

CS FOR HOUSE BILL NO. 472(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/25/04

Referred: Rules

Sponsor(s): REPRESENTATIVES ANDERSON, Fate

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to claims for personal injury or wrongful death against health care**
2 **providers; and providing for an effective date."**

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

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

6 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that the
7 national medical malpractice crisis continues to affect the state, and patient access to
8 physicians will be dramatically affected if physicians cannot afford, or obtain at any price,
9 malpractice insurance.

10 (b) It is the intent of this Act to

11 (1) alleviate a medical malpractice insurance crisis that the legislature believes
12 will, if not corrected, threaten the quality of the state's health care; the legislature believes that
13 the continuing availability of adequate medical care depends directly on the availability of
14 adequate insurance coverage, which in turn operates as a function of costs associated with

1 medical malpractice litigation; the legislature believes that decreasing the limits on
 2 noneconomic damages will help to contain the costs of malpractice insurance by controlling
 3 damages and will significantly help to provide for a stable malpractice insurance market for
 4 health care providers, thereby maximizing the availability of medical services to meet the
 5 state's health care needs;

6 (2) modify the decisions of the Alaska Supreme Court in *Marsingill v.*
 7 *O'Malley*, 58 P.3d 495 (Alaska 2002) and *Korman v. Mallin*, 858 P.2d 1145 (Alaska 1993);
 8 and

9 (3) clarify the law of informed consent in medical malpractice cases.

10 * **Sec. 2.** AS 09.55.548 is amended by adding new subsections to read:

11 (c) In an action to recover damages for personal injury or wrongful death
 12 based upon the provision of services by a health care provider, damage claims for
 13 noneconomic losses shall be limited to compensation for pain, suffering,
 14 inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment
 15 of life, loss of society and companionship, loss of consortium, injury to reputation, and
 16 other nonpecuniary damage.

17 (d) Notwithstanding AS 09.17.010, the damages awarded by a court or a jury
 18 for claims allowed under (c) of this section, including a loss of consortium or other
 19 derivative claim, arising out of a single injury or death may not exceed \$250,000
 20 regardless of the number of health care providers against whom the claim is asserted
 21 or the number of separate claims or causes of action brought with respect to the injury
 22 or death.

23 (e) The jury may not be informed about the limitation on damage claims for
 24 noneconomic losses in (c) of this section, but an award for noneconomic losses in
 25 excess of \$250,000 shall be reduced before the entry of judgment.

26 (f) Multiple injuries sustained by one person as a result of a single incident
 27 shall be treated as a single injury.

28 (g) The limit on damages in (d) of this section and the reduction of an award
 29 for noneconomic losses in (e) of this section do not apply if the plaintiff proves by
 30 clear and convincing evidence that the health care provider's conduct

31 (1) was outrageous, including acts done with malice or bad motives; or

1 (2) evidenced reckless indifference to the interest of another person.

2 * **Sec. 3.** AS 09.55.556 is amended to read:

3 **Sec. 09.55.556. Informed consent.** (a) A health care provider is liable for
4 failure to obtain the informed consent of a patient if the claimant establishes by a
5 preponderance of the evidence that the provider has failed to inform the patient of the
6 common risks and reasonable alternatives to the proposed treatment, [OR] procedure,
7 **or course of action**, and that, but for that failure, the claimant would not have
8 consented to the proposed treatment, [OR] procedure, **or course of action**.

9 (b) It is a defense to any action for medical malpractice based upon an alleged
10 failure to obtain informed consent that

11 (1) the risk not disclosed is too commonly known or is too remote to
12 require disclosure;

13 (2) the patient stated to the health care provider that the patient would
14 **or would not** undergo the treatment, [OR] procedure, **or course of action** regardless
15 of the risk involved or that the patient did not want to be informed of the matters to
16 which the patient would be entitled to be informed;

17 (3) under the circumstances, consent by or on behalf of the patient was
18 not possible; or

19 (4) the health care provider, after considering all of the attendant facts
20 and circumstances, used reasonable discretion as to the manner and extent that the
21 alternatives or risks were disclosed to the patient because the health care provider
22 reasonably believed that a full disclosure would have a substantially adverse effect on
23 the patient's condition.

24 * **Sec. 4.** AS 09.55.556 is amended by adding new subsections to read:

25 (c) A health care provider, when informing a patient of the common risks and
26 reasonable alternatives to a proposed treatment, procedure, or course of action, shall
27 disclose a known risk of death or serious bodily harm and explain the common
28 complications that may occur. A health care provider is required only to disclose that
29 information that a skilled health care provider of the same or reasonably similar
30 specialty would disclose under similar circumstances.

31 (d) A health care provider is not liable for advice given to a patient by

1 telephone, radio, electronic mail, telemedicine, or other electronic communication if
2 the advice is that the patient seek further care or evaluation at the health care
3 provider's office, a clinic, an emergency room, or a hospital, and the patient elects not
4 to follow that advice.

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

7 **APPLICABILITY.** This Act applies to suits against health care providers initially
8 filed on or after the effective date of this Act.

9 * **Sec. 6.** This Act takes effect July 1, 2004.