inc. and American Home Assurance Company, Defendants-Respondents.

Appeal No. 01-3461

COURT OF APPEALS OF WISCONSIN, DISTRICT FOUR

2003 WI App 1; 259 Wis. 2d 481; 655 N.W.2d 546; 2002 Wisc. App. LEXIS 1216

November 7, 2002, Decided
November 7, 2002, Filed

NOTICE: [*1] PURSUANT TO WIS. STAT. RULE 809.23(3) OF APPELLATE PROCEDURE, AN UNPUBLISHED OPINION IS OF NO PRECEDENTIAL VALUE AND FOR THIS REASON MAY NOT BE CITED IN ANY COURT OF THIS STATE AS PRECEDENT OR AUTHORITY EXCEPT TO SUPPORT A CLAIM OF RES JUDICATA, COLLATERAL ESTOPPEL OR LAW OF THE CASE.

PRIOR HISTORY: APPEAL from a judgment of the circuit court for Columbia County: JAMES O. MILLER, Judge. Cir. Ct. No. 99-CV-252.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs, a child and her parents, sued defendants, a ski resort and its insurer, when the child was injured while skiing at the resort; they alleged that defective equipment rented from the resort caused the child's injuries. Finding that a signed release form rendered the resort immune from liability, the Circuit Court for Columbia County, Wisconsin, granted the resort's motion for summary judgment. The child and her parents appealed.

OVERVIEW: Before the child's ski trip, her mother signed a rental agreement and release of liability form. On review, the child and her parents contended the release was void on contract principles and public policy grounds. Applying the Richards test, the appellate court found the release was enforceable as: the release's two purposes were clearly and unmistakably identified in its title; the release was not unduly broad or all-inclusive as it expressly and unmistakably restricted itself to those using the resort's equipment; and it could not be said that the agreement offered little or no opportunity for negotiation or free and voluntary bargaining. The liability release was also enforceable under the Yauger test as: it clearly, unambiguously, and unmistakably informed the child and her parents that they were agreeing not to pursue a claim against the resort for injuries resulting from the use of rented equipment; and the title of the release, if nothing else, clearly informed the them of what they were signing. Although a second release that the child signed was invalid because she was a minor, the issue was irrelevant as the first release signed by the mother remained in effect.

OUTCOME: The judgment was affirmed.

LexisNexis (TM) HEADNOTES - Core Concepts:

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Affirmative Defenses
[HN1] A parent may waive a child's claim.

Torts > Negligence > Defenses > Exculpatory ClausesCivil Procedure > Appeals > Standards of Review > Standards Generally
[HN2] An exculpatory contract may be void on public policy grounds or under rules governing contracts. In either case, the issue is one of law. In deciding it, the appellate court owes no deference to the trial court.

Torts > Negligence > Defenses > Exculpatory Clauses
[HN3] The Rogers three-part public policy test to determine the validity of a liability release asks: (1) whether it serves two purposes, neither clearly identified nor distinguished; (2) whether it is extremely broad and all-inclusive; and (3) whether it is a standardized form offering little or no opportunity for negotiation or free and voluntary bargaining. None of these factors alone necessarily invalidates the release; however, taken together they demand the conclusion that the contract is void as against public policy.

Torts > Negligence > Defenses > Exculpatory Clauses
[HN4] The two-part Yauger test for determining the validity of a liability release asks: (1) whether the release clearly, unambiguously, and unmistakably informed the signer of what was waived; and (2) whether the form in its entirety alerted the signer to the nature and significance of what was being signed.

JUDGES: Before Vergeront, P.J., Dykman and Deininger, JJ.

OPINION: P1. PER CURIAM. Amanda Osborn and her parents, Joan and Richard Osborn, appeal from a summary judgment dismissing their personal injury action against Cascade Mountain, Inc., and its insurer. The Osborns sued for injuries Amanda, then age twelve, received while skiing at Cascade Mountain. The dispositive issue is whether the Osborns' claim is subject to an enforceable release of liability agreement signed by Joan Osborn. We conclude that it is, and therefore affirm.

P2. The Osborns allege that a defective ski-boot-binding system, on ski equipment rented from Cascade Mountain, caused the injury to Amanda. However, before Amanda's ski trip, Joan signed a document entitled "Rental Permission Agreement and Release of Liability." That document provided:

> I understand and am aware that skiing is a **HAZARDOUS** activity. I understand that the sport of skiing and the **[*2]** use of this ski equipment involve a risk of injury to any and all parts of my child's body. I hereby agree to freely and expressly assume and accept any and all risks of injury or death to the user of this equipment while skiing.
>
> I understand that the ski equipment being furnished forms a part of or all of a ski-boot-binding system which will **NOT RELEASE** at all times or under all circumstances, and that it is not possible to predict every situation in which it will or will not release, and that its use cannot guarantee my child's safety or freedom from injury while skiing. I further agree and understand that this ski-boot-binding system may reduce but does not eliminate the risk of injuries to the bottom one-third of my child's lower leg. However, I agree and understand that this ski-boot-binding system does **NOT** reduce the risk of injuries to my child's knee or any other part of my child's body.
>
> I agree that I will release Cascade Mountain from any and all responsibility or liability for injuries or damages to the user of the equipment listed on this form, or to any other person. I agree **NOT** to make a claim against or sue Cascade Mountain for injuries or damages **[*3]** relating to skiing and/or the use of this equipment. I agree to release Cascade Mountain from any such responsibility, whether it results from the use of this equipment by the user, or whether it arises from any **NEGLIGENCE** or other liability arising out of the maintenance, selection, mounting or adjustment of this ski equipment.
>
> ...
>
> I have carefully read this agreement and release of liability and fully understand its contents. I am aware that this is a release of liability and a contract between my child, myself and Cascade Mountain and I sign it of my own free will.

P3. Amanda fell twice while skiing. Amanda had signed a second release agreement similar to the one previously signed by her mother. The second fall caused her injuries.

P4. Cascade Mountain moved for summary judgment, alleging that the above-quoted release rendered it immune from liability. The trial court agreed and granted summary judgment. On appeal, the Osborns contend that the release is void on contract principles and public policy grounds. n1

n1 It is recognized that [HN1] a parent may waive a child's claim, ***Fire Ins. Exch. v. Cincinnati Ins. Co.***, *2000 WI App 82, P24, 234 Wis. 2d 314, 610 N.W.2d 98*, and the Osborns do not claim otherwise here.

[*4]

P5. [HN2] An exculpatory contract may be void on public policy grounds or under rules governing contracts. *See* ***Werdehoff v. General Star Indem. Co.***, *229 Wis. 2d 489, 499-500, 600 N.W.2d 214 (Ct. App. 1999).* In either case, the issue is one of law. ***Yauger v. Skiing Enters., Inc.***, *206 Wis. 2d 76, 80, 557 N.W.2d 60 (1996).* In deciding it, we owe no deference to the trial court. *See* ***M & I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.***, *195 Wis. 2d 485, 497, 536 N.W.2d 175 (Ct. App. 1995).*

P6. In ***Richards v. Richards***, *181 Wis. 2d 1007, 1011, 513 N.W.2d 118 (1994),* [HN3] the supreme court applied a three-part public policy test to determine the validity of a liability release: first, whether it serves two purposes, neither clearly identified nor distinguished; second, whether it is extremely broad and all-inclusive; and third, whether it is a standardized form offering little or no opportunity for negotiation or free and voluntary bargaining. "None of these factors alone would necessarily invalidate the release; however, taken together they demand the conclusion that the contract is void as against public [*5] policy." ***Id.***

P7. In ***Yauger***, [HN4] the court applied a two-part test: first, examining whether the release clearly, unambiguously, and unmistakably informed the signer of what was waived; and second, whether the form in its entirety alerted the signer to the nature and significance of what was being signed. ***Yauger***, *206 Wis. 2d at 84.* Here, the Osborns contend that Cascade Mountain's liability release must be deemed void under both the ***Richards*** and the ***Yauger*** tests.

P8. Cascade Mountain's liability release is not void under the ***Richards*** test. The release's two purposes are clearly and unmistakably identified in its title, "Rental Permission Agreement and Release of Liability." That clear enunciation of purpose is not remotely confusing. Second, the release is not unduly broad or all-inclusive. It expressly and unmistakably restricts itself to those using its equipment: "I agree to release Cascade Mountain from [liability], whether it results from the *use of this equipment by the user*, or whether it arises from any NEGLIGENCE or other *liability arising out of the maintenance, selection, mounting or adjustment* [*6] *of this ski equipment.*" (Emphasis added.) Under any reasonable view, that language does not present an overly or unduly broad and all-inclusive release of liability. Third, it cannot be said that the agreement offered little or no opportunity for negotiation or free and voluntary bargaining. The release applied only to those who rented equipment from Cascade Mountain. Amanda, or any other skier, was permitted to ski at Cascade Mountain without signing the release if the person chose to obtain equipment elsewhere.

P9. The liability release is also enforceable under the ***Yauger*** test. The release clearly, unambiguously, and unmistakably informed the Osborns that they were agreeing not to pursue a claim against Cascade Mountain for injuries resulting from the use of rented Cascade Mountain ski equipment. Second, the title of the release, if nothing else, clearly informed the Osborns of what they were signing. In ***Yauger***, the court held a liability release void in significant part because it was titled "APPLICATION." *See* ***Yauger***, *206 Wis. 2d at 86-87.* The release here, unambiguously entitled a "Release of Liability," removed that problem. Also [*7] in ***Yauger***, only part of the release document actually dealt with the subject of liability. *See* ***id.*** *206 Wis. 2d at 79.* Here, virtually every sentence of the release plainly and unmistakably addresses the issues of injury and liability for injury. Again, the facts are far removed from those that persuaded the court in ***Yauger*** to declare the release void. Additionally, although the Osborns argue otherwise, the reference to "Cascade Mountain" as the released party is not ambiguous. No one reading the release form could reasonably understand it as referring to anything other than Cascade Mountain, Inc.

P10. The Osborns also contend that the release Amanda signed was not valid because she was a minor. That is true, but irrelevant. The first release, signed by Joan, remained in effect.

By the Court.-Judgment affirmed.

This opinion will not be published. Wis. Stat. Rule 809.23(1)(b)5 (1999-2000).

1 of 4 DOCUMENTS

ZIVICH ET AL., APPELLANTS, v. MENTOR SOCCER CLUB, INC., APPELLEE, ET AL.

No. 97-1128

SUPREME COURT OF OHIO

82 Ohio St. 3d 367; 1998 Ohio 389; 696 N.E.2d 201; 1998 Ohio LEXIS 1832

April 21, 1998, Submitted
June 29, 1998, Decided

PRIOR HISTORY: [*1]**

APPEAL from the Court of Appeals for Lake County, No. 95-L-184.

In May 1993, appellant Pamela Zivich registered her seven-year-old son, appellant Bryan Zivich, for soccer with Mentor Soccer Club, Inc. ("Club"), appellee, for the 1993-1994 season. The Club is a nonprofit organization that provides children in the greater Mentor area with the opportunity to learn and play soccer. The Club is primarily composed of parents and other volunteers who provide their time and talents to help fulfill the Club's mission. The Club's registration form, signed by Mrs. Zivich, contained the following language:

"Recognizing the possibility of physical injury associated with soccer and for the Mentor Soccer Club, and the USYSA [United States Youth Soccer Association] accepting the registrant for its soccer programs and activities, I hereby release, discharge and/or otherwise indemnify the Mentor Soccer Club and the USYSA, its affiliated organizations and sponsors, their employees, and associated personnel, including the owners of the fields and facilities utilized by the Soccer Club, against any claim by or on behalf of the registrant as a result of the registrant's participation in the Soccer [***2] Club ***.".

On October 7, 1993, Bryan attended soccer practice. During practice, the boys participated in an intrasquad scrimmage. Bryan's team won. After the scrimmage, Bryan ran to his father, who was standing on the sidelines and talking with the coach. Excited about the win, Bryan, unsupervised, jumped on the goal and swung back and forth on it. The goal, which was not anchored down, tipped backward. Bryan fell, and the goal came down on his chest, breaking three of his ribs and collarbone, and severely bruising his lungs.

In January 1995, Bryan's parents, Philip and Pamela Zivich, appellants, sued the Club n1 for injuries sustained by Bryan. The complaint alleged negligence and reckless misconduct. n2 The Club moved for summary judgment on the ground that the release executed by Bryan's mother barred the claims. The trial court agreed and granted the Club's summary judgment motion.

n1 Appellants also sued the city of Mentor, which owned the park where practice was held. The city settled with appellants and this court dismissed it from the lawsuit in December 1997. *80 Ohio St. 3d 1474, 687 N.E.2d 471.*

n2 Other claims were asserted, but they are not at issue here. [***3]

The court of appeals affirmed, albeit partly on different grounds. In Judge Nader's majority opinion, in which Judge Christley "reluctantly" joined, he said that the exculpatory agreement was effective against Mr. and Mrs. Zivich, but not against Bryan. Thus, while the trial court was correct to grant summary judgment, Bryan still had a cause of action which a guardian could bring on his behalf or which he could assert once he gained the age of majority. Judge Nader

acknowledged the public policy in favor of enforcing the agreement against Bryan, but found that that decision was best left to the General Assembly or this court. Additionally, Judge Nader's majority opinion found no evidence to support the willful and wanton misconduct claim. Concurring in the result only, Judge Ford opined that the public policy of Ohio favors enforcement of the agreement against Bryan as well as his parents. Judge Christley "wholehearted[ly] endorse[d]" the policy advocated by Judge Ford, but agreed with Judge Nader that the issue should be resolved by the General Assembly or this court.

The cause is now before this court pursuant to the allowance of a discretionary appeal.

DISPOSITION:

Judgment affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs, parents of injured minor child, appealed a judgment from the Court of Appeals for Lake County (Ohio), which affirmed the grant of summary judgment to defendant soccer club, on the ground that the release executed by plaintiff mother barred the claims for negligence and reckless misconduct in a personal injury action.

OVERVIEW: The parents of injured minor child, challenged the appellate court's judgment, which affirmed the grant summary judgment to the soccer club, on the ground that the release executed by the child's mother barred the claims for negligence and reckless misconduct in a personal injury action. The appellate court's judgment was affirmed. The court held that the injury was a natural incident of the minor child's participation in soccer practice and fell within the ambit of the release. The court ruled that the exculpatory agreement executed by plaintiff mother on behalf of her minor son released the soccer club from liability for the minor child's claims and plaintiffs' claims as a matter of law. Summary judgment was appropriately entered in the soccer club's favor. Further, plaintiffs had the authority to bind their minor child to exculpatory agreements and the agreement could not be disaffirmed by the minor child on whose behalf it was executed.

OUTCOME: The court affirmed the appellate court's decision affirming the grant of summary judgment in favor of the soccer club.

LexisNexis (TM) HEADNOTES - Core Concepts:

Civil Procedure > Summary Judgment > Burdens of Production & ProofCivil Procedure > Summary Judgment > Summary Judgment Standard
[HN1] Pursuant to *Fed. R. Civ. P. 56*, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.

Torts > Negligence > Defenses > Exculpatory Clauses
[HN2] The general rule is that releases from liability for injuries caused by negligent acts arising in the context of recreational activities are enforceable.

Torts > Negligence > Defenses > Exculpatory Clauses
[HN3] Parents have the authority to bind their minor children to exculpatory agreements in favor of volunteers and sponsors of nonprofit sport activities where the cause of action sounds in negligence. These agreements may not be disaffirmed by the child on whose behalf they were executed.

Torts > Negligence > Defenses > Exculpatory Clauses

[HN4] Parents may release their own claims arising out of the injury to their minor children.

SYLLABUS: [***4]

1. Parents have the authority to bind their minor children to exculpatory agreements in favor of volunteers and sponsors of nonprofit sport activities where the cause of action sounds in negligence. These agreements may not be disaffirmed by the child on whose behalf they were executed.

2. Parents may release their own claims arising out of injury to their minor children.

COUNSEL: Svete, McGee & Carrabine Co., L.P.A., and James W. Reardon, for appellants.

Reminger & Reminger Co., L.P.A., George S. Coakley, Laura M. Sullivan and Brian D. Sullivan, for appellee.

JUDGES: FRANCIS E. SWEENEY, SR., J. MOYER, C.J., RESNICK, COOK and LUNDBERG STRATTON, JJ., concur. DOUGLAS and PFEIFER, JJ., concur in judgment only. COOK, J., concurring.

OPINIONBY: FRANCIS E. SWEENEY

OPINION:

[*369] [203] FRANCIS E. SWEENEY, SR., J.** We are asked to decide whether the exculpatory agreement n3 executed by Mrs. Zivich on behalf of her minor son released the Club from liability for the minor child's claims and the parents' claims as a matter of law. We find that the exculpatory agreement is valid as to all claims. Summary judgment was appropriately entered in the **[**204]** Club's favor. The judgment of the court of appeals is affirmed. [***5]

n3 The words "release," "waiver" and "exculpatory agreement" have been used interchangeably by the courts. These defenses are based on contract principles. "Exculpatory agreements, also called 'releases' or 'waivers,' are basically written documents in which one party agrees to release, or 'exculpate,' another from potential tort liability for future conduct covered in the agreement." King, Exculpatory Agreements for Volunteers in Youth Activities -- The Alternative to "Nerf" Tiddlywinks (1992), *53 Ohio St. L.J. 683.*

[HN1] Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have **[*370]** the evidence construed most strongly in his favor. *Horton v. Harwick Chem. Corp. (1995), 73 Ohio St. 3d 679, 653 N.E.2d 1196,* paragraph three of the syllabus. The party moving **[***6]** for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt (1996), 75 Ohio St. 3d 280, 292-293, 662 N.E.2d 264, 273-274.*

Appellants argue that since practice had concluded, the injury occurred outside the scope of the exculpatory agreement. We find this contention meritless. We quote, with approval, Judge Nader's majority opinion rejecting this argument: "It should not come as any great surprise for a parent to learn that, during a period of inactivity at a soccer practice, his or her child fiddled with loose equipment, climbed on nearby bleachers, or scaled the goal. It should be equally clear that coaches supervising the practices will not be able to completely prevent such unauthorized activity, as some degree of bedlam is unavoidable, when children of tender years are brought together to play a game, and when their emotions are aroused. The risk of a seven[-]year[-]old child climbing on a goal shortly after winning an intrasquad scrimmage is, therefore, a natural incident of his participation in soccer practice. Thus, Bryan's injuries fall within the ambit of the **[***7]** release."

We next consider whether the release is valid. With respect to adult participants, [HN2] the general rule is that releases from liability for injuries caused by negligent acts arising in the context of recreational activities are enforceable. *Bowen v. Kil-Kare, Inc. (1992), 63 Ohio St. 3d 84, 90, 585 N.E.2d 384, 390; Simmons v. Am. Motorcyclist Assn., Inc. (1990), 69 Ohio App. 3d 844, 846 591 N.E.2d 1322, 1324; Cain v. Cleveland Parachute Training Ctr.*

(1983), 9 Ohio App. 3d 27, 9 Ohio B. Rep. 28, 457 N.E.2d 1185. These holdings recognize the importance of individual autonomy and freedom of contract. Here, however, the exculpatory agreement was executed by a parent on behalf of the minor child.

Appellants contend that the release is invalid on public policy grounds. In support of their argument, they refer to the general principle that contracts entered into by a minor, unless for "necessaries," are voidable by the minor, once the age of majority is reached, or shortly thereafter. *Restatement of the Law 2d, Contracts (1979), Sections 7*, 12 and 14, and Comment *f* to Section 12. Appellants urge us to apply the seminal case of *Wagenblast v. Odessa School Dist. No. 105-157-166 J* [***8] (1988), 110 *Wash. 2d 845, 851-852, 758 P.2d 968, 971*, where the Washington Supreme Court relied upon *Tunkl v. Regents of Univ. of California (1963), 60 Cal. 2d 92, 32 Cal. Rptr. 33, 383 P.2d 441*, and set forth a six-part test to determine whether a particular release violates public policy. The Club, however, argues that the proper focus is not whether the release violates public policy; but rather that public policy itself justifies the enforcement of this agreement. [*371] This is also the position advocated by Judge Ford in his concurring opinion. We agree with the Club and Judge Ford. n4

n4 The majority opinion stated that an intermediate appellate court was not the appropriate forum to decide public policy. However, in a common-law system, a judicial decision declaring the rights of the parties can be based on several grounds, one of which is public policy. Hopkins, Public Policy and the Formation of a Rule of Law, *37 Brooklyn L.Rev. (1971) 323, 330.* Therefore, public policy is an appropriate device to be used by an appellate court to decide a case.

[***9]

The General Assembly has enacted statutes designed to encourage landowners to open their land to public use for recreational activities without fear of liability. *Moss v. Dept. of Natural Resources (1980), 62 Ohio St. 2d 138, 142, 16 Ohio Op. 3d 161, 164, 404 N.E.2d 742, 745.* See *R.C. 1533.18* and 1533.181, which together provide that private [**205] entities that hold land open for recreational use without charge are immune from tort liability for any injury caused by a recreational user. Then, in 1996, *R.C. 2305.381* and 2305.382 n5 were enacted, effective January 27, 1997. Together, these statutes accord qualified immunity to unpaid athletic coaches and sponsors of athletic events Hence, the General Assembly has articulated its intent of encouraging the sponsorship of sports activities and protecting volunteers. However, *R.C. 2305.381* and 2305.382 were enacted after this cause of action arose. Thus, our role is to render a decision that fills the gap left open before the effective date of the statutory enactments.

n5 Am.Sub.H.B. No. 350, 146 Ohio Laws, Part II, 3867, 3931. Our statutory law is in line with the many "volunteer statutes" passed by other states. See McCaskey and Biedzynski, A Guide to the Legal Liability of Coaches for a Sports Participant's Injuries (1996), 6 Seton Hall J. of Sport L. 7, 62-63 (citing statutes).

[***10]

It cannot be disputed that volunteers in community recreational activities serve an important function. Organized recreational activities offer children the opportunity to learn valuable life skills. It is here that many children learn how to work as a team and how to operate within an organizational structure. Children also are given the chance to exercise and develop coordination skills. Due in great part to the assistance of volunteers, nonprofit organizations are able to offer these activities at minimal cost. In fact, the American Youth Soccer Organization pays only nineteen of its four hundred thousand staff members. The Little League pays only seventy of its 2.5 million members. See King, Exculpatory Agreements for Volunteers in Youth Activities -- The Alternative to "Nerf" Tiddlywinks (1992), *53 Ohio St.L.J. 683, 739, fns. 208 and 209.* Clearly, without the work of its volunteers, these nonprofit organizations could not exist and scores of children would be without the benefit and enjoyment of organized sports. Yet, the threat of liability strongly deters many individuals from volunteering for nonprofit organizations. Developments in the Law -- Nonprofit Corporations -- Special [***11] Treatment and Tort Law (1992), *105 Harv. L. Rev. 1667, 1682.* Insurance for the organizations is not the answer, because individual volunteers [*372] may still find themselves potentially liable when an injury occurs. Markoff, Liability Threat Looms: A Volunteer's Thankless Task (Sept. 19, 1988), 11 Natl.L.J. 1, 40. Thus, although volunteers offer their services without receiving any financial return, they place their personal assets at risk. See Developments, *supra, 105 Harv.L.Rev. at 1692.*

Therefore, faced with the very real threat of a lawsuit, and the potential for substantial damage awards, nonprofit organizations and their volunteers could very well decide that the risks are not worth the effort. Hence, invalidation of exculpatory agreements would reduce the number of activities made possible through the uncompensated services of volunteers and their sponsoring organizations.

Therefore, we conclude that although Bryan, like many children before him, gave up his right to sue for the negligent acts of others, the public as a whole received the benefit of these exculpatory agreements. Because of this agreement, the Club was able to offer affordable recreation and to continue to do [***12] so without the risks and overwhelming costs of litigation. Bryan's parents agreed to shoulder the risk. Public policy does not forbid such an agreement. In fact, public policy supports it. See *Hohe v. San Diego Unified School Dist. (1990), 224 Cal. App. 3d 1559, 1564, 274 Cal. Rptr. 647, 649.* Accordingly, we believe that public policy justifies giving parents authority to enter into these types of binding agreements on behalf of their minor children. We also believe that the enforcement of these agreements may well promote more active involvement by participants and their families, which, in turn, promotes the overall quality and safety of these activities. See King, *supra, 53 Ohio St. L.J. at 709.*

Another related concern is the importance of parental authority. Judge Ford's concurring opinion also embraces this notion. Citing *In re Perales (1977), 52 Ohio St. 2d 89, 96, 6 Ohio Op. 3d 293, 296-297, 369 N.E.2d 1047, 1051, fn. 9; In re Murray (1990), 52 Ohio St. 3d 155, 157, 556 N.E.2d 1169, 1171;* and [**206] *State ex rel. Heller v. Miller (1980), 61 Ohio St. 2d 6, 8, 15 Ohio Op. 3d 3, 4-5, 399 N.E.2d 66, 67,* Judge Ford found that the right of a parent to raise his or her child is a natural [***13] right subject to the protections of due process. Additionally, parents have a fundamental liberty interest in the care, custody and management of their offspring. Further, the existence of a fundamental, privacy-oriented right of personal choice in family matters has been recognized under the Due Process Clause by the United States Supreme Court. See *Meyer v. Nebraska (1923), 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042; Santosky v. Kramer (1982), 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599.*

Based upon these protections, Judge Ford believes that many decisions made by parents "fall within the penumbra of parental authority, *e.g.*, the school that the child will attend, the religion that the child will practice, the medical care that [*373] the child will receive, and the manner in which the child will be disciplined." He found it notable that the law empowers a parent to consent to medical procedures for a minor child, *R.C. 2317.54(C),* gives a parent the general authority to decide to decline medical treatment for the child, and destroys the child's cause of action for battery when consent is given. See *Lacey v. Laird (1956), 166 Ohio St. 12, 19, 1 Ohio Op. 2d 158, 161,* [***14] *139 N.E.2d 25, 30* (Hart, J., concurring). Thus, Judge Ford believes that invalidating the release as to the minor's claim is inconsistent with conferring other powers on parents to make important life choices for their children.

Nor is it appropriate to equate a preinjury release with a postinjury release. As one commentator aptly explains:

"The concerns underlying the judiciary's reluctance to allow parents to dispose of a child's existing claim do not arise in the situation where a parent waives a child's future claim. A parent dealing with an existing claim is simultaneously coping with an injured child; such a situation creates a potential for parental action contrary to that child's ultimate best interests.

"A parent who signs a release before her child participates in a recreational activity, however, faces an entirely different situation. First, such a parent has no financial motivation to sign the release. To the contrary, because a parent must pay for medical care, she risks her financial interests by signing away the right to recover damages. Thus, the parent would better serve her financial interests by refusing to sign the release.

"A parent who dishonestly or maliciously [***15] signs a preinjury release in deliberate derogation of his child's best interests also seems unlikely. Presumably parents sign future releases to enable their children to participate in activities that the parents and children believe will be fun or educational. Common sense suggests that while a parent might misjudge or act carelessly in signing a release, he would have no reason to sign with malice aforethought.

"Moreover, parents are less vulnerable to coercion and fraud in a preinjury setting. A parent who contemplates signing a release as a prerequisite to her child's participation in some activity faces none of the emotional trauma and financial pressures that may arise with an existing claim. That parent has time to examine the release, consider its terms, and explore possible alternatives. A parent signing a future release is thus more able to reasonably assess the possible consequences of waiving the right to sue." Purdy, *Scott v. Pacific West Mountain Resort:* Erroneously Invalidating Parental Releases of a Minor's Future Claim (1993), *68 Wash.L.Rev. 457, 474.*

These comments were made in a law review article criticizing the Washington Supreme Court's decision in *Scott* [***16] *v. Pacific W. Mountain Resort (1992), 119 Wash. 2d 484, 834 P.2d 6.* In that case, the court found that a

release, signed by [*374] the mother so that her son could take ski-racing lessons, was invalid as to the minor's claim. In *Scott*, the court had reasoned that it made no sense to treat a child's preinjury and postinjury property rights differently. *Id. at 494, 834 P.2d at 11-12.* The article criticized this decision, noting that when the mother signed the release, she gave her son the opportunity to ski. She gained no financial advantage for herself, nor did she suffer from fraud or collusion. She was under no financial or [**207] emotional pressure when she signed. The article states that "while she may have misjudged the risk to her son, Mrs. Scott did not mismanage or misappropriate Justin's property. She did her best to protect Justin's interests, and the court need not step in to do so." *Id., 68 Wash.L.Rev. at 474-475.*

We agree with Judge Ford's concurring opinion and the reasoning contained in the foregoing law review article. When Mrs. Zivich signed the release she did so because she wanted Bryan to play soccer. She made an important family decision and she assumed the risk of [***17] physical injury on behalf of her child and the financial risk on behalf of the family as a whole. Thus, her decision to release a volunteer on behalf of her child simply shifted the cost of injury to the parents. Apparently, she made a decision that the benefits to her child outweighed the risk of physical injury. Mrs. Zivich did her best to protect Bryan's interests and we will not disturb her judgment. In fact, the situation is more analogous to Ohio's informed consent law than to the law governing children's property rights. See *R.C. 2317.54(C)*, which gives parents the authority to consent to medical procedures on a child's behalf. In both cases, the parent weighs the risks of physical injury to the child and the attendant costs to herself against the benefits of a particular activity.

Therefore, we hold that [HN3] parents have the authority to bind their minor children to exculpatory agreements in favor of volunteers and sponsors of nonprofit sport activities where the cause of action sounds in negligence. These agreements may not be disaffirmed by the child on whose behalf they were executed.

Having upheld the release agreement against Bryan's claims, we find it also valid as to Mr. [***18] and Mrs. Zivich's claims for loss of consortium. Mrs. Zivich, the signatory on the agreement, acknowledged that she had read its contents and did not ask any questions about it. Parents may release their own claims growing out of injury to their minor children. See, *e.g., Simmons v. Parkette Natl. Gymnastic Training Ctr. (E.D. Pa. 1987), 670 F. Supp. 140, 142, Childress v. Madison Cty. (Tenn. App. 1989), 777 S.W.2d 1, 6; Scott, supra, 119 Wash. 2d 484, 834 P.2d 6.* We adopt this rule of law, finding it consistent with principles of freedom of contract. Thus, we hold that [HN4] parents may release their own claims arising out of the injury to their minor children. Accordingly, we find that Mrs. Zivich is barred from recovery as to her claims.

[*375] We further find that Philip Zivich's n6 loss of consortium claim is also barred as a matter of law. Although Mr. Zivich did not personally sign the release agreement, he accepted and enjoyed the benefits of the contract. In fact, when the injury occurred, Mr. Zivich was the parent who was at the practice field that evening. Thus, Mr. Zivich's conduct conveys an intention to enjoy the benefits of his wife's agreement and be bound by it. Under [***19] the doctrine of estoppel by acquiescence, Mr. Zivich may not assert his rights against the Club. *Natl. Football League v. Rondor, Inc. (N.D. Ohio 1993), 840 F. Supp. 1160, 1167.*

n6 In the court of appeals, Mr. Zivich also argued that summary judgment was improper as to his claim for negligent infliction of emotional distress. However, he does not raise this claim here. Accordingly, we do not address this issue.

As a separate ground for recovery, appellants also contend that the injury was caused by the Club's willful and wanton misconduct. In *McKinney v. Hartz & Restle Realtors, Inc. (1987), 31 Ohio St. 3d 244, 246, 31 Ohio B. Rep. 449, 451, 510 N.E.2d 386, 388-389*, this court defined "willful" misconduct as conduct involving "'an intent, purpose or design to injure.'" *Id.*, quoting *Denzer v. Terpstra (1934), 129 Ohio St. 1, 1 Ohio Op. 303, 193 N.E. 647*, paragraph two of the syllabus. "Wanton" misconduct was defined as conduct where one "'falls to exercise any care whatsoever toward those to whom he owes [***20] a duty of care, and this failure occurs under circumstances in which there is a great probability that harm will result.'" *McKinney, 31 Ohio St. 3d at 246, 31 Ohio B. Rep. at 451, 510 N.E.2d at 388-389*, quoting *Hawkins v. Ivy (1977), 50 Ohio St. 2d 114, 4 Ohio Op. 3d 243, 363 N.E.2d 367*, syllabus. We have held that while a participant in recreational activities can contract [**208] with the proprietor to relieve the proprietor from any damages or injuries he may negligently cause, the release is invalid as to willful and wanton misconduct. *Bowen, supra, 63 Ohio St. 3d at 90, 585 N.E.2d at 390.*

To support this claim, appellants assert that the Club's former president, David Bolsen, attended a seminar just before his term of office ended. It was at the seminar that he learned of the need to anchor the goals and to post warning

labels on them. Bolsen testified that because his term expired two weeks later, he only had time to relay the information to a few persons. However, no action was taken to secure the goals.

Appellants argue that Bolsen's failure to take more affirmative steps to ensure that the Club and the city implemented the safety recommendations amounts to willful and wanton misconduct. **[***21]** Like the court of appeals, we reject this argument.

There is no evidence that the former president intended that Bryan should be injured. Nor did the former president utterly fail to exercise any care whatsoever. Even accepting as true the appellants' claim that club officials knew about **[*376]** the safety problems but failed to act, this action does not amount to willful and wanton misconduct. As noted by the appellate court, "Park officials testified that the City never had anchored the goals in the past, and, apparently, of the thousands of young boys and girls playing soccer in the youth league throughout the years, no other child had been injured in this manner." Thus, reasonable minds could not conclude that the risk posed by the unanchored goal was so great as to require immediate remedial action.

Moreover, the evidence established that the city, not the Club, was responsible for the upkeep of the soccer fields and the purchase, storage, maintenance and placement of the soccer goals.

We find that appellants failed to produce sufficient evidence to present a jury question on the claim of willful and wanton misconduct.

Accordingly, we affirm the court of appeals' judgment, albeit **[***22]** on somewhat different grounds. We uphold its decision that the release is valid as to the parents' claims. However, we hold that the release is also valid as to the minor child's claim.

Judgment affirmed.

MOYER, C.J., RESNICK, COOK and LUNDBERG STRATTON, JJ., concur.

DOUGLAS and PFEIFER, JJ., concur in judgment only.

COOK, J., concurring.

CONCURBY: COOK

CONCUR:

COOK, J., concurring. I join in the well-reasoned majority opinion. I write separately only to point out that today's decision is firmly grounded in the public policy of the General Assembly, as evinced by the legislative enactments cited by the majority.

1 of 1 DOCUMENT

MERAV SHARON vs. CITY OF NEWTON.

SJC-08671

SUPREME JUDICIAL COURT OF MASSACHUSETTS

437 Mass. 99; 769 N.E.2d 738; 2002 Mass. LEXIS 384

April 2, 2002, Argued
June 10, 2002, Decided

PRIOR HISTORY: [***1] Middlesex. Civil action commenced in the Superior Court Department on November 5, 1998. A motion to amend answer was heard by Martha B. Sosman, J., and the case was heard by Leila R. Kern, J., on a motion for summary judgment. The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff student was injured while participating in a cheerleading practice. The student sued defendant city, alleging negligence. The city filed a motion for summary judgment raising a signed release as a defense. The Middlesex Superior Court Department (Massachusetts) granted summary judgment in favor of the city. The student appealed. The state supreme court on its own initiative transferred the case from the Appeals Court.

OVERVIEW: On appeal, the issue was the validity of the release signed by the student's father for the purpose of permitting her to engage in public school extra-curricular sports activities. The state supreme court concluded that the student's father had the authority to bind her to an exculpatory release that was a proper condition of her voluntary participation in extracurricular sports activities offered by the city. Both the student and her father had ample opportunity to read and understand the release before signing it, and they were therefore deemed to have understood it. The student's participation in the city's extracurricular activity of cheerleading was neither compelled nor essential, and the public policy of the commonwealth was not offended by requiring a release as a prerequisite to that participation. The enforcement of the release was consistent with the commonwealth's policy of encouraging athletic programs for youth and did not contravene the responsibility that schools had to protect their students. The benefit bargained for, the student's participation in the cheerleading program, was adequate consideration for the release.

OUTCOME: The state supreme court affirmed the grant of summary judgment in favor of the city.

LexisNexis (TM) HEADNOTES - Core Concepts:

Civil Procedure > Pleading & Practice > Pleadings > Amended PleadingsCivil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Affirmative DefensesCivil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Waiver & Preservation
[HN1] It is well established that the defense of a release must be raised as an affirmative defense and that the omission of an affirmative defense from an answer generally constitutes a waiver of that defense. Mass. R. Civ. P. 8(c). It is

equally well settled that a party may amend its pleading by leave of court and that such leave shall be freely given when justice so requires. Mass. R. Civ. P. 15(a).

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Affirmative Defenses
[HN2] When a release is raised in defense of a negligence claim, the plaintiff bears the burden of proving that it is not a valid bar to her suit.

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Affirmative Defenses
[HN3] It is a rule in the Commonwealth of Massachusetts that the failure to read or to understand the contents of a release, in the absence of fraud or duress, does not avoid its effects.

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Affirmative Defenses
[HN4] Massachusetts law favors the enforcement of releases. A party may, by agreement, allocate risk and exempt itself from liability that it might subsequently incur as a result of its own negligence. There can be no doubt that under the law of Massachusetts in the absence of fraud a person may make a valid contract exempting himself from any liability to another which he may in the future incur as a result of his negligence or that of his agents or employees acting on his behalf. Whether such contracts be called releases, covenants not to sue, or indemnification agreements, they represent a practice Massachusetts courts have long found acceptable.

Contracts Law > Formation > Capacity of PartiesContracts Law > Remedies > Ratification
[HN5] Under Massachusetts common law, any contract, except one for necessaries, entered into by an unemancipated minor could be disaffirmed by him before he reached the age of 18 or within a reasonable time thereafter. This long-standing principle has been applied to releases executed by a minor. While the common-law rule has been narrowed somewhat by statute, it remains Massachusetts law that the contract of a minor is generally voidable when she reaches the age of majority.

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Affirmative DefensesTorts > Public Entity Liability > Liability
[HN6] The Massachusetts Tort Claims Act, Mass. Gen. Laws ch. 258, does not create any new theory of liability for a municipality, but rather, specifically provides that they are liable in the same manner and to the same extent as a private individual under like circumstances. *Mass. Gen. Laws ch. 258, § 2.* Outside of the procedural limitations and exceptions contained within the Act, cities and towns are afforded the same defenses as private parties in tort claims. Because releases of liability for ordinary negligence involving private parties are valid as a general proposition in the Commonwealth of Massachusetts, it is not contrary to the purposes of the Act to allow municipalities to use releases as a precondition for the participation in voluntary, nonessential activities they may sponsor.

COUNSEL: Jeffrey Petrucelly for the plaintiff.

Richard G. Chmielinski, Assistant City Solicitor, for the defendant.

The following submitted briefs for amici curiae: Thomas J. Urbelis for Massachusetts City Solicitors and Town Counsel Association.

Michael K. Gillis & John J. D'Andre for The Massachusetts Academy of Trial Attorneys.

Leonard H. Kesten & Patricia M. Manese for Massachusetts Municipal Association.

JUDGES: Present (Sitting at Barnstable): Marshall, C.J., Greaney, Ireland, Spina, & Cordy, JJ.

OPINIONBY: CORDY

OPINION: [741]**

[*100] CORDY, J. In this case, we consider the question of the validity of a release signed by the parent of a minor child for the purpose of permitting her to engage in public school extra-curricular sports activities. The question is one of first impression in the Commonwealth.

A. Background.

On November 8, 1995, sixteen year old Merav Sharon [***2] was injured while participating in a cheerleading practice at Newton North High School. Merav fell from a teammate's shoulders while rehearsing a pyramid formation cheer and sustained a serious compound fracture to her left arm that required surgery. n1 At the time of her injury, Merav had had four seasons of cheerleading experience at the high school level.

n1 Merav Sharon's injury occurred during a cheerleading squad practice in the school's dance studio that was equipped with one-inch thick mats on the floor. The team used members of the squad as spotters while performing difficult stunts or cheers. While such spotters were in place at the time of Merav's injury, her spotter was not able to catch her or break her fall from the top of the pyramid.

On November 5, 1998, having reached the age of majority, Merav filed suit against the city of Newton, alleging negligence (Count I) and the negligent hiring and retention of the cheerleading coach (Count II). n2 The city filed its answer on December 24, 1998. In late [***3] October, 1999, during the course of discovery, the city came across a document entitled "Parental Consent, Release from Liability and Indemnity Agreement" signed by Merav and her father in August, 1995, approximately three months prior to the injury. The relevant part of the release reads as follows:

"[I] the undersigned [father] . . . of Merav Sharon, a [*101] minor, do hereby consent to [her] participation in voluntary athletic programs and do forever RELEASE, acquit, discharge, and covenant to hold harmless the City of Newton . . . from any and all actions, causes of action, [and] claims . . . on account of, or in any way growing out of, directly or indirectly, all known and unknown personal injuries or property damage which [I] may now or hereafter have as the parent . . . of said minor, and also all claims or right of action for damages which said minor has or hereafter may acquire, either before or after [she] has reached [her] majority resulting . . . from [her] participation in the Newton Public Schools Physical Education Department's athletic programs . . . ."

The city filed a motion for summary judgment raising the signed release as a defense.

n2 The negligence claims were brought against the city of Newton pursuant to the Massachusetts Tort Claims Act, G. L. c. 258.

[***4]

Merav filed an opposition to the city's motion for summary judgment in which she argued that, because the release had not been raised as an affirmative defense in the city's answer, it should be deemed waived. Shortly thereafter, the city filed a motion to amend its answer in order to add the release as an affirmative defense. One judge in the Superior Court allowed the city's motion to amend on June 30, 2000, and a second judge subsequently allowed the city's motion for summary judgment based on the validity of the release. n3 [**742] In her ruling, the judge concluded that "[a] contrary ruling would detrimentally chill a school's ability to offer voluntary athletic and other extra-curricular programs."

n3 The city also filed a motion to implead Merav's father as a third-party defendant based on the release. This motion was granted but the third-party complaint was subsequently dismissed as moot.

Merav filed a timely appeal claiming that (1) the motion judge abused her discretion by allowing the city to amend its [***5] answer late; (2) the grant of summary judgment was inappropriate because genuine issues of material fact remained in dispute; and (3) the release signed by Merav and her father was invalid because (a) she disavowed it on attaining her majority n4; (b) the release violates public policy; (c) the release is contrary to the [*102] Massachusetts Tort Claims Act, *G. L. c. 258, § 2*; and (d) the release is invalid for lack of consideration. We transferred the case here on our own motion and now affirm the grant of summary judgment in favor of the city. n5

n4 The city concedes that minors may ratify or disaffirm their own contracts on reaching the age of majority. It prevailed below on the theory that Merav's father could effectively waive her claim by signing the release.

n5 We acknowledge amicus briefs of the Massachusetts City Solicitors and Town Counsel Association, the Massachusetts Municipal Association, and The Massachusetts Academy of Trial Attorneys.

B. Discussion.

1. Amendment [***6] of the city's answer. Merav claims that the allowance of the city's untimely motion to amend its answer was prejudicial error and that, because the city failed to raise the release as an affirmative defense in its original answer, the defense should be deemed waived.

[HN1] It is well established that the defense of a release must be raised as an affirmative defense and that the omission of an affirmative defense from an answer generally constitutes a waiver of that defense. See *Mass. R. Civ. P. 8 (c), 365 Mass. 749 (1974); Leahy v. Local 1526, Am. Fed'n of State, County & Mun. Employees, 399 Mass. 341, 351, 504 N.E.2d 602-352 (1987)*, citing J.W. Smith & H.B. Zobel, Rules Practice § 8.6, at 797-798 (1974 & Supp. 1986); *Coastal Oil New England, Inc. v. Citizens Fuels Corp., 38 Mass. App. Ct. 26, 29 n.3, 644 N.E.2d 258 (1995)*. It is equally well settled that a party may amend its pleading by leave of court and that such leave "shall be freely given when justice so requires." *Mass. R. Civ. P. 15 (a), 365 Mass. 761 (1974)*. See *Foman v. Davis, 371 U.S. 178, 182, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962)* (interpreting identical language [***7] in Federal rule and stating mandate that leave to amend "shall be freely given when justice so requires" is to be heeded).

Merav contends that the combination of undue delay and prejudice to her case should have led the judge to deny the city's motion to amend. While we have often upheld a judge's discretion to deny leave to amend based in part on undue delay, such denials have generally been coupled with consideration of other factors such as imminence of trial and futility of the claim sought to be added. See, e.g., *Leonard v. Brimfield, 423 Mass. 152, 157, 666 N.E.2d 1300 (1996); Mathis v. Massachusetts Elec. Co., 409 Mass. 256, 264, 565 N.E.2d 1180 (1991); Castellucci v. United States Fid. & Guar. Co., 372 Mass. 288, 292, 361 N.E.2d 1264 (1977)*. Given that the amendment in this [*103] case did not raise a new issue on the eve of trial and could not be considered futile or irrelevant to the city's defense, the judge did not abuse her discretion in granting the motion to amend the city's answer.

2.

Summary Judgment.

By proffering the release signed by Merav and her father releasing the city [**743] from any claims that Merav [***8] might acquire from her participation in the city's athletic program, the city has met its initial burden of demonstrating that Merav's negligence claim is likely to be precluded at trial. n6 In response, Merav contends both that there are issues of material fact in dispute regarding the validity of the release, and that it is unenforceable as a matter of law and public policy. We conclude that the facts Merav contends are in dispute are not material, enforcement of the release is consistent with our law and public policy, and Newton is entitled to judgment as a matter of law.

n6 [HN2] When a release is raised in defense of such a claim, the plaintiff bears the burden of proving that it is not a valid bar to her suit. See *Gannett v. Lowell, 16 Mass. App. Ct. 325, 327, 450 N.E.2d 1121 (1983)*.

a. Merav's factual contentions. Merav first argues that there are disputed issues of material fact regarding her understanding of the release and its voluntariness. She contends that neither she nor her father [***9] realized that by signing the release they were waiving their future claims against the school, and that their understanding of what they signed is a matter of fact to be decided by a jury. As the motion judge properly noted, [HN3] "it is a rule in this Commonwealth that the failure to read or to understand the contents of a release, in the absence of fraud or duress, does not avoid its effects." *Lee v. Allied Sports Assocs., Inc., 349 Mass. 544, 550, 209 N.E.2d 329-551 (1965)*. The undisputed evidence supports the conclusion that both Merav and her father had ample opportunity to read and understand the release before signing it, and they are therefore deemed to have understood it. *Cormier v. Central Mass. Chapter of the Nat'l Safety Council, 416 Mass. 286, 289, 620 N.E.2d 784 (1993)*.

The release is a clearly labeled, two-sided document, which Merav brought home from school for her parents to review. Merav and her father both signed the front of the release, which they indicated was for the sport of "cheerleading." In addition, **[*104]** they filled out the back of the release that called for information regarding Merav's address, date of birth, health insurance provider, and emergency **[***10]** contacts, and which provided for the purchase of optional student accident insurance through the school (an option which they explicitly declined on the form). Her father also signed the back of the release giving parental consent to a physical examination of Merav prior to her participation in the cheerleading program. In these respects, the circumstances differ substantially from the so-called "baggage check" or "ticket" cases relied on by Merav in which a customer merely purchases a ticket or receives a receipt that contains release language. See *Lee v. Allied Sports Assocs., Inc., supra; O'Brien v. Freeman, 299 Mass. 20, 11 N.E.2d 582 (1937); Kushner v. McGinnis, 289 Mass. 326, 194 N.E. 106 (1935).*

In these "baggage check" and "ticket" cases, we have ruled that the "type of document which the patron receives and the circumstances under which he receives it are not such that a person of ordinary intelligence would assume that the ticket limits the proprietor's liability unless the patron becomes actually aware of that limitation." *Lee v. Allied Sports Assocs., Inc., supra at 549-550.* Therefore, we have **[***11]** held in those cases that actual notice of the limitation of liability may be a question of fact properly submitted to the jury. This is not such a case. The release at issue here was clearly labeled as such and was filled out and signed by Merav and her father for the purpose of ensuring that she would be permitted to **[**744]** participate in an ongoing extracurricular activity. These are not circumstances likely to mislead a person of ordinary intelligence as to whether a limitation of liability might be included in the type of document being executed. There is no dispute that Merav and her father had ample opportunity to review and understand the release. Their failure to do so does not avoid its effects as a matter of law. Id. *Cormier v. Central Mass. Chapter of the Nat'l Safety Council, supra.*

Merav further argues that a jury should consider whether the release was signed under duress because, had she refused to sign it, she would not have been allowed to participate in cheerleading. This argument was not made to the motion judge, and is waived. But see *Minassian v. Ogden Suffolk Downs, Inc.,* **[*105]** *400 Mass. 490, 492, 509 N.E.2d 1190 (1987)* ("take it **[***12]** or leave it" release as condition of voluntary participation enforceable).

b. Public policy. Merav next contends that enforcement of the release against her claims would constitute a gross violation of public policy. This argument encompasses at least three separate public policy contentions: first, that it is contrary to public policy to permit schools to require students to sign exculpatory agreements as a prerequisite to participation in extracurricular school sports; second, that public policy prohibits a parent from contracting away a minor child's right to sue for a future harm; and third, that the enforcement of this release would undermine the duty of care that public schools owe their students.

In weighing and analyzing Merav's public policy arguments, we must also consider other important public policies of the Commonwealth implicated in the resolution of this issue, including policies favoring the enforcement of releases, and the encouragement of extracurricular athletic programs for school-aged children.

(1) Releases. [HN4] Massachusetts law favors the enforcement of releases. *Lee v. Allied Sports Assocs., Inc., 349 Mass. 544, 550 (1965),* citing *MacFarlane's Case, 330 Mass. 573, 576, 115 N.E.2d 925 (1953);* **[***13]** *Clarke v. Ames, 267 Mass. 44, 47, 165 N.E. 696 (1929).* A party may, by agreement, allocate risk and exempt itself from liability that it might subsequently incur as a result of its own negligence. See, e.g., *Lee v. Allied Sports Assocs., Inc., supra at 550; Barrett v. Conragan, 302 Mass. 33, 18 N.E.2d 369 (1938); Ortolano v. U-Dryvit Auto Rental Co., 296 Mass. 439, 6 N.E.2d 346 (1937).* See also J.W. Smith & H.B. Zobel, Rules Practice § 8.18 (1974). "There can be no doubt . . . that under the law of Massachusetts . . . in the absence of fraud a person may make a valid contract exempting himself from any liability to another which he may in the future incur as a result of his negligence or that of his agents or employees acting on his behalf." *Schell v. Ford, 270 F.2d 384, 386 (1st Cir. 1959).* Whether such contracts be called releases, covenants not to sue, or indemnification agreements, they represent "a practice our courts have long found acceptable." *Minassian v. Ogden Suffolk Downs, Inc., supra at 493.* See *Shea v. Bay State Gas Co., 383 Mass. 218, 223-224, 418 N.E.2d 597 (1981);* **[***14]** *Clarke v. Ames, supra at 47.*

[*106] The context in which such agreements have been upheld range beyond the purely commercial. In *Lee v. Allied Sports Assocs., Inc., supra,* we upheld a release signed as a prerequisite to a spectator entering the pit area of an automobile race, and in *Cormier v. Central Mass. Chapter of the Nat'l Safety Council, 416 Mass. 286, 620 N.E.2d 784 (1993),* we similarly **[**745]** upheld a release signed by a beginner rider as a condition of her enrollment in a motorcycle safety class. In both cases, the plaintiffs were subsequently injured by the allegedly negligent acts of the other party to the release. In the Lee case, supra, we concluded that the denial of the defendant's motion for a directed

verdict was error on the basis of the validity of the release. In the Cormier case, supra, we upheld the granting of summary judgment on the same basis, holding that "placing the risk of negligently caused injury on a person as a condition of that person's voluntary choice to engage in a potentially dangerous activity ordinarily contravenes no public policy of the Commonwealth." *Id. at 289.* **[***15]** There is little that distinguishes the activity in the present case from those in the Lee and the Cormier cases.

Although Merav has suggested that, if the release at issue here is valid, there is nothing to prevent cities or towns from requiring releases for "simply allowing a child to attend school," such a conclusion does not necessarily follow. We have not had occasion to rule on the validity of releases required in the context of a compelled activity or as a condition for the receipt of essential services (e.g., public education, medical attention, housing, public utilities), and the enforceability of mandatory releases in such circumstances might well offend public policy. See *Cormier v. Central Mass. Chapter of the Nat'l Safety Council, supra at 289 n.1,* citing *Gonsalves v. Commonwealth, 27 Mass. App. Ct. 606, 608, 541 N.E.2d 366 (1989)* (exacting release of liability for negligence from public employee who was under compulsion to enroll in training course might offend public policy). See also Recent Case, *102 Harv. L. Rev. 729, 734 (1989)* (importance of service to public should be paramount factor in deciding whether **[***16]** to invalidate exculpatory release on public policy grounds). In this case, Merav's participation in the city's extracurricular activity of cheerleading was neither compelled nor essential, and we conclude that **[*107]** the public policy of the Commonwealth is not offended by requiring a release as a prerequisite to that participation.

(2) Parent's waiver of a minor's claim. Merav contends that a parent cannot waive, compromise, or release a minor child's cause of action, and that enforcement of such a release against the child would violate public policy. She relies on a series of decisions from other jurisdictions. n7 The city on the other hand relies on a series of cases holding to the contrary. n8 While these cases are instructive and emblematic of the difficulty in balancing **[**746]** the important interests and policies at stake, we first look to our own law.

n7 See *Fedor v. Mauwehu Council, Boy Scouts of Am., Inc., 21 Conn. Supp. 38, 143 A.2d 466 (1958)* (release signed by parent waiving child's future claims violates public policy); *Meyer v. Naperville Manner, Inc., 262 Ill. App. 3d 141, 146, 199 Ill. Dec. 572, 634 N.E.2d 411 (1994)* (parent cannot waive, compromise, or release minor child's cause of action); *Doyle v. Bowdoin College, 403 A.2d 1206, 1208 n.3 (Me. 1979)* (release signed by parent before son's hockey injury void as to child's cause of action); *Childress v. Madison County, 777 S.W.2d 1, 7 (Tenn. Ct. App. 1989)* (release signed by mother void as to son's rights but valid as to mother's); *Scott v. Pacific W. Mountain Resort, 119 Wn. 2d 484, 494, 834 P.2d 6 (1992)* (en banc) (preinjury release signed by parent does not bar child's cause of action). **[***17]**

n8 See *Hohe v. San Diego Unified Sch. Dist., 224 Cal. App. 3d 1559, 274 Cal. Rptr. 647 (1990)* (parent may execute release on behalf of minor child); *Cooper v. United States Ski Ass'n, 32 P.3d 502,* 29 Colo. Law. No. 10 166 (Colo. Ct. App. 2000) (mother's release of minor child's claims for negligence valid and enforceable); *Zivich v. Mentor Soccer Club, Inc., 82 Ohio St. 3d 367, 696 N.E.2d 201 (1998)* (mother had authority to bind minor child to exculpatory agreement).

[HN5] Under our common law, "any contract, except one for necessaries, entered into by an unemancipated minor could be disaffirmed by him before he reached the age of [eighteen] or within a reasonable time thereafter." *Slaney v. Westwood Auto, Inc., 366 Mass. 688, 692, 322 N.E.2d 768 (1975).* This long-standing principle has been applied to releases executed by a minor as far back as 1292. See 5 S. Williston, Contracts § 9.2, at 5 (4th ed. 1993), citing *Y.B. 20 and 21 Edw. at 318 (1292)* (release by minor "would not bar him from suing when he came of age"). While the common-law rule **[***18]** has been narrowed somewhat by statute, n9 it remains our law that the contract of a minor is generally **[*108]** voidable when she reaches the age of majority. Merav unequivocally repudiated the release (to the extent it might be deemed a contract executed by her) by filing suit against the city. See *G.E.B. v. S.R.W., 422 Mass. 158, 164, 661 N.E.2d 646 (1996)* (minor's filing of suit is direct repudiation of contract not to sue signed by minor). The city concedes that Merav effectively disaffirmed the release, but contends that insofar as the release is signed by the parent and purports to release the school from any claim that might accrue to the minor, it remains valid because the parent can do what the minor cannot.

n9 See, e.g., *G. L. c. 167E, § 10* (student under eighteen years of age admitted to institution of higher learning has full legal capacity to act on her own behalf in contracts and other transactions regarding financing of education); *G. L. c. 175, § 128* (certain contracts for life or endowment insurance may not be voided by minor over fifteen years of age); *G. L. c. 175, § 113K* (minor over sixteen years of age permitted to contract for motor vehicle liability insurance); *G. L. c. 112, § 12E* (minor over twelve years of age found to be drug dependent may consent to treatment for dependency); *G. L. c. 112, § 12F* (minor may consent to medical or dental treatment if she meets criteria outlined in statute).

[***19]

The purpose of the policy permitting minors to void their contracts is "to afford protection to minors from their own improvidence and want of sound judgment." *Frye v. Yasi, 327 Mass. 724, 728, 101 N.E.2d 128 (1951).* This purpose comports with common sense and experience and is not defeated by permitting parents to exercise their own providence and sound judgment on behalf of their minor children. *Parham v. J.R., 442 U.S. 584, 602, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979)* ("The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions"). See 1 W. Blackstone Commentaries 452 (9th ed. 1783) (minor's consent to marriage void unless accompanied by parental consent; one of many means by which parents can protect children "from the snares of artful and designing persons"). Moreover, our law presumes that fit parents act in furtherance of the welfare and best interests of their children, Petition of the Dep't of Pub. Welfare to Dispense with *Consent to Adoption, 383 Mass. 573, 587-589, 421 N.E.2d 28 (1981); Sayre v. Aisner, 51 Mass. App. Ct. 794, 799 n.8, 748 N.E.2d 1013 (2001),* [***20] and with respect to matters relating to their care, custody, and upbringing have a fundamental right to make those decisions for them. See *Parham v. J.R., supra at 603* (parents can and must make judgments and decisions regarding risks to their children).

In the instant case, Merav's father signed the release in his [*109] capacity as parent because he wanted his child to benefit from participating in cheerleading, as she had done for four previous seasons. He made an important family decision cognizant of the risk of physical injury to his [**747] child and the financial risk to the family as a whole. In the circumstance of a voluntary, nonessential activity, we will not disturb this parental judgment. This comports with the fundamental liberty interest of parents in the rearing of their children, and is not inconsistent with the purpose behind our public policy permitting minors to void their contracts. n10

n10 Our conclusion that parents may execute an enforceable preinjury release on behalf of their minor children is not inconsistent with our policy regarding discretionary court approval of settlement releases signed by minors. See *G. L. c. 231, § 140C* 1/2 (allowing judge to approve settlement for damages stemming from personal injury to minor where parties have petitioned for such approval). This statute applies only to postinjury releases, and the policy considerations underlying it are distinct from those at issue in the preinjury context. A parent asked to sign a preinjury release has no financial motivation to comply and is not subject to the types of conflicts and financial pressures that may arise in the postinjury settlement context, when simultaneously coping with an injured child. Such pressure can create the potential for parental action contrary to the child's ultimate best interests. In short, in the preinjury context, there is little risk that a parent will mismanage or misappropriate his child's property. See *Zivich v. Mentor Soccer Club, Inc., 82 Ohio St. 3d 367, 373, 696 N.E.2d 201 (1998).*

[***21]

c. The encouragement of athletic activities for minors. Our views with respect to the permissibility of requiring releases as a condition of voluntary participation in extracurricular sports activities, and the enforceability of releases signed by parents on behalf of their children for those purposes, are also consistent with and further the public policy of encouraging athletic programs for the Commonwealth's youth. This policy is most clearly embodied in statutes that exempt from liability for negligence: nonprofit organizations and volunteer managers and coaches who offer and run sports programs for children under eighteen years of age (*G. L. c. 231, § 85V*), and owners of land (including municipalities) who permit the public to use their land for recreational purposes without imposing a fee (*G. L. c. 21, § 17C*). See *Anderson v. Springfield, 406 Mass. 632, 549 N.E.2d 1127 (1990)* (city not liable for injuries to softball player resulting from negligently caused defect in city-owned baseball field).