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MICA Medical Indemnity
Corporation of Alaska

ALEUT PLAZA
4000 OLD SEWARD HWY., SUITE 203
ANCHORAGE, ALASKA 99503
(907) 563-3414

TO: William Brock
Roger Holmes, Esq.
Susan Mason, Esq.

FROM: Mary Pierce *MP*

DATE: May 8, 1990

RE: Tax Issue History

The final tax issue history is enclosed for your files. I don't plan on distributing this other than to the three of you at this time. Thanks for you help on this, it may prove to be a good reference in the future.

MP/tmb

TAX ISSUE HISTORY

1988

Sometime in early 1988 as MICA was working with Ernst & Whinney on our reserve issue Tom Koecher advised Mary Pierce, Executive Director, that their office felt there may be a question regarding MICA's tax status due to the change in the 1986 tax law. He said they were looking into it and would get back to us.

March 12 - Executive Committee Meeting. Tom Koecher, Ori Orien of Anchorage and Dave Wilson (Seattle) all of Ernst & Whinney were at the meeting to discuss reserve increases. They told the Executive Committee about the tax status question and that their tax advisor would be attending the next Executive Committee meeting.

March 18 - Executive Committee Meeting. Koecher, Orien and Shelby Stastny explained question of tax status to committee. They explained two prong test to be tax exempt.

1) Income must accrue to the State
and

2) Must have a public purpose or "essential governmental function."

The Executive Committee asked them to investigate the question and report back. Brock, Pierce and Koecher would meet with Director Roller on March 25th to advise him of tax exempt status question.

April 26 - Stastny reported to Executive Committee that initial informal discussion with IRS suggested we would not receive a favorable ruling. Suggested we file tax returns and pursue formal tax ruling request. Cost to do research and ruling request est. \$10 - 15,000.

May 6 - Engagement letter from Stastny outlining course of action on request for tax ruling and cost.

May 13 - Board votes to submit formal ruling request to IRS. Estimated cost from E & W is \$20,000.

- June 17 - Paul Roller, Director Division of Insurance and Deputy Director, Jim Jordan present at Board meeting. A draft tax ruling request given to Executive Committee. Stastny asked Arliss Sturgulewski to do some legislative research to help answer legislative intent questions. Letter to be finalized soon.
- June 30 - Memo from Maureen Weeks to Sturgulewski stating she had researched the records of the 1976 session and there was not any specific testimony to create for-the-good-of-the-public issue.
- July 15 - Stastny reports to the Executive Committee that ruling request not sent yet. He is waiting for final information from legislative research. MICA has provided all pertinent back-up from 1975 Governor's Medical Malpractice Insurance Commission and all other historical data.
- July 24 - At Quarterly meeting of the Board, Director Paul Roller tells Board he has spoken to several legislators. They are anxious to help us clear up any misunderstandings about legislative intent and would like our proposed changes by September.
- August 4 - Stastny sends some ideas for proposed legislative changes that may help us win our case to Roger Holmes, Brock and Pierce.
- August 5 - Stastny's research has uncovered three companies very similar to MICA who requested rulings. Sent to Holmes and Pierce. All three received unfavorable rulings.
- August 11-30 - Holmes proposes legislative changes. He believes that these changes will make it clear that our earnings belong to the state.
- August 23 - David Bickerstaff gives us estimate that rates will need to increase 15-17% for 1989 to cover taxes.
- August 24 - MICA sends revenue ruling request to IRS.

- Special Executive Committee meeting on tax status with entire Board of Governors. Koecher and Stastny present.
They explain problem and that Holmes' proposed legislation could resolve it by making it clear MICA's earnings belong to the state.
The Board votes to forward Holmes' legislation to Governor and legislature.
- September 7 - Roller (Director) agrees to hand carry the letter to the Governor. The letter explains our dilemma to the Governor and asks if he might sponsor legislative changes.
- Roller also suggest we purchase an insurance company with net losses to offset our taxes.
- September 16 - Brock receives letter from Stastny advising him that MICA can't use net losses of an acquired corporation (insurance company) to offset income.
- Executive Committee Meeting. E & W tells committee ruling request filed on 8-24-88 and we will have a response within 90 days. Unfortunately a rate filing must be made by November 1 and a 15% increase is needed to just cover 1989 taxes. Executive Committee votes to file 1-1-89 rate based on pure premium and to then retroactively charge an amount needed for taxes later in year if we don't receive legislative fix.
- September 16 - Holmes and Pierce meet with Senator Kelly and
thru 30 Representative Cotten to personally advise them of our problem and show them proposed legislation.
- November 4 - Board has Quarterly meeting. Jim Jordan reports to Board that although the Governor has not released his legislative priorities the informal message is that he will sponsor our legislation.

A plan of action to get information to legislators while we are waiting for official response from the Governor is proposed. The Legislative Committee will register as lobbyists for this purpose.

- November 11 - A letter is sent to the policyholders explaining 1989 rating structure.
- November 22 - Tom Kelley the agent at the IRS has several questions regarding MICA that he asks of Stastny. We respond with a letter to Kelley.
- November 25 - A draft letter is composed to have board members send to legislators. This is sent to the Board members along with:
- a) a fact sheet
 - b) a copy of the letter sent to policyholders on the rates
 - c) a spread sheet of our financials for the last 5 years.

Pierce sends letter to Senator Kelly and Representative Cotten.

- December 1 - The Legislative Committee meets to devise plan to distribute information to legislators since told Governor would not sponsor legislation because a) he could not investigate all possibilities in a timely manner and b) he did not feel that the state should be in the insurance business.
- December 8 - A special Board meeting is called.

Chairman Brock had met with Director Roller and Stan Garlington. Roller said it was reasonable to assume that legislation will pass and the Governor will not oppose or veto bill. Board votes to approve 10.5% increase for hospitals and 12.6% increase for physicians to be taken for taxes if it is determined we were liable.

Chairman Brock reported we have been asked to meet with the IRS in Washington, D.C. Also Stastny reported the tax accountants in Washington advised us we may be relieved retroactively of taxes. We had previously been told this wasn't possible. The IRS's single question was "do our profits inure to the state." The Board discussed if that could mean fewer legislative changes.

Finally, it was discussed if MICA should even propose legislation considering there was a) a question of our tax liability b) reluctance of Governor to sponsor legislation and c) whether MICA wanted to legislatively bind itself closer to the state. Board agreed to meet after Brock meets with IRS.

Director Roller also approved of us hiring a lobbyist to forward legislation.

- Executive Committee approves Brock to go to Washington, D.C.
- December 14 - Brock, Stastny, Phil Royalty and Ken Tracy from E & W in Washington, D.C. met with Tom Kelley and Kelley's boss, Maura Sullivan and another person Alvin Brown from the insurance section. Brock hopes to at least find out what kind of legislative changes would be needed to maintain tax exemption. IRS not sympathetic and will not give information on legislation. E & W expects we will have ruling by January 1989. We will provide additional information requested by IRS. E & W feels a favorable opinion from Alaska Attorney General regarding state "ownership" could be helpful.
- December 10 thru 16 - The legislative drafter is contacted by Holmes thru Senator Kelly's office to anticipate information from Brock's meeting in D.C. Drafter later informed to hold off on that legislation by Holmes as result of December 14th meeting with I.R.S.
- December 20 - Brock spoke to Jim Jordan about obtaining the AG's opinion. Jim will discuss with Paul Roller and get back to us.
- December 30 - Director Roller prepares request for AG's opinion on disposition of MICA's assets if MICA were to be dissolved.

1989

- January 11 - Letter from Stastny to IRS explaining how unique we are, unlike previous adverse ruling cases.
- February 8 - Jeffrey Bush, Deputy Commissioner of Commerce, forwards Director Roller's request for opinion to AG's office.
- February 10 - Board meeting in which Chairman Brock informs board we still have no ruling. Brock tells board that Pierce will be preparing a summary of issues and will forward.
- February 22 - Memo from Pierce to Board outlining all of our choices if tax ruling is favorable or unfavorable.
- February 28 - Stastny calls IRS to get word on ruling. He is informed by Kelley that although Kelley is favorable his boss isn't. This could mean arbitration within IRS. Holmes advises MICA to get tax attorney.
- March 7 - Bruce Gagnon and Sue Mason of Atkinson, Conway & Gagnon meet with Brock, Holmes, Crabtree, Koecher, Stastny and Pierce. Advise us to take an aggressive approach with IRS.
- March 8 - Engagement letter from Atkinson, Conway and Gagnon. Advise MICA that we should propose a resolution to have the legislature clear up question about MICA being an integral part of the state.
- March 8-22 - We talk to Roller and then Deputy Commissioner Jeff Bush and advise them we want to do resolution.
- We contact Cotten in House and Sturgulewski in Senate to see if they might sponsor resolution.
- March 17 - Executive Committee meets and is informed about need for tax attorney. They approve contract with Atkinson, Conway and Gagnon. They will ask Board to approve.

- March 20 - Brock, Pierce and Mason meet in Juneau with Jeffrey W. Bush, Deputy Commissioner of the Department of Commerce and Economic Development, and later with Cotten's aide, regarding proposed legislative resolution.
- March 22 - MICA sends "Background Summary" on tax issue to Cotten.
- House Joint Resolution 40, co-sponsored by Gruenberg and Cotten, is introduced.
- Brock sends a letter to Ron Clarke in Governor's office regarding discussion with Jeff Bush on resolution enclosing copy of proposed legislative resolution.
- March 26 - Gagnon, Phil Royalty & Ken Tracy (E & W, Washington, D.C.) have conference call with Tom Kelly at IRS and learn that a proposed adverse ruling is now being reviewed by Maura Sullivan. Kelly says that the ruling would be based on the Maryland Savings Share case.
- March 28 - Mason writes to AG's office and outlines factors supporting conclusion that MICA's assets would revert to the state upon dissolution.
- April 3 - Senate Joint Resolution 41, sponsored by Sturgulewski is introduced.
- April 13 - A. G. couldn't reach an opinion that was helpful to MICA so request for an opinion was abandoned.
- April 18 - Executive Committee has joint meeting with Underwriting. They are informed that resolution has been forwarded and we expect it to pass. In the meantime Gagnon and Mason advise us not to implement mid-year premium increase because we would be admitting liability.
- April 25 - Mason has telephone discussion with Deputy Commissioner Bush regarding distribution of Joint Legislative Resolution.

April 26 - Mason has telephone discussion with Shari Kochman, Assistant to Bob Evans in the Governor's Office, regarding Joint Legislative Resolution.

April 28 - Quarterly Board meeting and board advised we still have not heard from the IRS.

Board told that tax attorneys will be working with the Governor to draft an appropriate letter to our Congressional delegation. We are hopeful that the congressional delegation can assist us to consult with someone of a higher stature in the IRS. We aren't getting anywhere at level we are at.

Roller and Jordan attend the meeting but only for their report.

Board increases budget to cover legal and audit counsel expenses on our tax issue.

Board votes not to take rate increases for taxes.

The Board has a lengthy discussion that the tax issue has been more complicated than anticipated. Since this tax liability is shown on our financial statements it will continue to accumulate. The Board feels that we need a long term solution.

Chairman Brock points out that if we receive an adverse ruling we can litigate. However, that litigation would take time and be costly and our tax liability would continue to accumulate.

- Legislative Committee meets and is informed that the resolution should pass.

May 5 - Senate Joint Resolution 41 passes the House.

May 8 - Brock sends Ron Clarke a draft of a proposed letter from the Governor to the Congressional delegation enclosing copies of Senate Joint Resolution 41 and "Background Summary".

May 12 - Senate Joint Resolution 41 transmitted to Governor from Legislature.

- May 25 - Pierce talks to Clarke to confirm letters will be sent soon.
- June 2 - Governor Cowper sends letters to Young, Murkowski and Stevens, enclosing Senate JR 41 and requesting they assist MICA on tax issue.
- Cowper sends copy of letters to his special assistant, John Katz in Washington, D.C. office to ask him to assist.
- June 12 - Phil Royalty (E & W) discussed MICA with Tom Kelley of IRS and learned that a decision had been made to issue an adverse ruling; Maura Sullivan is no longer involved and Bill Coppersmith is Kelley's new supervisor, and MICA will have an opportunity to meet with him before the ruling is issued. Kelley says that the basis for the decision is that MICA is insuring private interests. Royalty requests copies of Joint Legislative Resolution and of Governor's letters to the Congressional delegation.
- June 13 - Bob Evans of the Governor's Office tells Mason he has discussed the situation with John Katz and that MICA should contact Katz.
- June 16-21 - The Governor signs Legislative Resolve #38. Copy of it and letters Governor sent to congressional delegation sent from Mason to Royalty. Ask Royalty to give to IRS.
- June 19 - Mason and Gagnon discuss situation by telephone with John Katz, who offers the assistance of Eric Ostrovsky in his office.
- June 21 - Special Board meeting. Holmes, Mason and Stastny in attendance to discuss tax issue with the Board. Stastny and Mason advise Board to withdraw revenue ruling request until we can meet with the IRS and advise them of the Legislative Resolve. Board gives them authority to pull request if they deem necessary.

- June 22 - Mason talks by telephone to Ostrovsky regarding possible meeting with IRS to include representatives from Katz's office and from Stevens' office and regarding possible federal legislation.
- June 27 - Chuck Konigsberg from Senator Stevens' office calls to offer us help to meet with IRS attorneys and with Office of Tax Policy in the Treasury Department.
- July 18 - Mason receives letter from Pierce advising that Konigsberg is setting up a meeting with the Department of the Treasury for the week of August 7.
- July 19 - Royalty sends copy of Legislative Resolve #38 to IRS. He tells them we will be meeting with the Department of the Treasury in August. He asks that if they determine before then that we should have an adverse ruling to advise us so we can pull the request.
- July 21 - MICA meets with Roller to advise him of our progress.
- July 26 - Konigsberg sends letter to following for 8-8-89 meeting with Department of the Treasury: Brock, Mason, Pierce, Royalty and partner Dave Bierenson from E & W, and Eric Ostrovsky from the Alaska State Office in Washington, D.C.
- August 8 - Meeting with Department of Treasury in Washington, D.C. Attendees: Brock, Pierce, Mason, Konigsberg, Royalty, with Kay Gouwans rather than Eric Ostrovsky from Governor's office. This group meets at Senator Stevens' office prior to the meeting at the Treasury Department, to be briefed on what kind of questions we might be asked.

Treasury meeting chaired by Dana Trier, Deputy Assistant for Tax Policy, Treasury Department. His assistants Evelyn Brody and Cathlyn Farrow are also present and Bill Coppersmith, Tom Kelley's supervisor from the IRS, is also there.

Mr. Trier seems favorably disposed toward MICA. They are fearful if they allowed MICA to remain tax exempt that they will create a "slippery slope" which would allow others to structure themselves like us. We try to convince them that we are unique. We end with the agreement that we will submit supplemental information regarding MICA's history and current business to the IRS.

August 9 - The same core group meets again in Senator Stevens' office, this time with Ostrovsky from the Governor's Office rather than Gouwans. Our purpose is to prepare for a meeting with the Senate Finance Committee aides to evaluate if seeking federal legislative relief is an option.

We meet with Rick Grafmeyer, a minority aide for Finance, and aides; Scott McCloud, a specialist in insurance tax issues, and Mel Thomas a specialist in tax issues from the Joint Committee on Taxation.

We are not encouraged by them to seek federal legislation after we advise them of our plight. There is a thought that a provision dealing with MICA's tax exemption could be attached to a Rural Health Care bill and Konigsberg said he will talk to Senator Stevens about that possibility.

August 17 - Pierce sends memo to Board of Governors summarizing meetings in Washington, D.C.

August 18 - A Supplemental Submission to the IRS is sent to Phil Royalty.

- A thank-you letter is sent to Dana Trier from Konigsberg.

August 22 - Senator Stevens sends a thank-you letter to Trier with MICA's Supplemental Submission attached and a copy of a letter from Royalty explaining why the Marvland Saving Share Ins. Corp. v. U.S. case is different from MICA.

- August 28 - Konigsberg is in Anchorage and Gagnon, Mason, Kathy Crabtree and Pierce meet with him. We discuss unlikely possibility that we would win a court case against the IRS. Konigsberg says he will work on federal legislation but feels that our chances this year are extremely slim. Consensus is that if litigation is necessary, it would be better to obtain adverse ruling than to withdraw the request.
- September 15 - Mason in attendance at Executive Committee meeting. Executive Committee worried about mounting tax assessment. They vote to get revenue ruling whether favorable or not.
- There is discussion of litigating in U.S. District Court (must pay tax first) or in U.S. Tax Court (must wait for IRS to assess deficiency).
- September 20 - Konigsberg informs Mason that he is exploring possibility of federal legislation and is drafting a proposal. He also reports that he has spoken by telephone to Dana Trier. Trier says that the IRS is considering entering into a closing agreement with MICA, which is basically a settlement agreement that can eliminate past and future tax liability for a specified number of years (authorized by Internal Revenue Code 7121).
- September 21 - Mason has conference call with Royalty, Tom Meyerer (E & W) and Konigsberg to discuss ramifications of closing agreement.
- September 26 - Konigsberg asks Pierce for information so he can draft federal legislation. Pierce faxes him: - date Governor signed bill, 5-28,76; date legislation effective, 5-29,76, although couldn't write insurance until 6-28-76.

Copy of original statute and current statute sent with major difference between old and new being:

- a) Exclusive and mandatory dropped
- b) Occurrence changed to claims-made
- c) Joint Underwriting Authority (JUA) concept dropped.

October 6 - Konigsberg faxes Mason first draft of proposed federal legislation, and Mason and Gagnon fax Konigsberg revisions after discussing with Royalty.

- Conference call: Mason, Crabtree, Konigsberg, Royalty, Meyerer, Coppersmith, Jim Malloy, and Pete Scott, Acting Chief Counsel of the IRS. Discussed possible closing agreement and agreed to meeting in Washington on October 16.

October 10 - Mason sends notice of meeting with Department of Treasury and IRS on 10-16-89. We have been advised by Konigsberg that IRS may want to propose a closing agreement. We are informed that this is to be treated as very confidential.

- Mason sends Pierce a draft with a review by she and Gagnon of potential federal legislation proposed by Konigsberg.

October 16 - Meeting with IRS and Department of Treasury in Washington, D.C. Core group of Mason, Pierce, Konigsberg, Royalty and Tom Meyerer of E & Y (new player) and Eric Ostrovsky from Governor's Office meet in Senator Stevens' office to discuss closing agreement concept. Pierce informs group that MICA's Executive Committee has been polled and are very interested in this concept.

Meeting at the IRS chaired by Pete Scott, Acting Chief Counsel of the IRS, Jim Malloy, Assistant Counsel for Financial Institutions (Section 115 co's under his jurisdiction) and Bill Coppersmith all from IRS. Dana Trier and Evelyn Brody are there again representing Office of Tax Policy in the Treasury Department.

Scott says we have very sympathetic case. They believe a closing agreement would be in everybody's best interest. We discuss what to do to remain tax exempt and MICA's unique structure again. They ask MICA to submit closing agreement. Scott suggests the following parameters for an agreement: past tax liability eliminated; MICA agrees to try to change structure within specified

period; MICA becomes taxable at end of specified period if no change in structure; MICA must take interim steps toward phasing out or bifurcating; if MICA becomes part of state, problem disappears. In response to a direct question, Scott says that, if a ruling is issued, it will be adverse.

October 23-24 - Mason sends draft closing agreement and copy of federal regulations covering closing agreements to Pierce. Closing agreement proposes elimination of any past tax liability and future tax liability through 1994 with partial or full taxability beginning in 1995, unless MICA has been made an integral part of the state.

October 24 - Pierce sends memo to Board of Governors outlining closing agreement concept and the advantages to MICA. Two major advantages are relief from past tax liability and being tax-exempt for some future period.

October 25 - Brock and Pierce meet with Jim Jordan, Acting Director of Division of Insurance and discuss details of closing agreement. Jordan to discuss with his boss Mercurlieff who will discuss with Governor's office. Jordan approves concept and draft closing agreement, doesn't anticipate problems from anyone else in Administration.

October 26 - Executive Committee and Finance Committee have joint meeting. Mason and Holmes in attendance. Mason explains this is a binding agreement and other details of closing agreement.

October 27 - Quarterly Board meeting with Gagnon, Mason and Orien in attendance.

The Board discusses the closing agreement and authorizes the draft. Gagnon and Mason feel that state should also approve based on the state's involvement in MICA by statute.

The Board gives the Executive Committee the power to finalize this agreement with Brock.

- Gagnon and Mason meet with Jordan. He agrees to be a signor on closing agreement with Brock.
- October 30 - Closing Agreement hand-delivered to Pete Scott by Royalty.
- November 2 - Mason sends letter to Pierce with a copy of cover letter to closing agreement that Royalty gave to Scott. She also states she had a discussion with Konigsberg and informs Pierce that the President has nominated a new Chief Counsel to replace Acting Pete Scott. The Senate may confirm that replacement before Thanksgiving. Pierce very concerned because new Chief Counsel may not agree to closing agreement between IRS and MICA and we would have to start the process again.
- Letter from Senator Stevens to Pete Scott, attaching closing agreement and requesting his attention.
- November 10 - Pierce calls Royalty requesting his assistance with IRS in approving closing agreement.
- November 30 - Executive Committee meeting in which Pierce informs them that we have no word on agreement.

1990

- November 30
thru
February 5 - Various phone calls among Pierce, Royalty, Konigsberg and Mason requesting information on status of closing agreement.
- January 2 - Pierce meets with Jordan and discusses closing agreement and MICA's financial stability. Jordan says state should concern itself with MICA staying strong financially because he feels a restructuring and independence are imminent. Jordan says will stay as Acting Director until new Administration (end of year).
- February 5 - Letter to Scott from Royalty referencing Scott's recent conversation with Meyerer and requesting resolution of closing agreement.

- February 16 - Letter to Konigsberg from Pierce explaining crucial deadlines with Convention Statement, NAIC, A.M. Best, etc. that are adversely affecting MICA's financial reputation and stability because of the unresolved tax issue.
- February 20 - Royalty calls Pierce and Mason to inform them that Scott has met with Royalty and Meyerer and proposed a new agreement. He wants to only allow tax exemption through 1990 for MICA to work with legislature to restructure. MICA can only remain tax-exempt if becomes part of state and he wants immediate bifurcation of business.
- February 23 - Letter from Mason to Royalty with new draft closing agreement, proposing elimination of tax liability for past years and through 1992, with full tax liability beginning in 1993 unless MICA becomes integral part of the state.
- Letter from Pierce to Scott summarizing our understanding of his verbal concerns and explaining things we can't control, i.e., length of time necessary to obtain legislative action and upcoming change of administration.
 - Brock, and Pierce and Holmes participating telephonically, meet with new Director, Dave Walsh to explain tax issue. Walsh agrees to sign if agreement remains the same in concept.
- February 28 - Letter to Scott from Brock (with the legal advice of Mason) explaining serious practical problems in carrying out bifurcation.
- March 2 - Royalty and Meyerer meet with Scott and Coppersmith regarding changes IRS wants in closing agreement: exempt through 1991, partially taxable (bifurcation) in 1992, fully taxable beginning 1993 unless become "integral part of state."

- March 5 - Conference call with Brock, Frazier, Keller, Smith (Executive Committee) and Mason to discuss revised closing agreement incorporating Scott's changes. Revised closing agreement approved.
- March 6 - Final draft of closing agreement after agreeing to time deadlines for interim actions to be taken by MICA.
- After rethinking closing agreement Director Walsh feels he should not sign due to potential liability to the state and other agencies similar to MICA.
- At Walsh's request, Assistant Attorney General Alexis Gabay telephones Mason. Mason faxes background information to Gabay. Mason discusses situation with Gabay and (now) Assistant Attorney General Jeffrey Bush by telephone.
- March 7 - Letter from Mason to Alexis Gabay, Assistant Attorney General, enclosing proposed letter from the Director to Brock concurring with MICA's decision to enter into a closing agreement.
- March 8 - Meyerer and Royalty contact the IRS and Director Walsh is removed as signor on closing agreement.
- Director confers with Ron Clarke in Governor's office about MICA's closing agreement and his discomfort with the agreement.
- Holmes sends letter to Walsh explaining history of the tax issue and the involvement of the state in negotiations. Holmes informs Walsh that he has advised the Board to sign the closing agreement.
- March 9 - Closing agreement is to arrive today from the IRS for Brock's signature.
- Walsh confers with Ron Clarke and Clarke is of the opinion MICA shouldn't sign the agreement.
- Mason and Holmes have telephone meeting with Clarke. Clarke then discusses situation with Attorney General, Doug Baily. Clarke agrees MICA

can sign but state will remain neutral. He requests that MICA report to Director Walsh once the agreement is signed.

- Mason faxes to Pierce a summary of conversation with Clarke.
 - Director Walsh sends letter to Brock, who faxes to Pierce, Mason and Holmes, stating state cannot concur with MICA's signing the agreement.
 - Pierce sends letter to Walsh (via fax) stating it was her understanding state taking neutral position and attaching Mason's summary letter regarding conversation with Clarke.
- March 12 - Walsh calls Pierce regarding her letter. They agree on their understanding of state's position which is that the state is not taking a position.
- Pierce sends memo to Brock with copy to Holmes and Mason summarizing above conversation.
- Brock signs Closing Agreement and returns to IRS.
- March 15 - Scott signs Closing Agreement.
- March 19 - Final Closing Agreement received by MICA signed by Scott and Brock.

HB 238

MICA Medical Indemnity
Corporation of Alaska

ALEUT PLAZA
4000 OLD SEWARD HWY., SUITE 203
ANCHORAGE, ALASKA 99503
(907) 563-3414

DATE: October 22, 1990

TO: All MICA Policyholders

FROM: Ron Keller, M.D. *RJK*
Chairman of the Board of Governors
Medical Indemnity Corporation of Alaska

RE: Announcement of quarterly meeting & notice of potential purchase offer for MICA

On November 2nd, MICA's Board of Governors will hold our regular quarterly meeting in Anchorage at the Clarion Hotel beginning at 9 a.m.

I am sending you this quick memo to let you know some good news: It's likely that we will be receiving a formal offer to purchase MICA, and we'll deal with that issue at the meeting. Policyholders are, naturally, invited to attend. But we also invite you--if you've got questions about these developments--to give MICA Executive Director Mary Pierce a call at 563-3414. She'll be glad to answer any questions and fill you in on the recent events since we last contacted you.

Let me give you a quick run down. As you'll recall, MICA's tax exempt status was challenged by the IRS; and as a result MICA cannot continue to operate the way it has been operating since it was established in 1976. The three choices for MICA are to:

- Merge into the state bureaucracy.
- Spin off to become a totally private mutual insurance company.
- Have its assets & liabilities purchased by a private carrier.

Of these options, the MICA Board has unanimously chosen to pursue a purchase.

We have every indication that a physician owned mutual, very closely aligned philosophically with MICA will be making us an offer. This firm has indicated they are willing to meet the tough conditions that the MICA Board has placed on any sale. Those conditions are:

- A 5-year guarantee that all current policyholders who are otherwise acceptable underwriting risks will receive continued coverage.
- No cancellation of existing policyholders without an Alaska-based appeal process.
- No geographical discrimination in underwriting terms & benefits.
- Continuation of current rating classifications, with a special category for family practice docs doing obstetrics.
- Purchaser will keep an Alaska office with both claims adjusting and risk management staff, plus provide an 800 toll-free phone number.
- Certain policyholder benefits will continue, such as the current DDR (free tail); availability of tail policies for purchase; policyholder inception date with MICA used to determine benefits based on length of coverage; and insureds will still have to give written consent to settle any claim.

As you can see, the MICA Board's top priority is safeguarding your interests. We'll be contacting you again once a formal offer is made, and after our meeting on Nov. 2nd. Meanwhile, please feel free to call Mary at 563-3414 to get questions answered or to find out more about where MICA is going.

Thanks.

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

William G. Brock
Chairman of the Board
Medical Indemnity Corporation
of Alaska
400 Old Seward Highway
Anchorage, Alaska 99503

Person to Contact:
Thomas J. Kelly

Telephone Number:
(202) 566-3506

Refer Reply to:
CC:FI&P:2 - TR-31-3927-88

Date:

MAR 19 1990

RECEIVED

MAR 21 1990

• Dear Mr. Brock:

The Deputy Chief Counsel of the Internal Revenue Service approved your closing agreement on March 15, 1990.

I have enclosed the signed duplicate of the agreement for your records.

Thank you for your cooperation.

Sincerely yours,
Assistant Chief Counsel
Financial Institutions and Products

By: William E. Coppersmith
William E. Coppersmith
Chief, Branch 2

Enclosure:
Duplicate of closing agreement

Department of the Treasury - Internal Revenue Service

CLOSING AGREEMENT ON FINAL DETERMINATION

COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code, the Medical Indemnity Corporation of Alaska (MICA), 4000 Old Seward Highway, Anchorage, Alaska 99503, Employer Identification Number: 92-6017594 and the Commissioner of Internal Revenue make the following closing agreement:

WHEREAS,

(1) An issue has arisen whether MICA's income is not included in gross income under section 115 of the Internal Revenue Code; and

(2) MICA and the Commissioner of Internal Revenue (IRS) desire to settle this issue with respect to all past and present tax years and with respect to future tax years through and including tax year ending December 31, 1992; and

(3) MICA and the IRS desire to identify specific actions that MICA will undertake between the date of execution of this Closing Agreement and December 31, 1992;

IT IS DETERMINED AND AGREED for Federal income tax purposes that:

(1) With respect to all past and present tax years and with respect to future tax years through and including tax year ending December 31, 1991, MICA's income shall not be included in gross income under section 115 of the Internal Revenue Code.

(2) With respect to the tax year ending December 31, 1992, MICA's income shall not be included in gross income under section 115 of the Code only to the extent that MICA establishes that such income is attributable to physicians or other health care providers who, despite a reasonable effort, could not obtain medical malpractice coverage from another insurance company.

**Closing Agreement
Medical Indemnity Corporation of Alaska**

(3) During the period from the date of execution of this Closing Agreement until December 31, 1992, MICA agrees as follows:

(a) before May 1, 1990, and annually thereafter until December 31, 1992, MICA will send written notice to all insurance companies that now offer medical malpractice coverage in the State of Alaska and also to at least five other companies that write medical malpractice coverage informing them of the existence of the statutory mechanism for the purchase of MICA's business under Alaska Statute 21.88.095 ("Transfer of Corporate Assets and Liabilities"); and

(b) upon receipt of any good faith offer or expression of interest, MICA will make a good faith effort to negotiate an agreement for the transfer of corporate assets and liabilities on the terms authorized by said statute and to obtain the approval of the Director of the Alaska Division of Insurance for such transfer; and

(c) before the end of the current legislative session, which is required by law to end by May 10, 1990, MICA will transmit to the Alaska Legislature a written report that (1) summarizes the provisions of this Closing Agreement, (2) describes the principal statutory changes that may be necessary with respect to MICA's structure and tax status, and (3) alerts the legislature to the need to take legislative action with respect to MICA during the next two-year legislative term, which will begin in January 1991, if the Legislature wishes to preserve MICA's tax-exempt status; and

(d) after the statewide elections in the fall of 1990, MICA will transmit to the newly-elected Governor and to all members of the Alaska Legislature for the 1991-1992 term a written report that (1) summarizes the provisions of this Closing Agreement, (2) describes the principal statutory changes that may be necessary with respect to MICA's structure and tax status, and (3) alerts the legislature to the need to take legislative action with respect to MICA during the 1991-1992 term of the Legislature, if the Legislature wishes to preserve MICA's tax-exempt status; and

**Closing Agreement
Medical Indemnity Corporation of Alaska**

(e) before the beginning of the next legislative session, which will begin in January 1991, MICA will consult with the newly-elected Governor and will contact key individual legislators for the 1991-1992 legislative term, for the purpose of developing a legislative proposal regarding MICA's future structure and tax status; and

(f) during the 1991-1992 term of the Alaska Legislature, MICA will initiate and maintain regular and ongoing contacts with the Governor's office, with the Director of the Division of Insurance, and with key individual legislators for the purpose of informing them of the need for legislative action with respect to MICA; and

(g) throughout the 1991-1992 term of the Alaska Legislature, as necessary or advisable, MICA will prepare or assist in the preparation of appropriate proposed legislation and will seek to have that proposed legislation introduced as early as possible after the Legislature goes into session in January 1991; and

(h) if appropriate legislation pertaining to MICA is introduced during the 1991-1992 term of the Alaska Legislature, MICA will participate in the legislative hearing process and will otherwise take appropriate action to encourage the passage of the legislation.

(4) Beginning with the tax year ending December 31, 1993, none of MICA's income shall be excluded from gross income under section 115 of the Internal Revenue Code.

(5) However, if MICA's organic statute (Alaska Statute 21.88) is repealed, reenacted or otherwise revised so as to establish MICA as an integral part of the State, MICA's income shall not be subject to federal tax as of the effective date of the statutory change.

(6) If MICA is established as an integral part of the state or MICA's structure is otherwise changed so that MICA no longer claims that its income is excluded from gross income under section 115 of the Code, MICA's obligation under paragraph (3) above shall cease.

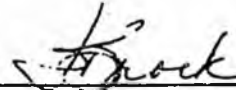
Closing Agreement
Medical Indemnity Corporation of Alaska

This agreement is final and conclusive except:

- (1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;
- (2) it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions, notwithstanding any other law or rule of law except for Code section 7122; and
- (3) if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to that tax period.

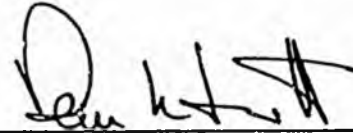
By signing, the above parties certify that they have read and agreed to the terms of this document.

Medical Indemnity Corporation of Alaska

By: 
William G. Brock
Chairman of the Board

Date signed: Mar. 12, 1990

Commissioner of Internal Revenue

By: 
Peter K. Scott
Deputy Chief Counsel

Date signed: Nov 15, 1990

ALASKA STATE

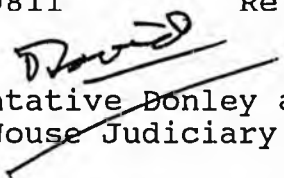
HOSPITAL & NURSING HOME

ASSOCIATION

April 29, 1991

Representative Dave Donley, Chair
Judiciary Committee
House of Representatives
Capitol Building
Juneau, AK 99811

Re: Support HB 238, MICA Dissolution


Dear Representative Donley and Members
of the House Judiciary Committee:

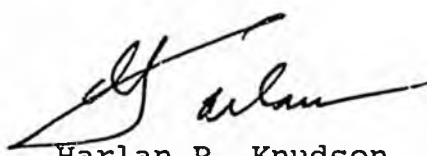
The Alaska State Hospital and Nursing Home Association would like to offer its support of HB 238, allowing for the repeal of statutes creating the Medical Indemnity Corporation of Alaska (MICA).

The Association and its members have followed for the past year the "tax" developments requiring the statutory restructuring of MICA, or its sale to another insurance company.

Hospitals were kept well informed on the tax problem faced by MICA, the options to avoid the tax liability, and the decision to sell MICA to a non-profit physician owned mutual liability insurance company (NORCAL).

Director of Insurance David Walsh, did an excellent job of keeping everyone informed of the sale, and we believe a sound decision has been made. That decision will see Alaska health care providers have access to coverage that will, in the long run, be better coverage at less cost than MICA.

Sincerely,



Harlan R. Knudson
President/CEO

cc: Members, House Judiciary Committee
Representative Gruenberg
Representative Ellis
Representative Parnell
Representative Hanley
Representative Martin
Representative Miller, M.W.

7-LS1066J
Ford
5/8/91

**CS FOR HOUSE BILL NO. 238 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE LABOR & COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to the office of state medical malpractice insurance and to the Medical
2 Indemnity Corporation of Alaska; and providing for an effective date."**

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

4 * Section 1. AS 09.55.548(a) is amended to read:

**5 (a) Damages shall be awarded in accordance with principles of the common law. The
6 fact finder in a malpractice action shall render any award for damages by category of loss. The
7 court may enter a judgement that future damages be paid in whole or in part by periodic
8 payments rather than by a lump-sum payment; the judgment shall include, if necessary, other
9 provisions to assure that funds are available as periodic payments become due. Insurance from
10 an authorized insurer as defined in AS 21.90.900 [OR FROM THE MEDICAL INDEMNITY
11 CORPORATION OF ALASKA] is sufficient assurance that funds will be available. Any part
12 of the award that [WHICH] is paid on a periodic basis shall be adjusted annually according to
13 changes in the consumer price index in the community where the claimant resides. In this
14 subsection, future damages includes damages for future medical treatment, care or custody, loss**

1 of future earnings, or loss of bodily function of the claimant.

2 * Sec. 2. AS 09.55.548(a) is repealed and reenacted to read:

3 (a) Damages shall be awarded in accordance with principles of the common law. The
4 fact finder in a malpractice action shall render any award for damages by category of loss. The
5 court may enter a judgement that future damages be paid in whole or in part by periodic
6 payments rather than by a lump-sum payment; the judgment shall include, if necessary, other
7 provisions to assure that funds are available as periodic payments become due. Insurance from
8 an authorized insurer as defined in AS 21.90.900 or from the office of state medical malpractice
9 insurance is sufficient assurance that funds will be available. Any part of the award that is paid
10 on a periodic basis shall be adjusted annually according to changes in the consumer price index
11 in the community where the claimant resides. In this subsection, future damages includes
12 damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily
13 function of the claimant.

14 * Sec. 3. AS 09.55.560 is amended to read:

15 Sec. 09.55.560. DEFINITIONS. In AS 09.55.530 - 09.55.560,

16 (1) "health care provider" means an acupuncturist licensed under AS 08.06; an
17 audiologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist
18 licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68;
19 a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an
20 optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist
21 or occupational therapist licensed under AS 08.84; a physician licensed under AS 08.64; a
22 podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital
23 as defined in AS 18.20.130, including a governmentally owned or operated hospital; [A
24 CORPORATE ENTITY COVERED UNDER AS 21.88.050(b)(11);] and an employee of a health
25 care provider acting within the course and scope of employment;

26 (2) "board" means an arbitration board established under AS 09.55.535;

27 (3) "panel" means an expert advisory panel established under AS 09.55.536.

28 * Sec. 4. AS 18.20.075(a) is amended to read:

29 (a) To be eligible for a license, each hospital shall have in operation an internal risk
30 management program that [WHICH] shall

31 (1) investigate the frequency and causes of incidents in hospitals that cause injury

1 to patients;

2 (2) develop and implement measures to minimize the risk of injury to patients;
3 in developing these measures each hospital shall take into account recommendations of its
4 medical staff, [THE MEDICAL INDEMNITY CORPORATION OF ALASKA,] private
5 underwriters, industry standards, experience of other hospitals, and recommendations of licensing
6 boards of other health care providers; and

7 (3) analyze patient grievances that relate to patient care.

8 * Sec. 5. AS 18.20.075(a) is repealed and reenacted to read:

9 (a) To be eligible for a license, each hospital shall have in operation an internal risk
10 management program that shall

11 (1) investigate the frequency and causes of incidents in hospitals that cause injury
12 to patients;

13 (2) develop and implement measures to minimize the risk of injury to patients;
14 in developing these measures each hospital shall take into account recommendations of its
15 medical staff, the office of state medical malpractice insurance, private underwriters, industry
16 standards, experience of other hospitals, and recommendations of licensing boards of other health
17 care providers; and

18 (3) analyze patient grievances that relate to patient care.

19 * Sec. 6. AS 18.23.070(3) is amended to read:

20 (3) "health care provider" means an acupuncturist licensed under AS 08.06; a
21 chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
22 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
23 AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a
24 physical therapist or occupational therapist licensed under AS 08.84; a physician licensed under
25 AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and
26 a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;
27 [A CORPORATE ENTITY COVERED UNDER AS 21.88.050(b)(1);] and an employee of a
28 health care provider acting within the course and scope of employment;

29 * Sec. 7. AS 21.06.080 is amended by adding a new subsection to read:

30 (e) The director shall provide written notice to the legislature if medical malpractice
31 insurance rates increase by 10 percent or more in a 12-month period. The notice required under

1 this subsection shall be provided by the 10th day of the next session of the legislature.

2 * Sec. 8. AS 21.78.050 is amended to read:

3 Sec. 21.78.050. GROUNDS FOR LIQUIDATION. The director may apply to the court
4 for an order appointing the director as receiver, if an appointment of the director as receiver is
5 not then in effect, and directing the director to liquidate the business of a domestic insurer or of
6 the United States branch of an alien insurer having ~~tr~~usted assets in this state, regardless of
7 whether or not there has been a prior order directing the director to rehabilitate the insurer, upon
8 any of the grounds specified in AS 21.78.040, or if the insurer

9 (1) has ceased transacting business for a period of one year; or

10 (2) is an insolvent insurer and has commenced voluntary liquidation or
11 dissolution, or attempts to commence or prosecute an action or proceeding to liquidate its
12 business or affairs, or to dissolve its corporate charter, or to procure the appointment of a
13 receiver, trustee, custodian or sequestrator under any law except this title [; OR

14 (3) IS THE MEDICAL INDEMNITY CORPORATION OF ALASKA, AND THE
15 DIRECTOR HAS ORDERED TERMINATION OF THE BUSINESS OF THE CORPORATION
16 IN ACCORDANCE WITH AS 21.88.055].

17 * Sec. 9. AS 21.78.100(b) is amended to read:

18 (b) The director may apply for and secure an order dissolving the corporate existence of
19 a domestic insurer [, EXCEPT THE MEDICAL INDEMNITY CORPORATION OF ALASKA,]
20 upon the director's application for an order of liquidation of the insurer or at any time after the
21 order has been granted.

22 * Sec. 10. AS 21.80.180(5) is amended to read:

23 (5) "insolvent insurer" means an insurer

24 (A) authorized to transact insurance in this state, except an assessable
25 reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities,
26 a reciprocal insurer formed under AS 21.75 to provide marine insurance, and a joint
27 insurance arrangement formed under AS 21.76, [AND THE MEDICAL INDEMNITY
28 CORPORATION OF ALASKA,] either at the time the policy was issued or when the
29 insured event occurred, and

30 (B) determined to be insolvent by a court of competent jurisdiction;

31 * Sec. 11. AS 21.88.030 is repealed and reenacted to read:

1 Sec. 21.88.030. **LIABILITY OF A GOVERNOR, OFFICER, OR EMPLOYEE.** A
2 governor, officer, or employee or former governor, officer, or employee of the corporation is not
3 liable for civil damages or a criminal fine by reason of the person's act or omission as a
4 governor, officer, or employee of the corporation, or by reason of the act or omission of the
5 corporation, the board of governors, officers, or employees unless (1) the person acts with actual
6 knowledge that the person was acting outside the scope of the person's authority, (2) at the time
7 of the act or omission the person was acting or failing to act for a purpose which the person
8 knew was not in the best interests of the corporation, or (3) with respect to a criminal act, the
9 person had actual knowledge or should have known the person's act was unlawful. If a claim
10 or action is brought against a person entitled to the protection of this section, the claim or action
11 will be defended by the state, except that the person shall reimburse the state for the cost to the
12 state of the person's defense if the provisions of (1), (2), or (3) of this section apply to the
13 person.

14 * **Sec. 12.** AS 21.88.095 is repealed and reenacted to read:

15 Sec. 21.88.095. **PREMIUM TAX OFFSET.** If the company to which the assets and
16 liabilities of the corporation are transferred does not write premiums for two consecutive years
17 that total less than 35 percent of all premiums written in the state for physicians' medical
18 malpractice insurance or does not write premiums for one calendar year that total less than 20
19 percent of all premiums written in the state for physicians' medical malpractice insurance, the
20 company may carry forward and offset against the company's premium tax liability to the state
21 the amount by which the aggregate claims paid on reinsurance assumed under the transfer
22 exceeds aggregate reserves on the same business established at the date of the transfer of the
23 assets and liabilities of the corporation.

24 * **Sec. 13.** AS 21.88.900 is repealed and reenacted to read:

25 Sec. 21.88.900. **DEFINITION.** In this chapter, "corporation" means the Medical
26 Indemnity Corporation of Alaska.

27 * **Sec. 14.** AS 36.30.015(e) is amended to read:

28 (e) The board of directors of the Alaska Railroad Corporation and the office of state
29 medical malpractice insurance shall adopt procedures to govern the procurement of supplies,
30 services, professional services, and construction. The procedures must be substantially equivalent
31 to the procedures prescribed in this chapter and in regulations adopted under this chapter.

1 * Sec. 15. AS 36.30.850(b) is amended by adding a new paragraph to read:

2 (23) contracts of the office of state medical malpractice insurance (AS 44.21.550).

3 * Sec. 16. AS 37.05.146 is amended to read:

4 Sec. 37.05.146. DEFINITION OF PROGRAM RECEIPTS. In AS 37.05.142 - 37.05.146
5 and AS 37.07.080 "program receipts" means fees, charges, income earned on assets, and other
6 state money received by a state agency in connection with the performance of its functions; all
7 program receipts except the following are general fund program receipts:

8 (1) federal receipts;

9 (2) University of Alaska receipts (AS 14.40.491);

10 (3) individual, foundation, or corporation gifts, grants, or bequests that by their
11 terms are restricted to a specific purpose;

12 (4) receipts of the following funds:

13 (A) highway working capital fund (AS 44.68.210);

14 (B) correctional industries fund (AS 33.32.020);

15 (C) loan funds;

16 (D) international airport revenue fund (AS 37.15.430);

17 (E) funds managed by the Alaska State Housing Authority (AS 18.55.020),
18 the Alaska Housing Finance Corporation (AS 18.56.020), [THE MEDICAL INDEMNITY
19 CORPORATION OF ALASKA (AS 21.88.020),] the Alaska Railroad Corporation
20 (AS 42.40.010), the Municipal Bond Bank Authority (AS 44.85.020), or the Alaska
21 Industrial Development and Export Authority (AS 44.88.020);

22 (F) fish and game fund (AS 16.05.100);

23 (G) school fund (AS 43.50.140);

24 (H) training and building fund (AS 23.20.130);

25 (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and
26 former AS 39.37);

27 (J) permanent fund (art. IX, sec. 15, Alaska Constitution);

28 (K) public school trust (AS 37.14.110);

29 (L) second injury fund (AS 23.30.040);

30 (M) fishermen's fund (AS 23.35.060);

31 (N) FICA administration fund (AS 39.30.050).

1 * **Sec. 17.** AS 44.21 is amended by adding new sections to read:

2 **ARTICLE 9. OFFICE OF STATE MEDICAL MALPRACTICE INSURANCE.**

3 **Sec. 44.21.550. STATE MEDICAL MALPRACTICE INSURANCE OFFICE**
4 **ESTABLISHED.** There is created in the Department of Administration the office of state
5 medical malpractice insurance.

6 **Sec. 44.21.560. POWERS AND DUTIES.** (a) The office shall

7 (1) in the form approved by the director, issue to all physicians, nurses, and
8 hospitals, who are found to be acceptable risks under standards developed under (5) of this
9 subsection and who pay the premiums for it, a contract or contracts indemnifying physicians,
10 nurses, and hospitals and their employees who are health care providers against loss by reason
11 of liability for covered claims for an act or omission in the delivery of professional health care
12 in this state, and agreeing to tender on behalf of the physicians, nurses, and hospitals and their
13 employees who are health care providers a defense to a covered claim in a proceeding brought
14 under AS 09.55.530 - 09.55.560; the limits of liability for policies issued by the office shall be
15 approved by the director; the contract must cover the costs of a legal defense against but need
16 not indemnify liability for punitive damages arising from a covered claim; at the option of the
17 office, if approved by the director, and for an additional premium, the contract may cover claims
18 against the physician, nurse, or hospital that arise out of professional services performed by the
19 physician, nurse, or hospital for any period before the contract is issued, except that coverage
20 may not be provided for a claim already filed or that the physician, nurse, or hospital had or
21 reasonably should have had notice of at the time the retroactive insurance was purchased;

22 (2) charge a premium for the protection provided by the contracts issued by the
23 office; the premium shall be determined by the commissioner of administration and is subject to
24 the approval of the director;

25 (3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160,
26 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250, AS 21.12.020, AS 21.18, AS 21.21, AS 21.24,
27 AS 21.27.100, and AS 21.36; and shall be exempt from participation as a member insurer in the
28 Alaska Insurance Guaranty Corporation;

29 (4) carry out the obligations of the contracts issued by the office by defending all
30 covered claims made against insured health care providers and by paying all liabilities that are
31 finally adjudicated against the insured health care provider or that may in the opinion of the

1 office reasonably be expected to be finally adjudicated against the health care provider to the
2 extent of the contract obligation;

3 (5) establish standards for the acceptability of risks; in establishing these standards
4 the office may exclude an applicant for insurance based on individual risk selection factors, but
5 may not exclude an applicant based only on the classification of the applicant.

6 (b) The office may

7 (1) negotiate for and procure reinsurance from private casualty insurers or
8 reinsurers for any and all liability incurred by contracts issued by it;

9 (2) provide coverage to insureds for other hazards customarily included in medical
10 malpractice insurance policies when there is a finding by the director that this coverage is not
11 available to insureds of the office in the private insurance market at a competitive price;

12 (3) negotiate and become a party to those contracts as are necessary to carry out
13 the purposes of the office,

14 (4) provide risk management advice and services to hospitals;

15 (5) negotiate and become a party to contracts for management services for the
16 office;

17 (6) perform all other acts necessary and proper to carry out the duties of the
18 office;

19 (7) in a form approved by the director and for an additional premium determined
20 under AS 44.21.580, issue endorsements that provide indemnity for claims not yet reported that
21 arise out of professional services rendered during a period of continuous coverage under the
22 originally issued contract, to physicians, nurses, and hospitals who pay the premium for the
23 coverage and who are terminating their original covered claims contract with the office for a
24 period of not less than one year,

25 (8) subject to approval by the director, extend coverage to a person, entity, or
26 facility that renders health care services in the state under the supervision of a physician.

27 Sec. 44.21.570. PLAN OF OPERATION. (a) The office shall prepare and submit to the
28 director for approval a plan of operation that provides for the fair and reasonable administration
29 of the affairs of the office and the discharge of the purposes for which the office is created. The
30 plan and any amendments to it become effective upon the director's approval. If the office fails
31 to submit a plan of operation or if at a subsequent time the board fails to submit suitable

1 amendments to the plan, the director shall, after notice and hearing, adopt a plan of operation or
2 amendments that are necessary or advisable to carry out the provisions of AS 44.21.550 -
3 44.21.620. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

4 (b) The plan of operation must

5 (1) establish the procedures by which all the powers and duties of the office
6 specified in AS 44.21.560 shall be performed;

7 (2) establish procedures for handling assets and discharging liabilities;

8 (3) establish procedures for records to be kept of all financial transactions of the
9 office;

10 (4) establish the procedures for awarding contracts to carry out the provisions of
11 AS 44.21.550 - 44.21.620;

12 (5) establish the procedures for issuing contracts of insurance as provided in
13 AS 44.21.560 and for the determination of rates;

14 (6) contain additional provisions necessary for the execution of the powers and
15 duties of the office.

16 Sec. 44.21.580. RATES. The rates and rating plans used by the office for the policies
17 issued shall be determined by license category of health care providers subject to the following:

18 (1) a minimum rate may be set for each category of health care provider,
19 discipline, or classification within the license category;

20 (2) rates

21 (A) may not be excessive; rates are excessive if, after a period of time and
22 with respect to an amount of gross premium that is actuarially credible, the premiums
23 exceed losses incurred by the office, including losses paid, reserves for covered claims
24 reported and unpaid, reserves for covered claims incurred during the policy period and
25 not reported, and reasonable expenses for the operation of the office;

26 (B) may not be inadequate; rates are inadequate if, based on available
27 actuarial data, the premiums to be paid by the health care providers are or may reasonably
28 be expected to be insufficient to pay for losses incurred by the office, including covered
29 claims paid, reserves for covered claims reported and unpaid, reserves for covered claims
30 incurred during the policy period and not reported, and reasonable expenses for the
31 operation of the office;

- 1 (C) may not be unfairly discriminatory;
- 2 (D) shall be adjusted annually;
- 3 (E) for any policy year shall be calculated to include the adjustment for
- 4 actual experience of the office as developed for the preceding four policy years;
- 5 (3) in considering losses to be incurred, changes in the law, national, regional, or
- 6 local trends in medical negligence awards and other relevant factors may be considered;
- 7 (4) income from the investment of reserves shall be considered;
- 8 (5) individual risk underwriting factors shall be considered;
- 9 (6) disciplines and classifications within the license categories of health care
- 10 providers shall be considered;
- 11 (7) amounts sufficient for repayment of loan obligations shall be considered;
- 12 (8) if the earned premiums of the office for any given year are less than the
- 13 incurred claims, claim expense, underwriting expense, and reserves for that year, the office may,
- 14 subject to the prior approval of the director, levy an assessment upon the insureds who held
- 15 policies during that year, the assessment may be made in periodic installments, shall be made
- 16 within three years, and may not exceed 150 percent of the insured's premium for that year; the
- 17 termination of a policy does not relieve the insured of contingent liability for the insured's
- 18 proportionate share of the obligations to the office that accrued while the policy was in force;
- 19 (9) if the earned premiums of the office for a given year exceed its incurred claim
- 20 expense, underwriting expense, reserves for that year, and provision for repayment of a loan, the
- 21 office may, subject to the prior approval of the director, apportion and pay or credit its insureds
- 22 who held policies during that year; a payment or credit shall be proportionate to the insured's
- 23 earned premium for that year;
- 24 (10) upon application by a person, the director may issue a certificate authorizing
- 25 the office to extinguish all or a portion of an assessment levied, or that could be levied, under
- 26 (8) of this section for all insureds with policies in force when the certificate is issued, and to omit
- 27 provisions levying an assessment under (8) of this section in all policies delivered or issued for
- 28 delivery after the certificate is issued if the director determines that there is a sound actuarial
- 29 basis for the extinguishment; the director may at any time revoke the certificate; a policy in force
- 30 at the time of revocation is not subject to the revocation of the certificate for the remainder of
- 31 the period for which the premium has been paid, but after revocation a policy may not be issued

1 or renewed without providing for an assessment of the insured.

2 Sec. 44.21.590. MEDICAL MALPRACTICE INSURANCE FUND. The medical
3 malpractice insurance fund is established as a separate account in the general fund. The fund
4 shall be administered by the office and used to purchase or provide medical malpractice insurance
5 under AS 44.21.560. The fund consists of appropriations by the legislature and private grants
6 or contributions.

7 Sec. 44.21.600. PREMIUM TAX EXEMPTION. The office is exempt from the payment
8 of premium taxes imposed by the state.

9 Sec. 44.21.610. TERMINATION OF OFFICE. If the office is eliminated, the assets of
10 the office shall revert to the state.

11 Sec. 44.21.620. DEFINITIONS. In AS 44.21.550 - 44.21.620,

12 (1) "acupuncturist" means a person licensed under AS 08.06;

13 (2) "chiropractor" means a person licensed under AS 08.20;

14 (3) "continuous coverage" means one or more successive policy periods that is
15 uninterrupted by cancellation or failure to renew for any reason;

16 (4) "covered claim" means

17 (A) a claim by an injured patient reported to the office during the period
18 of continuous coverage by the office of the insured health care provider for an act or
19 omission in the delivery of health care services; and

20 (B) additional claims as defined in the policy, with the prior approval of
21 the director, and that are reported within specified periods after the expiration of the
22 policy;

23 (5) "dental hygienist" means a person licensed under AS 08.32;

24 (6) "dentist" means a person licensed under AS 08.36;

25 (7) "director" means the director of the division of insurance;

26 (8) "dispensing optician" means a person licensed under AS 08.71;

27 (9) "health care provider" means an acupuncturist licensed under AS 08.06; an
28 audiologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist
29 licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68;
30 a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a
31 pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under

1 AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological
2 associate licensed under AS 08.86; a hospital as defined in AS 18.20.130, including a
3 governmentally owned or operated hospital; an employee of a health care provider acting within
4 the course and scope of employment;

5 (10) "hospital" means an institution licensed under AS 18.20;

6 (11) "nurse" means a person licensed under AS 08.68;

7 (12) "occupational therapist" means a person licensed under AS 08.84;

8 (13) "office" means the office of state medical malpractice insurance created under
9 AS 44.21.010;

10 (14) "optometrist" means a person licensed under AS 08.72;

11 (15) "pharmacist" means a person licensed under AS 08.80;

12 (16) "physical therapist" means a person licensed under AS 08.84;

13 (17) "physician" means a person licensed under AS 08.64;

14 (18) "psychologist" and "psychological associate" mean a person licensed under

15 AS 08.86.

16 * Sec. 18. AS 21.88.010, 21.88.020, 21.88.040, 21.88.050, 21.88.055, 21.88.060, 21.88.070,
17 21.88.080, 21.88.090, and 21.88.210 are repealed.

18 * Sec. 19. Sections 2, 5, 14, 15, and 17 of this Act take effect July 1, 1993.

19 * Sec. 20. Sections 1, 3, 4, 6 - 13, 16, and 18 of this Act take effect January 1, 1992.