

Introduced: 1/15/76  
Referred: Commerce and  
Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 523

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to medical injury adjudication;  
7 changing Rule 5 of the Rules of Appellate Procedure;  
8 and providing for an effective date."

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

10 \* Section 1. AS 09.55 is amended by adding a new section to read:

11 Sec. 09.55.534. MEDICAL INJURY ADJUDICATION BOARD. (a) There  
12 is established within the Alaska Court System a Medical Injury Adjudi-  
13 cation Board to adjudicate claims filed under sec. 544 of this chapter.

14 (b) The board shall consist of 12 regular members appointed by  
15 the governor for terms of five years; however, initial appointments  
16 shall specify terms of one year for two members, two years for two  
17 members, three years for two members, four years for three members,  
18 and five years for three members, to assure the staggering of terms.

19 (c) Of the 12 regular members, three must be physicians licensed  
20 under AS 08.64. The other nine members must be persons who are neither  
21 attorneys nor health-care providers nor persons deriving compensation  
22 as employees or agents of the insurance industry.

23 (d) In performing its duties, the board shall function by means  
24 of hearing committees, consisting of a superior court judge assigned  
25 by the chief justice when a claim is filed, one of the physicians, and  
26 three other members. For each claim filed under sec. 544 of this  
27 chapter, the judge shall establish an expert advisory panel under sec.  
28 536 of this chapter. Upon the request of a party, following submission  
29 of the panel's report to the judge and the parties, the judge shall

1 establish a hearing committee for that case, assigning members to the  
2 committee. The judicial member shall also serve as the presiding  
3 officer for each committee. A judgment of a hearing committee con-  
4 stitutes a judgment of the board. The judicial member of a committee  
5 is subject to one peremptory challenge by each party and has the same  
6 authority to rule on motions and follow other procedure established by  
7 court rule for civil actions.

8 (e) At hearings held by the committee, all parties may be repre-  
9 sented by counsel, and the civil rules regarding evidence and procedure  
10 apply, except those which are inconsistent with secs. 530 - 560 of  
11 this chapter. Upon consideration of the panel's recommendation and  
12 all other evidence and testimony presented to the committee, the  
13 committee shall make a written judgment as to liability or no liability  
14 and of the amount of award, if any, to which the claimant is entitled.  
15 The committee's written judgment shall include a summary of the evidence  
16 and testimony considered by it.

17 (f) Each hearing committee shall review the claimant's and  
18 defendant's proposed attorney fees in each case.

19 \* Sec. 2. AS 09.55.536 is amended to read:

20 Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for  
21 damages due to personal injury or death, based upon the provision of  
22 professional services by a health-care provider, the judge presiding  
23 over a hearing committee of the board [COURT] shall establish an  
24 expert advisory panel in accordance with this section. When such an  
25 action is filed, the judge [COURT] shall, by order, determine pro-  
26 fessions or specialities to be represented on the expert advisory  
27 panel and shall advise each party of the professions or specialities  
28 to be represented, giving the parties the opportunity to object or  
29 make suggestions. The judge [COURT] may, in his [ITS] discretion,

1 conduct such other preliminary proceedings relative to the composition  
2 of the panel as he [IT] considers appropriate. The judge [COURT] may  
3 order a preliminary conference relative to composition of the panel.

4 (b) Each expert advisory panel shall consist of three members.  
5 In any case in which there is no defendant other than a physician or  
6 hospital, the panel shall consist exclusively of persons licensed to  
7 practice medicine in the State of Alaska. In all other cases against  
8 a health-care provider, the panel shall consist of two persons licensed  
9 to practice medicine in the State of Alaska and one person licensed to  
10 practice in the State of Alaska in the field in which the defendant is  
11 licensed. If, in a case against more than one defendant, it is  
12 impossible or impracticable to comply strictly with the preceding  
13 requirements of this subsection, the judge [COURT] shall order a panel  
14 composition he [IT] considers just under the circumstances; however,  
15 each panel must have at least one member who is licensed to practice  
16 medicine in the State of Alaska, and no panel may contain a member who  
17 is not a health-care provider licensed by the State of Alaska.

18 (c) After entering his [ITS] order concerning the professions or  
19 specialities to be represented on the panel, the judge [COURT] shall  
20 select three times the number of persons licensed in each profession  
21 or practicing in the speciality to be represented, and if more than  
22 one panel member is to be from the same profession or speciality, he  
23 [IT] shall select six or nine persons from that profession or speciality,  
24 as the case may be. Each person so selected shall execute an oath to  
25 be prescribed by the supreme court to the effect that he will and can  
26 serve as an impartial and unbiased member of the panel, and is not  
27 disqualified to do so by reason of financial, personal or professional  
28 relationship with the parties or an interest in the outcome of the  
29 proceeding. In any case in which the person selected does not execute

1 such an oath, a substitute member shall be selected. The list of  
2 names shall be supplied to each party by the judge [COURT], and  
3 persons so listed are subject to challenge for cause. If a challenge  
4 is sustained, a substitute member shall be selected. When all chal-  
5 lenges for cause have been exhausted or waived, the judge [COURT]  
6 shall afford each party the right to peremptory challenges until an  
7 expert advisory panel of three has been selected with a composition  
8 conforming to the judge's [COURT'S] order issued under (a) and (b) of  
9 this section. In a case of multiple defendants, the judge [COURT] may  
10 make an order he [IT] considers just to govern peremptory challenges.  
11 Challenges to prospective panel members shall be exercised by mail, or  
12 in whatever other expedient manner the judge [COURT] may direct.

13 (d) Before submission of the matter to the expert advisory  
14 panel, the parties may submit questions in writing to be answered by  
15 the panel in addition to those required by this section. The judge  
16 [COURT] may, by order, restrict those questions.

17 (e) The expert advisory panel may compel the attendance of  
18 witnesses, physically or orally examine the parties, consult with the  
19 specialists or learned works they consider appropriate, and compel the  
20 production of, and examine, all relevant hospital, medical, or other  
21 records relating to health-care treatment. The panel may meet in  
22 camera, but shall maintain a record of any testimony or oral statements  
23 of witnesses, and shall maintain copies of any written statements or  
24 opinions that it receives. Not less than 30 days after selection of  
25 the panel, it shall make a written report to the parties and to the  
26 judge [COURT], substantially answering the following questions in  
27 addition to any other question which the judge [COURT] puts to the  
28 panel:

29 (1) Was the claimant adversely affected by

1 the medical services? If so, how?

2 (2) What was the adverse affect?

3 (3) What is the prognosis?

4 (4) How did the medical services alter the natural course  
5 of the pre-existing disorder for which the services were originally  
6 rendered?

7 (5) How did the medical condition existing after performance  
8 of the medical services differ from the medical condition which might  
9 otherwise have been expected?

10 (f) In any case in which the answer to one or more of the  
11 questions under (e) of this section depends upon the resolution of  
12 factual questions which are not the proper subject of expert opinion,  
13 the report shall so state and may answer such a question based upon  
14 hypothetical facts that are fully and completely set out in the  
15 opinion. The report shall include copies of all written statements,  
16 opinions, or records relied upon by the panel, and either a trans-  
17 cription or other record of any oral statements or opinions; shall  
18 specify any medical or scientific authority relied upon by the panel;  
19 and shall include the results of any physical or mental examination  
20 performed on the plaintiff. Each member shall sign the report and his  
21 signature constitutes his adoption of all statements and opinions  
22 contained in it; however, a member may, instead of signing the report,  
23 submit a concurring or dissenting report which complies with the  
24 requirements of this subsection, and a member may [SHALL] not attest  
25 to any portion of the report as to which he is not qualified to give  
26 expert testimony.

27 (g) No discovery may be undertaken in a case until the report of  
28 the expert advisory panel is received. However, the judge [COURT] may  
29 relax this prohibition upon a showing of good cause by any party. If

1 the panel has not completed its report within the 30-day period  
2 prescribed in (e) of this section, the judge [COURT] may, upon appli-  
3 cation, grant it an additional 30 days.

4 (h) The report of the panel and any dissenting or concurring  
5 opinion are admissible in evidence to the same extent, and have the  
6 same force and effect, as though its contents were orally testified to  
7 by the person or persons preparing it. The judge [COURT] shall delete  
8 any portion that would not be admissible because of lack of foundation  
9 for opinion testimony, or otherwise. Either party may submit expert  
10 testimony to support or refute the report. The [JURY SHALL BE IN-  
11 STRUCTURED IN GENERAL TERMS THAT THE] report shall be considered and  
12 evaluated in the same manner as any other expert testimony. Any  
13 member of the panel may be called by any party and may be cross-  
14 examined as to the contents of the report or of his dissenting or  
15 concurring opinion.

16 (i) Members of a panel are entitled to travel expenses and per  
17 diem in accordance with state law pertaining to members of boards and  
18 commissions for all time spent in preparing its report and matters  
19 incidental to it, which shall be paid by the state. If a panel member  
20 is called upon as a witness at trial or upon deposition, he is en-  
21 titled to payment of an expert witness fee. In any case in which the  
22 judge [COURT] determines that a party has made a patently frivolous  
23 claim or a patently frivolous denial of liability, he [IT] shall order  
24 that all costs of the expert advisory panel be borne by the party  
25 making that claim or denial.

26 (j) Parties to the case, and counsel, may not communicate out  
27 of court with members of the panel on the subject matter of its  
28 inquiry and report, or cause or solicit others to do so, except through  
29 ordinary discovery proceedings.

1 \*Sec. 3. AS 09.55 is amended by adding a new section to read:

2           Sec. 09.55.544. FILING MEDICAL INJURY CLAIMS. (a) All claims  
3 for damages due to personal injury or death, based upon the provision  
4 of professional services by a health-care provider, shall be filed  
5 with the Medical Injury Adjudication Board established under sec. 534  
6 of this chapter.

7           (b) An injured person or his representative may file a claim for  
8 damages by submitting in writing the following information to the  
9 extent it is known at the time of filing:

10           (1) the name, address, and date of birth of the person  
11 whose injury or death gives rise to the claim;

12           (2) the nature of the injury suffered or the cause of  
13 death;

14           (3) the name of the health-care provider whose services are  
15 alleged to have caused the injury or death;

16           (4) a schedule of expenses already incurred and expected to  
17 be incurred for medical care, rehabilitation, and custodial care  
18 arising from the injury or death, and an estimate of loss of income  
19 arising from the injury; but dollar amounts of damages may not be  
20 specified in the complaint;

21           (5) a complete list of insurance policies or other sources  
22 of income or benefits which have been paid or are payable to the  
23 injured person or on behalf of the deceased person for injury, dis-  
24 ability, economic loss, medical care, rehabilitation, death, or for  
25 the benefit of a person dependent upon the injured or deceased person,  
26 excluding personally purchased life insurance, but including all  
27 payments from governmental programs.

28 \* Sec. 4. AS 09.55.546(b) is amended to read:

29           (b) Damages shall be awarded in accordance with principles of

1 the common law. The board [JURY IN A MALPRACTICE ACTION] shall  
2 render its verdict as to damages, by category of loss. The board  
3 [COURT] may enter a judgment that future damages be paid in whole or  
4 in part by periodic payments rather than by a lump-sum payment. In  
5 this subsection, "future damages" includes damages for future medical  
6 treatment, care or custody, loss of future earnings or loss of bodily  
7 function of the claimant. The board may, upon the request of either  
8 party or of the defendant's insurance carrier, review the amount or  
9 terms of the initial award in a case and may make appropriate modifi-  
10 cations in the interests of justice; however, this provision for  
11 review is not intended to permit re-trial of the damages question.

12 \* Sec. 5. AS 09.55 is amended by adding a new section to read:

13 Sec. 09.55.552. JUDICIAL REVIEW. A final judgment of the board  
14 may be appealed to the Alaska Supreme Court in accordance with proce-  
15 dures and standards for review established by that court. For the  
16 purposes of this section, a judgment of the board is "final" notwith-  
17 standing its susceptibility to modification under sec. 546(b) of this  
18 chapter.

19 \* Sec. 6. AS 09.55.560 is amended by adding new paragraphs to read:

20 (3) "board" means the Medical Injury Adjudication Board,  
21 established under sec. 534 of this chapter;

22 (4) "committee" or "hearing committee" means a hearing  
23 committee of the board, established under sec. 534(d) of this chapter.

24 \* Sec. 7. AS 22.05.010 is amended by adding a new subsection to read:

25 (c) The supreme court has direct jurisdiction over appeals from  
26 judgments of the Medical Injury Adjudication Board, established under  
27 AS 09.55.534.

28 \* Sec. 8. AS 09.55.550 is repealed.

29 \* Sec. 9. AS 09.55.552, enacted in sec. 5 of this Act, has the effect

1 of changing Rule 5 of the Alaska Supreme Court's Rules of Appellate Proce-  
2 dure, by providing for appeal to the supreme court from final judgments of  
3 the Medical Injury Adjudication Board as well as of the superior court.

4 \* Sec. 10. This Act takes effect upon the effective date of the amend-  
5 ment of Article I, Section 16, of the Alaska Constitution exempting health-  
6 care malpractice actions from the jury-trial requirement.

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