

SB

351

Alaska State Legislature

SENATOR

ARLISS STURGULEWSKI

Chairman, Senate Community and Regional Affairs Committee

Vice-Chairman, Senate Judiciary Committee

Member, Senate Resources Committee

295 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99501

White in Juneau
P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

M E M O R A N D U M

10 February 1988

TO: Senator Paul Fischer
Chairman, Senate HESS Committee

FROM: Senator Arliss Sturgulewski *as*

RE: Senate Bill 351 - "An Act relating to arbitration of
medical malpractice claims."

Senate Bill 351 - "An Act relating to arbitration of medical malpractice claims" is designed to make it more clear that of the arbitration agreements that patients sign with doctors and with hospitals, only the agreement signed with a hospital needs to be re-executed each time a patient enters a hospital.

Hospitals wish to have this clarified so that they are not obliged to perform the paperwork necessary to re-execute an agreement between a patient and a doctor when a patient enters the hospital.

I am attaching a sample of the documents used for arbitration agreements, a copy of the current statute governing medical arbitration, and a letter of support for this bill from the Health Association of Alaska. I am also attaching a letter from Janet K. Temple, a Soldotna attorney who made the original bill request, outlining the concerns of some physicians in the Soldotna area.

Jay Livey, Legislative Liaison for the Department of Health & Social Services says this bill is not applicable to that department.

Please call Melissa Fouse of my staff at 465-3818 if you have any questions.

JANET K. TEMPEL
Attorney at Law
P.O. Box 2073
Soldotna, Alaska 99669
Telephone (907) 262-4604

January 27, 1988

Senator Arliss Sturgulewski
2957 Sheldon Jackson
Anchorage, Alaska 99508

Dear Senator Sturgulewski:

On behalf of Marcus C. Deede, M.D., I previously requested that AS 09.55.535(e) be amended so as to clarify that this particular provision applied only to an arbitration agreement between a patient and a hospital, and not to an agreement between a patient and a physician.

There are at least two physicians in the Soldotna area who have been routinely using patient/physician arbitration agreements for a considerable period of time. Routinely, the patients sign the agreements at the doctor's offices during their initial visits. The agreements are then in effect until revoked by the patients, under the guidelines set out in the statute.

As long as the patients are not hospitalized, there would be no controversy concerning the interpretation of AS 09.55.535(e). However, if patients are hospitalized, the statute as written is unclear whether the requirement to re-execute an arbitration agreement is solely applied to patient/hospital agreements (which seems to be the intent) or whether it also applies to patient/physician agreements.

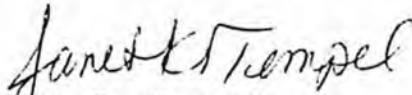
Since most people are rarely hospitalized, it is logical and desirable to require a new patient/hospital agreement on each admittance, if the hospital is using the agreements. A previously signed agreement between a patient and a physician, however, contemplates that all future care provided by the physician, including hospitalizations, would be governed by the existing agreement. Having to present a new agreement on each hospitalization, therefore, is not only confusing to the patient, but generates unnecessary paperwork and expense, and requires administrative personnel from the doctor's office (or the hospital) to take additional time to re-explain the agreement and obtain new signatures.

Senator Arliss Sturgulewski
January 27, 1988
Page Two

As I indicated to you in a prior letter dated May 5, 1987, it appears that MICA, as well as the Attorney General's Office is of the understanding that the legislative intent was to have subsection (e) apply only to patient/hospital agreements, and not to patient/physician agreements. (Copy enclosed for your information.) Based on this, the local physicians have not been having their patients with existing arbitration agreements execute new agreements on admission to the hospital. The local physicians are concerned, however, that the existing language in subsection (e) leaves a loophole if a patient later attempts to void the agreement.

I hope this letter will be of assistance to you. Please let me know if I can assist further. Thank you for your consideration and assistance in this matter.

Yours truly,



Janet K. Tempel
Attorney at Law

JKT/rmc

cc: Marcus C. Deede, M.D.

Michael Lockwood, Administrator
Central Peninsula General Hospital

PLEASE READ THIS DOCUMENT CAREFULLY

ARBITRATION AGREEMENT
FOR
PHYSICIANS AND PATIENTS

1. EXECUTION OF THIS AGREEMENT IS NOT A PREREQUISITE FOR YOU, THE PATIENT, TO RECEIVE MEDICAL CARE OR TREATMENT.

2. The attending physician will provide medical care and services to the patient to the best of his skill or knowledge, which medical care in the light of circumstances is possible and practical. The patient will cooperate fully with the attending physician by obtaining such medications as are prescribed, by following the instruments or the attending physician, by adhering to such treatment regimen or course of action as may be set forth, and by paying all fees and charges in full as billed or as provided by prior special arrangement.

3. In the event that any malpractice claim or other dispute, controversy or issue may arise out of the rendition of care or treatment by the undersigned physician, during the period that this Agreement is in force, it is hereby agreed that such will be submitted to an arbitration board selected and governed by rule as hereinafter provided.

4. This arbitration agreement may be revoked by the person receiving the rendition of care or treatment within thirty (30) days after the execution of this Agreement by notifying the undersigned physician in writing. The thirty (30) day period of revocation is extended by any period that you are physically unable to execute a revocation. The physician is not entitled to revoke this Agreement.

5. The arbitration board shall consist of three arbitrators: One designated by the physician; one designated by the party claiming malpractice by the physician; one to be selected by mutual agreement between the physician and the party claiming malpractice. If mutual agreement on the third arbitrator cannot be reached, the Superior Court in the district in which the doctor is a resident, pursuant to A.S. 09.55.535(f), shall provide a choice of three or more persons who might serve. The party claiming malpractice and the physician may each alternatively strike one or more names until one remains, thereby providing a basis for final selection by the court. The third arbitrator selected pursuant to this procedure shall serve as the chairman of the arbitration board.

6. The provisions of the Uniform Arbitration Act as contained in A.S. 09.43.010 -.180, and A.S. 09.55.535, shall apply to arbitration pursuant to this agreement, if not in conflict with specific provisions of this agreement. The arbitration board shall render its decision in accordance with the laws and legal precedence of the State of Alaska. Discovery shall be afforded to the parties pursuant to the Alaska Rules of Civil Procedure and the hearing shall be conducted according to the Rules of Evidence as they are applied by the courts of Alaska. A.S. 09.55.540 -.548 and .554 -.560 and A.S. 09.65.090 shall apply to the arbitration procedure in addition to the other laws, legal precedence, Rules of Civil Procedure and Rules of Evidence of the State of Alaska.

7. The undersigned parties hereby acknowledge that they have read the foregoing arbitration agreement and understand the provisions contained therein.

8. This agreement is to remain in full force for all disputes, controversies, issues, or claims by the undersigned parties relating to care or treatment for the foregoing:

9. Wherever used, the term "physician" includes the physician and all employees, agents and associates of the physician. This agreement terminates when the above-described care and treatment has been completed or on the ___ day of _____, 19___, whichever occurs first.

DATED this ___ day of _____, 19___.

PATIENT

PHYSICIAN

This form is hereby approved by the Office of the Attorney General for the State of Alaska:

DATED this 29 day of March, 1978.

OFFICE OF THE ATTORNEY GENERAL

By Robert M. Marshall

****PLEASE READ THIS DOCUMENT CAREFULLY****

**ARBITRATION AGREEMENT
FOR
HOSPITALS OR CLINICS AND PATIENTS**

1. EXECUTION OF THIS AGREEMENT IS NOT A PREREQUISITE FOR YOU, THE PATIENT, TO RECEIVE MEDICAL CARE OR TREATMENT. THIS AGREEMENT MUST BE RE-EXECUTED EACH TIME YOU ARE ADMITTED TO THE HOSPITAL.

2. The health care provider will provide medical care and services to the patient to the best of his skill and knowledge, which medical care in the light of circumstances is possible and practical. The patient will cooperate fully with the health care provider by obtaining such medications as are prescribed, by following the instructions of the health care provider, by adhering to such treatment regimen or course of action as may be set forth, and by paying all fees and charges in full as billed or as provided by prior special arrangement.

3. In the event that any malpractice claim or other dispute, controversy or issue may arise out of the rendition of care or treatment by the undersigned health care provider, during the period that this agreement is in force, it is hereby agreed that such will be submitted to an arbitration board selected and governed by rules as hereinafter provided.

4. This arbitration agreement may be revoked by the person receiving the rendition of care or treatment within thirty (30) days after the execution of this agreement by notifying the undersigned health care provider in writing. The thirty (30) day period of revocation is extended by any period that you are physically unable to execute a revocation. The health care provider is not entitled to revoke this agreement.

5. The arbitration board shall consist of three arbitrators: One designated by the health care provider; one designated by the party claiming malpractice by the health care provider; one to be selected by mutual agreement between the health care provider and the party claiming malpractice. If mutual agreement on the third arbitrator cannot be reached, the Superior Court in the district in which the health care provider is situated pursuant to A.S. 09.55.535(f), shall provide a choice of three or more persons who might serve. The party claiming malpractice and the health care provider may each alternatively strike one or more names until one remains, thereby providing a basis for final selection by the court. The third arbitrator selected pursuant to this procedure shall serve as the chairman of the arbitration board.

6. The provisions of the Uniform Arbitration Act as contained in A.S. 09.43.010 -.180, and A.S. 09.55.535, shall apply to arbitration pursuant to this agreement, if not in conflict with specific provisions of this agreement. The arbitration board shall render its decision in accordance with the laws and legal precedence of the State of Alaska. Discovery shall be afforded to the parties pursuant to the Alaska Rules of Civil Procedure and the hearing shall be conducted according to the Rules of Evidence as they are applied by the courts of Alaska. A.S. 09.55.540 -.548 and .554 -.560 and A.S. 09.65.090 shall apply to the arbitration procedure in addition to the other laws, legal precedence, Rules of Civil Procedure and Rules of Evidence of the State of Alaska.

7. The undersigned parties hereby acknowledge that they have read the foregoing arbitration agreement and understand the provisions contained therein.

8. This agreement is to remain in force for all disputes, controversies, issues, or claims by the undersigned parties relating to care or treatment for the following:

9. The term "health care provider" includes the hospital or clinic and all agents, employees, servants, officers and directors of the hospital or clinic and physicians employed by or associated with the hospital or clinic.

This agreement terminates when the above-described care or treatment has been completed or on the ____ day of _____, 19____, whichever occurs first.

DATED this ____ day of _____, 19____.

PATIENT

HEALTH CARE PROVIDER

This agreement is extended to apply to outpatient care for the treatment described in paragraph 8 of this agreement.

DATED this ____ day of _____, 19____.

PATIENT

HEALTH CARE PROVIDER

This form is hereby approved by the Office of the Attorney General for the State of Alaska.

DATED this 29 day of March, 1978.

OFFICE OF THE ATTORNEY GENERAL

By [Signature]

health association of alaska

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

Chairman of the Board
John Vowell
Wrangell General Hospital

January 22, 1987


Chairman-Elect
Jim Gingerich
Fairbanks Memorial
Hospital

Memo To:

Senator Arliss Sturgulewski

Immediate Past Chairman
Mike Lockwood
Central Peninsula
General Hospital
Soldotna

From:

Harlan R. Knudson 
Executive Director
Health Association of Alaska

Secretary/Treasurer
C. Keith Campbell
Seward General Hospital

Subject:

Support - SB 351, Amending Arbitration Act

Delegate to the American
Hospital Association
Sister Barbara Haase
Ketchikan General Hospital

The Health Association of Alaska has reviewed and

Alternate Delegate to the
American Hospital Assoc.
Ed Zeine
Cordova Community
Hospital

supports SB 351, amending the arbitration act to require that

Delegate to the American
Health Care Association
Tom Boling
Our Lady of Compassion
Care Center
Anchorage

the arbitration agreement between the patient and the hospital

be re-executed at each admission.

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Alternate Delegate to the
American Health Care
Association
Ronald Olthoff
Denali Center
Fairbanks

Delegate to the Healthcare
Forum
Ed Malewski
Sitka Community Hospital

Delegate to the National
Congress of Hospital
Governing Boards
Jan Trettner
Seward General Hospital

Government Institutions
Representative
Frank Sutton
Mt. Edgecumbe Hospital
Sitka

Outpatient Facilities
Representative
Avis Hayden
Alaska Treatment Center
Anchorage

Executive Director
Harlan R. Knudson