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Board	Practitioner Name	Occurred	Award	Case/Court	Date Paid	Rec	Brief Description of Claim
MED	Eaves, James B.	12/14/1989	$20,000	FXSH91-000105	10/14/1992	SET-A	Failure to insure IV remained in vein
MED	Gamer, Richard W.	9/2/1992	$4,927		10/28/1992	SET	After injection pt was diagnosed with pneumothorax
MED	Packard, Bruce	6/3/1991	$125,000	3KN-92-44	11/13/1992	SET-A	Alleged negligent mgmt of labor & delayed C-section
MED	Fallico, Franc	3/27/1990	$135,000	3AN-91-7174	11/23/1992	SET	Alleged misdx of villous adenoma
MED	Layman, Charles	6/17/1991	$500,000		12/8/1992	SET-B	Alleged failure to dx coronary artery spasm result in death
MED	Nathanson, Steven E.	Unknown	$20,000	3AN-91-1789CIV	12/10/1992	SET-A	Unknown
MED	Scully, James T.	11/17/1989	$10,000		3/26/1993	SET-B	Alleged rhinoplasty against consent during septoplasty
MED	Holle, Lois M.	11/6/1992	$4,800		4/21/1993	SET-B	Burn to pt chest during shave biopsy
MED	Davidhizar, Lavern R.	8/25/1991	$3,891		5/3/1993	SET-B	Failure to obtain consent/lack of informed consent
MED	Scully, James T.	8/5/1986	$800,000	3AN-88-7352	5/11/1993	SET-A	Neglect in pre, intra and post op management, result, death
MED	Newton, Douglas E.	3/25/1988	$150,000	91-2-00214-0	5/20/1993	SET-A	Alleged failure to dx cervical subluxation result partial paralysis
MED	Aarons, Charles	5/14/1991	$8,000		5/21/1993	SET-B	Wrong solution given by nurse for wart ID, pt burned
MED	Bustad, Leo	8/19/1987	$75,000	3AN-89-6782	6/11/1993	CA	Improper performance of cardiac catheterization result, death
MED	Voss, Kevin	3/27/1989	$175,000	OQDXDAT9100	7/8/1993	SET-A	Failure to supervise resident doc
MED	Little, Clarence J.	6/30/1983	$400,000		7/16/1993	SET-B	Newborn suffered brain damage due to delayed c-section
MED	Newton, Burritt W.	6/30/1983	$1,650,000		7/20/1993	SET-B	Spontaneous rupture of liver of term PG, baby born handicap
MED	Cornelius, Darrell R.	10/21/1986	$19,950	89-2-00765-0	7/27/1993	SET-A	83-YO pt died post-op w/ MI
MED	Shannon, Charles R.	12/6/1989	$80,000		8/5/1993	SET-A	Pt death due to postsurgical congestive heart failure
MED	Swingle, Jr., Roger L.	3/3/1987	$425,000	89L02703	10/1/1993	SET-A	Alleged failure to dx pre-term labor
MED	Cornelius, Darrell R.	4/9/1989	$300,000	92-2-11211-9	10/13/1993	SET-B	Failure to instruct pt to resume meds following procedure
MED	Crouch, Edward E.	12/18/1991	$60,000	7010956-M	11/2/1993	SET-B	Wrong intraocular lens implanted during cataract surgery
MED	Martin, Tina A.	7/20/1990	$202,700	4-92-283	12/1/1993	SET-A	Inadequate evaluation of back pain led to paralysis
MED	Deal, Clyde F.	9/16/1984	$375,000	3AN-89-9188	12/20/1993	SET-A	Alleged negligent dx, trx, & delay in transport multiple trauma pt
MED	Eaton, Michael W.	5/24/1989	$10,000		1/4/1994	SET-B	Injury to nerve during bone graft
MED	Anderson, David D.	3/10/1985	$90,000	3AN-87-2015	1/11/1994	SET-A	Alleged improper mgmt of injured trachea; addl allegations
MED	Lehman, Richard M.	4/29/1985	$420,000	3AN-87-2015	1/11/1994	SET-A	Negligent tx of spinal cord injury by employee physician
MED	Lee, Charles S.	3/14/1996	$1,000,000	7014990-M	1/11/1994	SET-A	Neg admin & monitoring of anesthesia; cardiac arrest, death
MED	Gohring, Catherine F.	6/22/1993	$7,500		1/27/1994	SET-B	Sponge left in after abortion
MED	Bell, Owen R.	7/11/1988	$750,000	3AN-90-4236CM	2/7/1994	CA	Alleged failure to dx & tx sepsis following childbirth;pt death
MED	Isenberg, Michael	8/4/1993	$200		2/14/1994	SET-B	Chipped tooth during intubation
MED	Farleigh, Richard M.	1/15/1992	$25,000	3AN-92-6580	3/2/1994	SET-A	Neg mgmt of IV med resulted in need of carpal tunnel release
MED	Murray, R. Richard	5/3/1989	$20,000		3/14/1994	SET-B	Alleged negl tubal ligation, pt preg 3yrs later, spontaneous abort
MED	Mullangi, Chandra	9/7/1991	$300,000	C92-0427-L(M)	3/14/1994	SET-A	Complication central venous line placed, suffered stroke
MED	Tan, Johannes	1/31/1991	$75,000		3/18/1994	SET-B	Misdx malignant lymphoma, pt death
MED	Lawrason, Peter D.	7/15/1986	$49,999		5/2/1994	SET-A	Pt wasn't properly monitored, advised, treated while pregnant
MED	Bishop, James M.	10/20/1993	$36,266		6/10/1994	SET-B	Pt alleged treatment related to Insd's care
MED	Spence, David		$200,000		8/25/1994	SET-A	36-YO woman died
MED	Hoag, Robert (w/ Ritzen)	2/22/1990	$230,000		9/1/1994	SET-B	Pap smear misdiagnosed, Ca metastasized to 1 lymph node
MED	Ritzen, Alex (w/ Hoag)	2/22/1990	$230,000		9/1/1994	SET-B	Pap smear misdiagnosed, Ca metastasized to 1 lymph node
MED	Gianni, Keith	5/90-5/92	$552,500		10/3/1994	SET-B	Reduction of immunosuppr meds in kidney transpl pt
MED	Godersky, John C.	11/6/1992	$30,000		10/27/1994	SET	Did anterior cortical diskectoomy & bone graft wrong site
MED	Pease, William D.	11/29/1992	$12,500		11/21/1994	SET-B	IV pump fell from stand, hit and split pat lip, stiches required
MED	Woll, Bruce J.	4/29/1992	$7,500	57-293631-R5	1/23/1995	SET-B	Cotton packing swab left in eye following surgery
MED	Colescott, Paula Jo	7/86-6/89	$50,000	93 CV 3739	4/17/1995	SET-A	Alleged negligence; breach of fiduciary duty
MED	Smith, Ronald J.	4/22/1993	$40,000	57-307584-R5	5/16/1995	SET-B	Pt alleges foreign object left in after surgery
MED	Godersky, John C.	9/13/1994	$65,000	3AN-95-1583	7/25/1995	SET-A	Did spinal fusion surg on wrong site
MED	White, Frank	4/19/1995	$2,500		8/17/1995	SET-B	Alleged failure to dx vascular compromise R hand-delay in tx
MED	Scully, James T.	1/27/1994	$10,000		9/29/1995	SET-B	Alleged negligent prep for sinus surg result in corneal burns
MED	Coder, Lenart C.	12/21/1993	$5,250		10/25/1995	SET-B	Lacerated anterior horn of medial meniscus

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MED	Grimm, Arthur R.	1/12/1988	$200,000		11/3/1995	SET-B	Alleged failure to dx lung Ca resulting in death of pt
MED	Orlando, Michael R.	11/14/1991	$600,000	F300179/TM	12/19/1995	CA	During endoscopic sinus surg, optic nerve, rectu muscle cut
MED	Hoag, Robert (w/ Ritzen)	90-92	$150,000		1/1/1996	SET-B	Alleged negligence in interpret of pap smear
MED	Ritzen, Alex (w/ Hoag)	90-92	$150,000		1/1/1996	SET-B	Alleged negligence in interpret of pap smear
MED	Walker, Enlow R.	11/17/1994	$8,333	98-100062-SR	3/15/1996	SET-B	Alleged failure to notify pt of abnormal pap
MED	Durnas, Marc	2/16/1993	$70,000	4 FA 95 415	5/23/1996	SET-A	Failed to admit/observe inebriated pt; later dx cervical fx
MED	Tyler, Earl D.	2/17/1993	$70,000	4FA-95-415	5/28/1996	SET-A	Alleged negligent interpretation of MRI of spine
MED	Klopp, A. Leonard	4/15/1993	$5,040		7/19/1996	CA	Removal of lesion by laser & developed keloid.
MED	Liberatore, Marcia A.	9/23/1995	$2,245		7/26/1996	SET-B	Failure to Dx fractures/inadequate discharge instructions
MED	Davidhizar, Lavern R.	6/27/1994	$1,063	3KN-96-223	8/21/1996	SET-A	PA employee failed to advise pt of meds' side effects to sun
MED	Mackie, Scott P.	2/18/1989	$77,598	3AN-89-7746	8/29/1996	SET	HIV test w/o consent-results given to spouse before pt told
MED	Merchant, Clifford R	5/20/1995	$23,500		9/11/1996	SET-B	Alleged failure to hosp w/ chest pain; pt had MI next day
MED	Palmer, William M.	5/5/1989	$150,000	1JU-96-1040	9/25/1996	SET-A	Alleged delay in Dx, treatment of breast cancer
MED	Williams, John D.	7/9/1992	$32,856	3AN-94-5234	9/30/1996	CA	Jury found insufficient data to support surgery repair to ear
MED	Roode, Peter G.	10/7/1994	$37,500		11/8/1996	SET-A	Alleged failure to diagnose heart attack
MED	Kim, Eui G.	10/19/1994	$35,000	3AN-96-6375	12/11/1996	SET-A	Urinary incontinence surgery complications
MED	Worley, Floyd	5/29/1995	$18,500		12/12/1996	SET-B	Alleged failure to dx ectopic pregnancy w/ tubal rupture
PAD	Jones, Gary P.	9/14/1994	$25,000		2/25/1997	SET-B	Negligent care while responding to accident
MED	McConkey, Samuel A.	1/19/1991	$69,592	4FA-93-857	3/10/1997	CA	Following laser trtmt pt lost central vision in left eye
MED	Fortier, George M.A.	3/3/1982	$150,000	WRM129OUP0356	3/13/1997	CA	Alleged incompl vagotomy result in recurrent ulcer & 2nd surgery
MED	Fortson, Jayne S.	8/7/1996	$8,000		3/13/1997	SET-B	Pt received 1st degree burns during ultraviolet light therapy
MED	Crouch, Edward E.	2/2/1993	$70,000	7011398-M	4/10/1997	SET-B	Tunic of eye punctured due to negligent injection of Kenalog
MED	Tinsley, Ronald E.	4/8/1994	$54,000	1JU-95-747	4/10/1997	SET-A	Alleged failure to remove nasal packing resulted in reoperation
MED	Palmer, William M.	5/5/1994	$180,000	1JU-95-2173	4/14/1997	SET-A	Alleged unnec laparoscopic surg; negligent follow-up
MED	Murphy, Neil J.	10/4/1994	$750,000		5/6/1997	SET-B	Wrongful death, gas embolism of heart during routine hys/lap
MED	Lacer, Linda L.	12/14/1990	Confidential	93-1648 RI SupCt	5/12/1997	SET-A	Breach of care; labor & delivery management
MED	Jackson, M. Marcell	1/28/1993	$10,000	3AN-95-1961	5/13/1997	SET-A	Alleged overdose of drug --withdrawal symptoms; fail to refer
MED	Gower, Roland E.	9/23/1992	$15,000	3AN-93-7693Ci	5/15/1997	SET-A	Alleged negligent laparoscopic cholecystectomy
MED	Palmer, William M.	4/16/1996	$65,000		5/20/1997	SET-B	Alleged negl performance abd laparoscopy w/ injuries
MED	Senta, Michael	12/5/1994	$65,000	3PA-96-971	7/1/1997	SET-A	Failure to dx /tx colonoscopy--death due to hemorrhage
MED	Beyele, Natalie	12/6/1994	$65,000	3PA-96-971	7/1/1997	CA	Failure to dx/treat compl/colonscopy/death/2nd splenic hemor
MED	Kiester, V. Scott	6/1/1992	$15,000	3AN-96-10106	7/11/1997	SET-A	Failure to dx/tx cholesteatoma
MED	Newton, Douglas E.	4/18/1995	$50,000		8/6/1997	SET-B	Pt dx w/ anxiety; presented next day w/ MI
MED	Hileman, Stephen L.	2/6/1992	$65,000	93-01-07969-CV	8/28/1997	SET-A	Pt w/pancreatitis died of alleged fluid overdose
MED	Hidog, Alisa M. Little	10/31/1995	$12,500		8/28/1997	SET	Perineal laceration after infant's delivery
MED	Linehan, Charles K.	7/9/1993	$565,000	96-2090	10/3/1997	CA	Delay in dx of melanoma; pt died of metastic Ca
MED	Swayman, Kenneth C.	2/24/1993	$50,000	95-2-33462-2SEA	10/31/1997	SET-A	Alleged improper & unnecessary foot surgery
MED	Smith, John James	7/20/1992	$394,704	3AN-94-10736	11/5/1997	SET-A	Pt died from rare Ca not dx by Pap tests
MED	Johnson, R. Holmes	2/4/1994	$122,500	A96-030	11/14/1997	SET-A	Alleged delay dx/tx cervical spine inj resulting in C-5 quardp
MED	Nathanson, Steven E.	12/31/1996	$250,000	3AN-97-3209	12/3/1997	SET-A	Allegation of poor surgery outcome
MED	Follman, Lawrence J.	8/27/1994	$21,373	4FA-96-1874	12/18/1997	SET-A	Alleged negligent eval of thumb laceration;tendon lac req surg
MED	Wood, Lawrence P.	09/94	$85,000	128815	1/29/1998	SET-B	Failure to dx subtle C-spine fx
MED	Hawkins, Ileana	1/31/1991	$75,000		4/10/1998	SET-B	Misdiagnosed malignant lymphoma, result was death
MED	Heraper, Peter David	11/14/1997	$11,672		4/10/1998	SET-B	Dura perfd during ethmoidectomy w/ cerebrospine fluid leak
MED	Stephens, Burl S.	1/22/1994	$750,000	A 96-259	6/9/1998	SET-A	Alleged failure to dx mass effect /cerebellum on CT scan
MED	Anderson, Richard S.	5/12/1997	$40,000		7/16/1998	SET-B	Inadvertant fatal death following amniocentesis
MED	Anderson, Roger Carl	7/13/1995	$150,000	97-421-Cvl-HRH	7/24/1998	SET-A	Following surg for incont; lost kidney due to obstruct of ureter
MED	Conley, Thomas L.	11/5/1993	$658,104	98-101151-SW	7/30/1998	SET-A	Renal failure necessitating kidney transplant from mother
MED	Shannon, Charles R.	10/30/1995	$40,000	3AN-96-3439	9/11/1998	SET-A	Misdx colonscopy of suspect tumor; tumor not found in surg

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MED	Monaker, Steven P.	10/3/1995	Confidential	3AN-96-3439 CI	10/5/1998	SET-A	Misdx colon CA, 2nd surgery revealed cancer of splenic flexor
MED	Whitefield, Jan E.	2/13/1995	$75,000		10/19/1998	SET-B	Failure to dx pregnancy - fetus removed during hysterectomy
MED	Bundtzen, Joan L.	2/27/1998	$400,000		10/19/1998	SET	Rectal mass misdiagnosed as cancer, tissue benign.
MED	Rogers, Donald R.	7/13/1994	$70,000	3AN-97-7199 CI	11/17/1998	SET-A	Alleged delay in dx of gastric Ca
MED	Hanley, Owen C.	7/15/1994	$25,000	4FA969164CT	12/17/1998	SET-A	Alleged wrongful death; failed to dx malignant hyperthermia
MED	Holayter, Julee K.	11/17/1992	$576,445	3AN-94-10281	1/4/1999	SET-A	Alleged negligent performance of C7 nerve block
MED	Odland, Duane I.	4/16/1995	$725,000	3PA-97-326	1/4/1999	SET-A	Failure to monitor anticoagulant in pt w/ mechanical ht vlv
MED	Klem, Robert James	12/27/1996	$162,500	J98-011CV	1/27/1999	SET-A	Perforated uterus following abortion; pt septic
MED	Raugust, Richard P.	4/4/1995	$75,000	4FA97-691	3/5/1999	SET-A	Alleged unnec nasal surg w/o informed cor sent
MED	Carlson, Ray Lynn	10/22/1994	$185,000		3/22/1999	SET-B	Failure to revu xray ordered by PA; failure dx Ca; pt died
MED	Bleicher, Michael A.	12/15/1995	$2,000,000	3AN-97-2088CIV	3/23/1999	SET	Delay/surg result short bowel syndrm; cardio-arrest/brain dmg
MED	Mickleson,D. Lynn	2/13/1996	$100,000		4/5/1999	SET-B	Alleged off-labeluse of drug; w/o informed consent of pt
MED	Dietz, David M.	5/8/1995	$20,000	7016532-M	4/6/1999	SET-B	Penrose drain left in after surg
MED	Stewart, Mary Lu	6/20/1996	$1,000,000	3AN-96-8977	4/30/1999	SET-A	Overdose of chemotherapy drug; pt died
MED	Ling, Louis A.	7/9/1996	$24,000	23,509	05/01/99	SET-A	Kidney obstruction following surgery; followup surgery to repair
MED	Scully, James T.	8/17/1995	$135,000	3AN-97-6076	5/12/1999	SET-A	Negligent surg biopsy; severed facial nerve; paralysis
MED	Rindlisbacher, Mark C.	12/1/1996	$65,000	3AN-99-4981	6/25/1999	SET-A	Declined gentamycin treatment ordered by another doctor
MED	Mackie, Scott P.	2/18/1989	$85,000	3AN-89-7746	7/12/1999	SET	HIV test w/o consent-results given to spouse before pt told
MED	Creelman, Kevin	10/5/1991	$220,000	3AN-93-8813	8/5/1999	SET-A	Delay in diagnosis of pregnancy, wrongful life/birth
MED	Beal, David	9/8/1995	$300,000	3AN-97-7366	8/17/1999	SET-A	Failure to obtain consent; unnec surg; negl performed surg
MED	Jones, Lindy	8/25/1996	$1,200,000	1JU-98-1619	8/30/1999	SET-A	Delay in C-sect result perinatal asphyxia, athetoid CP, encophal
MED	Pickering, Donald E	7/23/1990	$5,000	4FA-96-695	9/9/1999	SET-A	Alleged failure to obtain consent/lack of informed consent, tx
MED	Newton, Burnitt W.	12/13/1996	$21,600	3AN-98-10618	9/10/1999	SET-A	Alleged did not get pt's informed consent to remove ovaries
MED	Moore, Frank H.	4/29/1996	$15,000	3AN-98-5682	10/5/1999	SET-A	Failure to diagnose - wrong treatment/procedure performed
MED	Lesznik, George R.	12/8/1997	$687,500	98CV3597	12/28/99	SET-A	Alleged malprac caused blindness, possible brain damage
MED	Resinger, William W	1/22/1997	$23,000		1/3/2000	SET-B	Alleged failure to dx cancerous lesion on MRI
MED	Chandler, Leon	7/14/1994	$100,000	3AN-98-412	1/28/2000	SET-A	Failure to supv another MD in his employ
MED	Chandler, Leon Harvey	7/14/1994	$100,000	3AN-98-412	01/28/00	SET-A	Alleged failure to supv physician in his employ
MED	Sangster, Joseph A.	8/3/1994	$500,000	3KN-98-0483	2/11/2000	SET-A	Alleged failure to dx; no xray follow up; lung cancer dx
MED	Reiswig, Jon A.	12/28/1995	$143,339	1JU981095C	2/17/2000	SET-A	While removing an intermedullary rod, lft femur was refractured
MED	Newman, Michael H.	5/6/1994	$250,000	2AN 98-1513	3/14/2000	SET-A	Alleged neg L4-5 fusion, retained rod, chronic infection
MED	Gieringer, Robert E.	9/7/1993	Confidential	3AN956312	3/15/2000	SET-A	Alleged negligence - post operative nerve damage to shoulder
MED	Nathanson, Steven E.	Unknown	$7,500		3/15/2000	SET-B	Unknown - letter of 3-15-2000 from Lazar
MED	Lomairo, William J.	12/12/1996	$40,000	98-0157 HIS	3/16/2000	SET-A	Refractor remov ft lft in pt during hyst necess a second surgery
MED	Eaton, Michael W.	9/23/1998	$450,000	2800.99.29	4/7/2000	SET-B	Failure to obtain informed consent - leg lengthening surgery
MED	Kirschner, Arlene	10/10/1996	$50,000	4FA-98-2892	5/17/2000	SET-A	Wrong diagnosis or misdiagnosis - unnecessary surgery
MED	Klem, Robert James	6/10/1996	$50,000	S-98-90 CI	6/9/2000	SET-A	Delay in treatment
MED	Schurig, Samuel H.	1/11/1997	$220,000		6/28/2000	SET-B	Alleged misdx & overmedication; inappro behav w/ pt
MED	Chung, Won Pal	June, 1997	$22,000	3AN-97-2317CI	7/1/2000	SET-A	Allegation of long term med causing addiction, death
MED	Wiggins, C. Jane	6/16/1997	$90,000	3AN-998060	8/30/2000	SET-A	Alleged intraoperative damage to ureter - ureteral obstruction
MED	Campos, Rodolpho	3/95 - 10/96	$2,250,000	4FA-98-1272CI	8/31/2000	SET-A	Alleged failure to ck blood level of lithium causing kidney damage
MED	Michaud, Robert M.	8/8/1996	$397,500	1JU-98-582	9/1/2000	SET-A	Alleged negligent removal of neck cyst - spinal nerve damage
MED	Nathanson, Steven E.	Unknown	$350,000	3AN-99-6130 CI	9/19/2000	SET-A	Unknown (Rodriguez case)
MED	Kilkenny, Steven J.	2/21/1996	$50,000	3AN-96-8982	9/26/2000	SET-A	Failure to dx - cardiopulmonary arrest - death
MED	Tibbetts, Grant P.	10/15/1998	$160,000	99-108 WAFB	11/8/2000	PC	Failure to dx surgical complications
MED	Wahl, Steven M.	8/18/1997	$625,000	4FA-99-165	11/27/2000	SET-A	Alleged failure to do C.B.C. & dx AML in 12 YO pt
MED	Echo, Barbara	8/19/1997	$625,000	4FA-99-165	11/27/2000	SET-A	Alleged failure to dx & tx AML in 12 YO female
MED	Bertleson, James N.	4/11/1997	$162,959	3AN-99-671	12/6/2000	CA	Retained foreign body during surgery - delay in diagnosis
MED	Barton, Theodore D.	7/28/1994	$87,500	3KN-96-479	12/7/2000	SET-A	Alleged negligent laparoscopy; negligent post-op care

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MED	Tieva, Martin H.	8/4/1997	$700,000	SA-99-CA-1390	12/12/2000	SET-A	Failure to dx/tx papillary craniopharyngioma
MED	Deramus, Alfred D.	4/2/1997	$195,000	4FA-99-781	12/19/2000	SET-A	Alleged negl cataract surg & suspension of med; PO pt death
MED	Khabir, Jeffrey A.	Unknown	$287,500	95-8389NH	01/01/01	SET-A	Wrongful death
MED	Walters, Laura Marie	7/15/1997	$325,000	PR-000812TK	1/4/2001	PC	Failure to dx & tx angina, pt death
MED	Unsicker, Carl	8/1/1998	$62,500	PR99-02-007	1/22/2001	SET-B	Alleged failure of dx of fx carpal navicular
MED	Van Houten, Jay	4/9/1998	$450,000	3AN-99-114	2/7/2001	SET-A	Alleged improper management of medication, pt death
MED	Marble, Stephen P.	9/1/1992	$64,780	95-0902248	4/1/2001	SET-A	Alleged failure to supervise treatment/procedure
MED	Faucett, Ellen D.	7/17/1997	$500,000	3PA99625C1	4/2/2001	SET-A	Alleged failure to dx & trt Strep B in mother; injuries to newborn
MED	Godersky, John C.	5/27/1998	$325,000	3AN006554	5/21/2001	SET	Did spinal fusion surg on wrong site
MED	Van Houten, Jay	2/25/2000	$550,000	3AN-00-8907	5/29/2001	SET-A	Alleged excessive presc of meds, result in addiction, death
MED	Gower, Roland E.	3/24/1999	$250,000	3AN 00-03943CI	6/5/2001	CA	Alleged negligent transection of common bile duct
MED	Szekely, Daniel R.	7/19/1999	7/18/2228	C00-5432	7/6/2001	SET-A	Pt alleged should have been hospitalized nite before induct/fetal dth
MED	Crouch, Edward E.	10/11/1995	$701,500	3AN-97-8539CI	7/11/2001	SET-A	Alleged failure inform pt risks due to hx ROP; vision loss Rt eye
MED	Dix, Richard Michael	9/3/1997	$150,000	DM0662869622M001	7/25/2001	SET-B	Failure to prov antibiotics; closed fx radius/ulna w/ wound infect
MED	Kelley, William J.	3/9/1999	$55,000	3KN-00-1056	8/15/2001	SET-A	Wrongful death; cardiac arrest following bowel obstru surg
MED	Ford, Robert O.	10/26/1998	$175,000	71871	9/7/2001	SET-A	Alleged injury w/ Lasik surg; shouldn't have surg due to abn corneas
MED	Burton, Mark N.	1/13/1997	$131,250	SC20010059	9/17/2001	SET-A	Xray failed to reveal pulm nodule, delay in dx of lung Ca
PAD	Siddall, James J.	10/13/1998	$275,000	4FA-01-690 CIV	9/19/2001	SET-A	Removal of stuck contact lens resulted in corneal damage; transplt
MED	Lynch, Michael J.	8/23/1994	$120,000	97000305MI	10/2/2001	SET-A	Improper mgmt of diabetes during chemo for Ca
MED	Nordlund, John R.	1/25/1996	$312,300	3AN-98-3345	10/3/2001	SET-A	Alleged failure to dx post comm artery aneurysm
MED	Carlson, R. Lynn	7/13/1999	$175,000	[illegible]3331	10/15/2001	SET-B	Pt w/ resp distr, PA gave inj in wrong loc; damaged radial nerve
MED	R. Lynn Carlson	7/13/1999	$175,000	Norc[illegible] 3331	10/15/2001	SET-B	PA injected Benadryl distally damaging radial nerve
MED	Barton, Theodore D.	2/4/2000	$217,000	3AN-01-07752CI	10/15/2001	SET-A	Alleged lack of informed consent, negl performed br biopsies
MED	Boosch, David E.	10/12/1999	$32,500	CV2000-018264	10/25/01	SET-A	Failure to dx dislocation of R 4th finger
MED	Anderson, John Nels	1998	$15,000	3KN-99-707	11/16/01	SET-A	Failure to obtain consent to use eggs for other pt
MED	Beal, David D.	10/14/1997	$125,000	3AN-99-10484	12/4/2001	SET-A	Unnec tonsillectomy due to mitigating circumstances
MED	Sitter, Stephen C.	10/14/1997	$23,333	3AN-99-10484	12/4/2001	SET-A	Alleged failure to supv CRNA, premature dischrg of pt from recovry
MED	Matsulani, Osamu	8/4/1997	$65,000	3AN-99-8672CI	12/11/2001	SET-A	Alleged failed to prevent suicide
MED	Fortson, Jayne	9/8/1997	$10,000	3AN-99-09717	1/18/2002	SET-A	Alleged sunburn-like reaction to tx of PUVA lite therapy for psoriasis
MED	Krauss, Seth L.	5/31/1999	$300,000	3AN-00-11749CI	1/22/2002	SET-A	Alleged negligence in failure to dx MI
MED	Cable, Harold F.	June, 1997	$1,000,000	3AN-98-6532CI	2/5/2002	SET-A	Alleged back problem worsed following surgery
MED	Magen, Ned A.	2/11/1998	$275,000	3KN00-97CI	2/19/2002	SET-A	Alleged misdx of meningococcus-meningococcemia
MED	Hanson, Peter O.	3/1/2001	$572,798	48611	3/10/2002	SET-B	Alleged negl prescribing of atenolol
MED	Boling, M. Todd	4/14/2000	$590,000	M000057852	3/21/2002	SET-B	Complications fr laparoscopic exam & adhesiolysis
MED	Paton, William A.	3/16/1999	$60,000	3A[illegible]-01-05517	3/22/2002	SET-A	Alleged negl severed right median nerve during carpal tun surg
MED	Adams, Peter B.	5/14/1999	$80,000	3AN-01-7212	3/26/2002	SET-A	
MED	Goldberg, Marshall	5/24/1999	$50,000	30/519-92-8525	3/27/2002	PC	Alleged misdx/mistx of severe pre-eclampsia; fetal death
MED	Lawrence, Jeffrey D.	5/2/2000	$250,000	none	4/23/2002	SET-B	Suture in bladder from bladder suspension surg
MED	Stewart, Glenn	6/8/2000	$1,603,362	3AN-00-08446	4/26/2002	SET-A	Alleged that use of radiation to trt plantar's warts below std of care
MED	Jacoby, Kamy	3/31/1997	$25,000	98-2140640	4/30/2002	SET-A	Alleged negligence in removing drain, part of drain left in wound
MED	Belcher, Mark D.	9/4/1997	$83,333	3AN-99-9629	5/8/2002	SET-A	surg for perf apndx; died; autopsy found blood in lung pleural space
MED	Wennon, William W.	7/22/1999	$65,000	4FA-01-1400	8/5/2002	SET-A	Pt unhappy with outcome of eyebrow tattooing - darker than desired
MED	Snyder, John M.	9/2/1998	$400,000	3AN 00 9698	8/23/2002	SET-A	Alleged lack of post-op monitoring caused brain infarction
MED	Nyboer, Jan H.	4/22/1999	$5	3AN-01-5736	9/8/2002	SET-A	Alleged negl of two employees supp causing a detached retina
MED	Fawley, Howard H.	8/3/2001	$17,500	DMO663321502A002	10/23/2002	SET	Alleged failure to dx finger fracture
MED	Fawley, Howard Hull	8/3/2001	$17,500	DM0663321502A002	10/23/02	SET-B	alleged failure to dx finger fx on xray
MED	Nolan, Declan R.	1/19/1999	$650,000	2ANO13883C	11/5/2002	SET-A	Alleged negligent surgy and post-op follow up (?)
MED	Whipple, Bruce	4/1/1998	$561,455	4FA-00877CI	11/06/02	SET-A	Alleged negl in failure/delay to dx cortical osteomyolitis
MED	Fell, William Russell	10/30/1999	$45,000	3PA011169C	11/14/02	SET-A	Residual facial nerve weakness following surgery, known risk

ALASKA STATE MEDICAL BOARD

REVISED 03/05/2004

SORTED BY DATE PAID

Board	Practitioner Name	Occurred	Award	Case/Court #	Date Paid	Res	Brief Description of Claim
MED	Muffoletto, John F.	12/17/1998	$450,000	3AN-0-10889CI	12/17/02	SET-A	med negli while removing mass behind knee
MED	Brockman, Ronald	6/12/1999	$150,000	3AN-01-7812	02/04/03	SET-A	Alleged intimate relationship w/ pt; inappro prescribing
MED	Wrigley, John B.	0826/98	$260,000	3AN-01-8696	02/04/03	SET-A	Alleged failure to promptly dx renal cell carcinoma
MED	Schurig, Samuel H.	1998-2002	$32,000	3AN-03-04199	02/12/03	SET-A	Alleged negl & malpr for tx of chronic pain
MED	Wennen, William W.	5/16/2000	$92,323	CNA #HM036730	02/21/03	SET-B	Alleged negl photoderm proc; alleged damage to L eye, disfigrmt
MED	Bell, William H.		$2,000		02/21/03		Alleged failure to tx properly led to slow recovery
MED	List, Jerome O.	10/5/2000	$425,000	3AN-02-4081CI	03/06/03	SET-A	Alleged negl perform of endoscopic sinus surg; loss of vision R eye
MED	Harvey, John C.	2/1/1997	$556,375	A01-213-CV	03/07/03	SET-A	Alleged negl presc of demerol, addiction, seizures, blood clots, etc
MED	Beime, Michael F.	11/4/1999	$1,000,000	3AN-01-11714	04/16/03	SET-A	negl presc of methadone to pt w/ hx drug abuse; perm brain injry
MED	Vasiloff, Thomas	9/16/1999	$47,500	3AN-01-11383	06/03/03	SET-A	Alleged failed bunion surg requiring additional surg
MED	Muffoletto, John F.	10/21/1999	$800,000	3AN-01-10038CI	06/04/03	SET-A	Alleged negl in epigastric hernia repair by using too small graft
MED	Kuhanock, David V.	10/24/2002	$2,500	55848	06/24/03	SET-B	Alleged misinterpret of MMPI; alleged misuse of MPI test
MED	Stillner, Verner	10/24/2002	$2,500	55848	7/21/2003	SET-B	PT alleged physician violated confidentiality
MED	Collingham, John R.	6/27/2000	$400,000	3AN-02-06285	07/25/03	SET-A	Alleged negl tx low back pain; delayed dx of cauda equina syndrome
MED	Burtis, Bulfington B.	9/13/1991	$1,000,000	3AN-01-10325CI	07/30/03	SET-A	Alleged negl in dx, monitor, tx of abnormalities of lung & hypoxemia
MED	Fallico, Franc G.	9/18/1991	$500,000	3AN-01-10325CI	07/30/03	SET-A	Alleged failure to dx hypersensitivity pneumonitir; failed to comm
MED	Wennen, William W.	5/16/2000	$237,500	4FA-02-1158CI	10/09/03	SET-A	Alleged negl care & tx of burned child; alleged failure to dx
MED	Schafer, Jyme H.	2/25/2000	$325,000	3AN-01-06814	10/10/03	SET-A	Alleged dx & tx of aneurysm & subarachnoid hemorrhage, pt death
MED	Kesler, Kenneth	3/12/1997	$322,500	3AN-01-11416 CI	12/12/03	SET-A	Alleged delay dx & tx head injury in infant resulting in brain damage
MED	Layman, Richard J.	1989	$285,000		1996	SET-B	Alleged birth defects from delayed C-section
MED	Thompson, Robert G	6/5/1992	$5[illegible],000	3AN-92-1384CI	Installmts	SET-A	Bowel perforation by failed technique in laser surgery
MED	Kienzle, Gregory D.	Pending	Pending	Pending	Pending	Pending	Alleged failure to dx bilateral renal arterial injury in child
MED	Smith, Kir	9/23/1985	$10,000			SET-B	Alleged laceration/traumatic amputation during circumcision
MED	Chicarino-netto, Jose	2/1/1987	$50,000			SET-B	Alleged failure to dx tumor in mammogram; pt death
MED	Chiara, Louis	2/1/1990	$43,000			SET-A	Mother pregnant, needed med tx for rash, died of syphillis
MED	McMahan, Hugh B.	9/1/1992	Undisclosed	9312-07877		SET-A	Failure to dx twins frm US, death to 1 twin, brain damage to 2nd
MED	Coville, Frederick	11/19/1992	$82,100			SET-A	Knee arthroplasty complicated by laceration of popliteal artery, repd
MED	Johnson, M. Walter	7/14/1994	$100,000			SET-A	Failure to supervise another MD in his employ
MED	Road, Jamie N.	10/10/1996	$50,000			SET-A	Wrong diagnosis or misdiagnosis - unnecessary surgery
MED	Hollingshead, Kossuth F.	8/21/1997					Claim filed but not yet settled 7/12/00
MED	Schwartz, C. Bruce	10/23/1997					Alleged paralysis tibial nerve in leg from surgery
MED	Davis, Randall	5/27/1998	$325,000			SET	Did spinal fusion surg on wrong site
MED	Ogg, Bruce A.	6/21/1998	$200,000	99-2057 PHX ROS		PC	Pt sn 'or chst pn dx/trd for indigest. Later died of heart attack
MED	Weinstein, Saul F.	11/11/1998	$450,000	DV-99-95			Unknown
MED	Unsicker, Carl	1/1/1999	$5,000			SET-B	Alleged failure to adequately treat metarsal fx carpal navicular
MED	Nolan, Declan R.	7/6/1999	$120,000			SET-A	Alleged failure to dx liver dis prior to hip replacement - pt died
MED	Gannett, Mary	5/27/2000	$237,500			SET-A	Alleged delayed dx of septic shock in ped burn pt; wrongful death
MED	Eaton, Michael W.		$70,000	3AN-99-12315		SET-A	No information provided by physician
MED	Gray, Herman H.		$200			SET-B	Chipped tooth during intubation
MED	Lake, Gerald E.		$15,000	A305496		SET-A	Pt tx for deprssn, other med prblms, dev staph sepsis, died
MED	Spindle, David K.		$250,000			SET-A	Pt alleged paralysis after surgery
		Total	$58,131,777				
		Average	$210,622				

HOUSE JUDICIARY COMMITTEE
April 21, 2005
SB67
(excerpt)

Representative Kott:
Madam Chair, Dr. Rayneer – ***didn't you in your earlier testimony suggest that you thought your colleagues, I guess, would agree with you that we had affordable malpractice rates in this state***, and if we have affordable, how come the guy in Soldotna, or Seldovia or…

Dr. George Rhyneer:
They're affordable for the vast majority of physicians. Obviously, if you're a subsistence physican, basically, you can't afford it. And I expect if you work in some of the smaller communities, probably in Glenallen – I imagine their mission out there probably pays the insurance but I doubt the physician themself could afford the insurance. So it's affordable for the specialists, it's affordable for a lot of the surgeons, it's affordable for the people who have large practices, but for areas which have limited resources and a lot of the service that you provide is free and gratis, it's very tough to provide, to buy malpractice insurance.

LEGISLATIVE RESEARCH REPORT

APRIL 19, 2005

REPORT NUMBER 05.256

PHYSICIANS LICENSED IN ALASKA

PREPARED FOR REPRESENTATIVE LES GARA

BY CHUCK BURNHAM, LEGISLATIVE ANALYST AND
PATRICIA YOUNG, MANAGER

You asked about physicians licensed in Alaska. Specifically, you wanted to know the number of state-licensed physicians as compared to the population over the last several years. You particularly wished to know if the per capita number of physicians is in a declining trend.

As of this date, 2,480 medical doctors (MD) and doctors of osteopathy (DO) hold active state licenses. According to Leslie Gallant, Executive Administrator, Alaska State Medical Board, however, there is no way to ascertain the exact number of physicians actively practicing in the state at any given time. Of the total number of actively licensed physicians, 1,696 (68%) have Alaska addresses. Ms. Gallant believes that the majority of those practice full time within the state, but notes that some retired doctors maintain active licenses in order, for example, to continue writing prescriptions or to have the option of quickly returning to practice to supplement their incomes.[1]

In regard to the number of actively licensed physicians with addresses outside of Alaska, Ms. Gallant notes that, in addition to retired doctors, this group includes physicians who travel to the state to provide medical care during the absence of resident physicians, physicians who consult with resident doctors, and those who offer specialty clinics or provide periodic medical services within the state.

Table 1 shows the number of active, state-licensed physicians per fiscal year since 1985, as well as the Alaska population and the number of active physicians per 1,000 residents for each year of

[1] Physicians renew their licenses biennially. The fee for an active license is $590; the fee for an inactive license is $250.

that time period. As this table shows, the number of physicians per 1,000 residents has, overall, increased steadily.[2]

Table 1: Active State Licensed Physicians and Alaska Population, 1985-2004

Fiscal Year	Population	State Licensed Physicians	State-Licensed Physicians per 1,000 Residents
1985	543,900	815	1.50
1986	550,700	934	1.70
1987	541,300	1,027	1.90
1988	535,000	1,089	2.04
1989	538,900	925	1.72
1990	553,171	1,038	1.88
1991	569,054	1,004	1.76
1992	586,722	1,152	1.96
1993	596,906	1,183	1.98
1994	600,622	1,417	2.36
1995	601,581	1,419	2.36
1996	605,212	1,593	2.63
1997	609,655	1,603	2.63
1998	617,082	1,826	2.96
1999	622,000	1,810	2.91
2000	627,576	2,034	3.24
2001	632,674	1,850	2.92
2002	641,482	2,080	3.24
2003	648,818	2,099	3.24
2004	655,435	2,321	3.54

Notes: Numbers of physicians reflect active state-licensed medical doctors and doctors of osteopathy only; doctors of podiatric medicine are not included because their numbers include both active and inactive practitioners; federal physicians are not included because they are not licensed by the State Medical Board.

According to the American Medical Association, as reported in "Federal Physicians in 2001," Health Care State Rankings, 2003 (Morgan Quitno Press, 2003, p. 430), in 2001, Alaska had 147 federal physicians.

Population figures for 2003 and 2004 are provisional.

Sources: Alaska State Medical Board, and Alaska Department of Labor and Workforce Development.

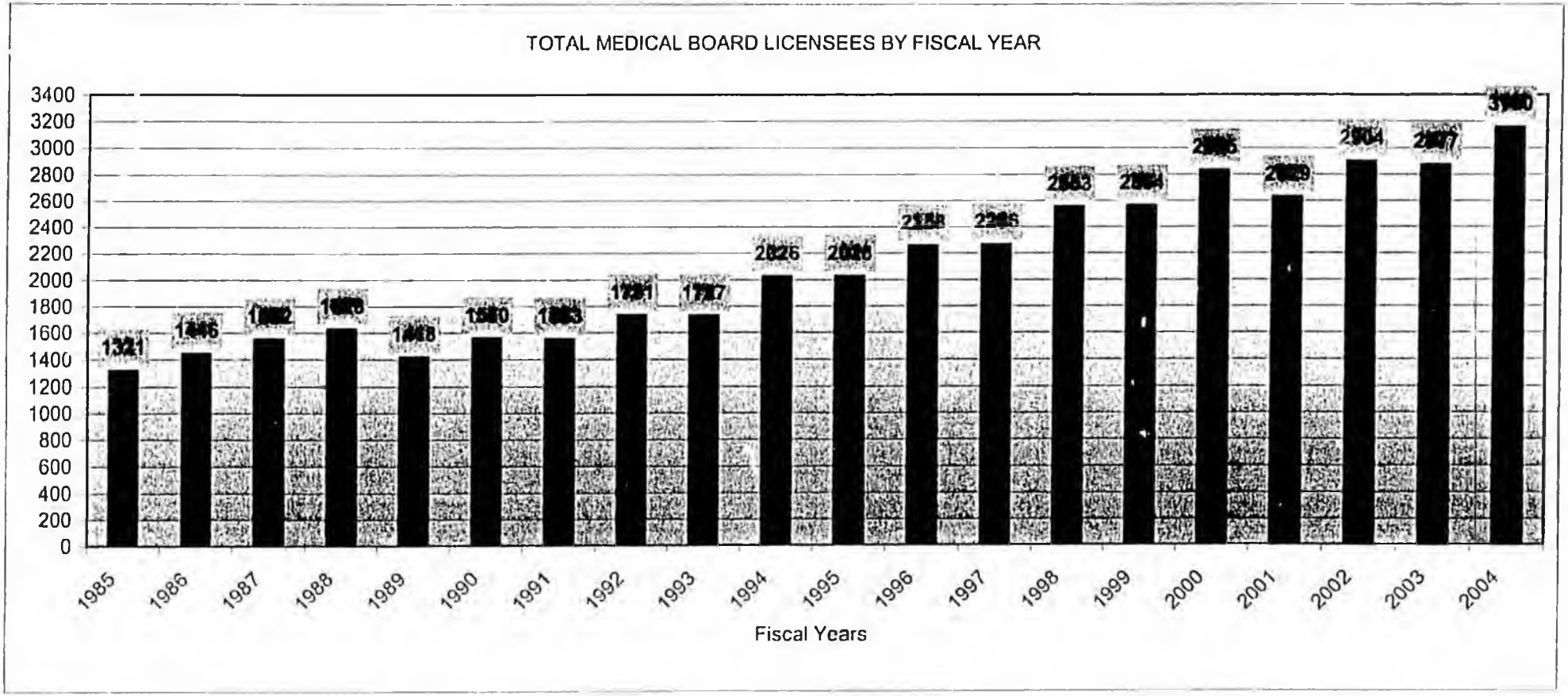
[2] These numbers reflect active, state-licensed medical doctors and doctors of osteopathy only. Doctors of podiatric medicine are not included because the numbers of active and inactive practitioners are not separated. We do not include federal physicians; because they are not licensed by the State Medical Board, their annual numbers are far less readily available.

Although only physicians with active licenses are authorized to practice, Ms. Gallant notes that the procedure for activating an inactive license is fairly simple and can be completed quickly. Therefore, in her view, both active and inactive licenses should be considered when stating the total number of state-licensed physicians. To that end, we attach a figure prepared by Ms. Gallant that shows the total number of active and inactive physicians as a component of the total number of primary health care providers in the state for fiscal years 1985-2004.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

TOTAL PHYSICIANS, PHYSICIAN ASSISTANTS, AND PARAMEDICS BY FISCAL YEAR

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03	FY04
MD/DO Active	815	934	1027	1089	925	1038	1004	1152	1183	1417	1419	1593	1603	1826	1810	2034	1850	2080	2099	2321
MD/DO Inactive	317	305	279	322	255	254	273	263	243	243	262	262	277	266	300	289	285	268	249	242
DPM-Act/Inact	0	11	11	0	0	0	9	11	12	15	13	14	14	15	15	16	16	17	18	17
PA-C-Act/Inact	111	111	134	126	138	157	159	186	177	216	200	231	221	255	244	266	245	284	266	297
MICP-Active	78	85	101	91	100	111	108	119	112	135	134	158	151	191	195	230	233	255	245	283
TOTAL	1321	1446	1552	1628	1418	1560	1553	1731	1727	2026	2028	2258	2266	2553	2564	2835	2629	2904	2877	3160
% Variance from Previous Year	--	+9.4	+7.3	+4.8	-12.9	+10	- .05	+11.4	- .02	+17.3	--	+11.3	.03	+12.6	+.04	+11	-7.8	+10.4	-.09	+ 9.8



MD - Medical Doctor (allopathic)

DO - Doctor of Osteopathy

DPM - Doctor of Podiatric Medicine

PA-C - Physician Assistant-Certified

MICP - Mobile Intensive Care Paramedic

Source: Leslie Gallant, Alaska State Medical Board

Metro Intergroup Communications
136 11th Street, S.E.
Washington, D.C. 20003

REGION____ _____

AK MLQ 05:01
March 8-10, 2005

Interviewer:_____ _____

Interview Date:_____

Length of Interview:_____
(be accurate to the minute)

Phone #: (907)_____

Gender of Respondent: 1. Male 2. Female

Name of Respondent:_____

Hello, my name is _____, and I'm from Metro Intergroup Communications, a national research firm. We're conducting a public opinion survey and I'd like to talk to the youngest man, age 18 or older, who is at home right now. **(IF NO MALE, ASK TO SPEAK TO THE YOUNGEST WOMAN, AGE 18 OR OLDER WHO IS AT HOME. WHEN RESPONDENT IS SELECTED:)** We're not selling anything and I won't ask you for a contribution or donation.

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1. First, are you currently a resident of the State of Alaska, or not? **(If "NO", ask to speak to someone else in the household who is a resident of Alaska.)**

1.	Yes/100%	Go to Q2
2.	No	We need to talk to people who are residents of Alaska. Would anyone else in the household qualify? **(If "YES", return to Introduction. If "NO", Terminate.)**
3.	Don't Know	

2. And for this survey, I need to know if you are registered to vote at this address we're now calling, or not? **(If "NO", ask to speak to someone else in the household who is a registered voter.)**

1.	Yes/100%	Go to Q3
2.	No	We need to talk to people who are registered voters. Would anyone else in the household qualify? **(If "YES", return to Introduction. If "NO", Terminate.)**
3.	Don't Know	

3. Tell me please, how long you've been a resident of Alaska. Is it... **(Read List).**

1. All your life,/25%
2. More than 20 years,/33%
3. Between 10 and 20 years,/23%
4. Between 5 and 10 years,/11%
5. Between 3 and 5 years,/3%
6. Between 1 and 3 years, or/3%
7. Less than 1 year./2%
8. Refused **(VOL.)**/1%

---

4. What is your overall opinion about the way things are generally going here in Alaska? Would you say things are generally going in the right direction, or do you feel things are pretty seriously off on the wrong track?

1. Right direction/58%
2. Wrong track/27%
3. Can't Say/15%

---

5. Generally speaking, how would you rate the job Frank Murkowski **(mer-COW-ski)** is doing as Governor? Do you strongly approve; somewhat approve; somewhat disapprove; or strongly disapprove of the way he is handling the job of Governor?

1. Strongly Approve/8%
2. Somewhat Approve/41%
3. Somewhat Disapprove/20%
4. Strongly Disapprove/19%
5. Can't Say/11%

---

6. Would you say the quality of health care you receive today is better than; about the same; or worse than the health care you received, say 10 years ago?

1.	Better/31%	Go to Q8	(NEXT PAGE) →
2.	About the same/40%		
3.	Worse/23%	Go to Q8	(NEXT PAGE) →
4.	Can't Say/6%		

7. **IF "ABOUT THE SAME" IN Q6, ASK:** Is that generally good or generally bad?

1. Generally Good/80%
2. Generally Bad/11%
3. Can't Say/9%

8. **ASK OF EVERYONE** And would you say the value you get for your health care dollar is better; about the same; or worse than it was say 10 years ago?

1. Better/14%
2. About the same/32%
3. Worse/47%
4. Can't Say/8%

9. How frequently would you say you hear or read about medical errors and patients who have been injured during medical treatment – quite frequently; fairly regularly; occasionally; hardly at all; or not at all?

1. Quite Frequently/8%
2. Fairly Regularly/10%
3. Occasionally/52%
4. Hardly At All/25%
5. Not At All/4%
6. Can't Say/1%

---

10. Are you aware of the on-going debate about medical malpractice liability and medical malpractice insurance costs for doctors, or not?

1	Yes/63%	Go to Q11
2.	No/36%	Go to Q12
3.	Can't Say/1%	

11. **IF YES, IN Q10, ASK:** Whom do you feel is most to blame for these medical malpractice insurance problems? Please choose the one – only one – you feel is the one most to blame. **(READ LIST) (ACCEPT ONLY ONE RESPONSE)**

ROTATE

1. Doctors and Hopitals,/17%
2. Insurance Companies,/21%
3. Injured Patients,/5%
4. Juries,/3%
5. Lawyers who represent Injured Patients,/33%
6. Politicians, or/4%
7. Lawyers for Doctors and Hopsitals,/5%
8. Can't Say **(DO NOT READ)**/11%

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12. **ASK OF EVERYONE** Please tell me if you think that health care providers overall are doing an excellent job, a good job, only a fair job, or a poor job at preventing medical errors and promoting patient safety?

1. Excellent Job/9%
2. Good Job/63%
3. Only a Fair Job/20%
4. Poor Job/5%
5. Can't Say/4%

The cost to have malpractice insurance coverage that doctors and nurses in Alaska have to pay has been going up at a considerate rate in recent years. Let me read to you some reasons others have told us are the cause of these high malpractice insurance rates on dotors and nurses. After each please tell me if you feel it is a major reason, a minor reason, or **NOT** a reason for these increases in malpractice insurance.

ROTATE	A Major Reason	A Minor Reason	Not a Reason	Can't Say
13. State Government not passing necessary laws that would reduce frivolous malpractice lawsuits.	38%	38%	18%	6%
14. Juries awarding excessive amounts of money to patients in malpractice cases.	50%	35%	10%	5%
15. More medical errors or mistakes by Doctors.	29%	47%	16%	8%
16. Patients and their lawyers filing frivolous lawsuits against doctors for financial gain.	60%	30%	5%	5%

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17. Do you think many doctors; some doctors; or a very few doctors here in Alaska are practicing defensive medicine by performing additional tests or procedures that are not necessary to protect themselves from frivolous lawsuits?

1. Many/13%
2. Some/45%
3. Very few/25%
4. None **(VOL.)**/3%
5. Can't Say/15%

For the following please tell me if you are very concerned; somewhat concerned; not too concerned; or not at all concerned that the increasing malpractice insurance costs and the ability to get malpractice insurance for doctors and nurses here in Alaska will lead to each of these possible outcomes for you and your family. The first one is...**(READ QUESTIONS AND REPEAT ANSWER SET FOR THE FIRST FEW)**

ROTATE	Very Concerned	Somewhat Concerned	Not Too Concerned	Not At All Concerned	Can't Say
18. That you'll have to pay more for healthcare or health insurance.	42%	44%	10%	4%	1%
19. You won't be able to afford health insurance coverage or necessary health care.	45%	34%	15%	5%	1%
20. You'll have trouble finding a doctor when you need one.	26%	40%	27%	7%	1%
21. Your current doctor will stop practicing or move out of the state.	24%	31%	34%	10%	2%
22. You'll have a more difficult time getting specialized care when you need it.	29%	43%	19%	8%	1%

---

23. Do you think many doctors; some doctors; or very few Alaskan doctors have stopped providing certain complex or high risk medical services or refused to treat patients with serious illnesses to protect themselves from frivolous lawsuits.

1. Many/7%
2. Some/41%
3. Very few/30%
4. None (VOL.)/3%
5. Can't Say/19%

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24. There is bill right now in front of the legislature that would put a cap or a limit on what is called non-economic damages of more than $250 thousand dollars in medical malpractice cases. Non-economic damages are usually referred to as getting money for pain and suffering. First of all are you aware there is an effort to pass this, or not?

1. Yes/43%
2. No/53%
3. Can't Say/4%

25. Again, this legislation calls for putting a limit of $250 thousand dollars on medical malpractice cases for non-economic damages, for pain and suffering. The bill would still allow people to be awarded damages for the full amount for monetary losses – for past and future medical expenses, past and future earnings, loss of employment: all cost associated with any medical accident. Generally would you say you strongly favor; somewhat favor; somewhat oppose; or strongly oppose this legislation that would put a limit of $250 thousand dollars on suing for non-economic, pain and suffering damages?

1. Strongly Favor/30%
2. Somewhat Favor/30%
3. Somewhat Oppose/17%
4. Strongly Oppose/11%
5. Can't Say/12%

Here are some statements others have told us about this problem. After each please tell me if you strongly agree; mostly agree; mostly disagree, or strongly disagree with each statement. The first one is...

(ROTATE Q26-Q31)

26. The national medical malpractice crisis is affecting us and our healthcare needs here in Alaska.

1. Strongly Agree/29%
2. Somewhat Agree/45%
3. Mostly Disagree/13%
4. Strongly Disagree/2%
5. Can't Say/10%

27. Having the legislature pass legislation that will lower the current limits on non-economic, pain and suffering damages to $250 thousand dollars in medical malpractice cases will be in the best interest of Alaska.

1. Strongly Agree/29%
2. Somewhat Agree/34%
3. Mostly Disagree/15%
4. Strongly Disagree/8%
5. Can't Say/15%

28. Limiting monetary awards for non- economic pain and suffering damages to no more than $250 thousand dollars will help to control health care costs here in the state.

1. Strongly Agree/29%
2. Somewhat Agree/33%
3. Mostly Disagree/16%
4. Strongly Disagree/8%
5. Can't Say/15%

29. If medical malpractice lawsuits aren't controlled, it's going to damage our cities, communities, and villages as we lose our doctors because they can't afford to pay their medical malpractice insurance.

1. Strongly Agree/29%
2. Somewhat Agree/37%
3. Mostly Disagree/16%
4. Strongly Disagree/7%
5. Can't Say/12%

30. Setting a limit of $250 thousand dollars on non-economic damages – for pain and suffering – will help promote quicker settlements.

1. Strongly Agree/29%
2. Somewhat Agree/35%
3. Mostly Disagree/13%
4. Strongly Disagree/6%
5. Can't Say/18%

31. Alaska really does have a critical shortage of nurses and doctors.

1. Strongly Agree/30%
2. Somewhat Agree/36%
3. Mostly Disagree/16%
4. Strongly Disagree/2%
5. Can't Say/15%

Let me go through some facts for you. After each please tell me if you find it to be a very convincing reason to be in favor of putting a $250 thousand dollar limit on pain and suffering in medical malpractice lawsuits; it is somewhat of a convincing reason; not convincing at all; or it would have no affect on you. The first one is…

32. Alaska is one of the most expensive state's in the nation for doctors to practice medicine. Is this a … **(READ LIST)**

1. A very convincing reason,/27%
2. Somewhat of a convincing reason,/40%
3. Not convincing at all, or/19%
4. It would have no affect on you./8%
5. Can't Say **(DO NOT READ)**/6%

33. Because of the high cost to insure doctors and nurses, two of the state's medical malpractice insurance companies have left the state after suffering significant losses and the last two remaining companies are limiting the amount of insurance coverage that doctors and/or nurses in specialty areas, such as OB/GYN and cardiology, can purchase. Is this a…

1. A very convincing reason,/34%
2. Somewhat of a convincing reason,/37%
3. Not convincing at all, or/16%
4. It would have no affect on you./8%
5. Can't Say **(DO NOT READ)**/5%

34. States that have reasonable limits on non-economic, pain and suffering damages, have 12 percent more doctors per capita than states that don't have these limits. Is this...

1. A very convincing reason,/27%
2. Somewhat of a convincing reason,/39%
3. Not convincing at all, or/19%
4. It would have no affect on you./7%
5. Can't Say **(DO NOT READ)/8%**

35. Alaska has difficulty attracting and maintaining an adequate number of doctors. Right now Alaska ranks 46th out of 50; in the number of doctors per capita. Is this..

1. A very convincing reason,/32%
2. Somewhat of a convincing reason,/36%
3. Not convincing at all, or/19%
4. It would have no affect on you./8%
5. Can't Say **(DO NOT READ)/5%**

36. Lowering the existing limits on non-economic, pain and suffering damages to $250 thousand dollars has proven to be the single most important tool in controlling the cost of medical malpractice insurance. Is this...

1. A very convincing reason,/26%
2. Somewhat of a convincing reason,/38%
3. Not convincing at all, or/21%
4. It would have no affect on you./9%
5. Can' Say **(DO NOT READ)/6%**

37. Nurses, doctors, dentists, physician assistants, specialists – the whole medical community would be helped by having this legislation passed. Is this...

1. A very convincing reason,/31%
2. Somewhat of a convincing reason,/36%
3. Not convincing at all, or/18%
4. It would have no affect on you./9%
5. Can't Sa **(DO NOT READ)/7%**

---

38. Now that we've had a few minutes to talk about this legislation. How do you feel about it now. Do you strongly favor; somewhat favor; somewhat oppose; or strongly oppose this legislation which would put a limit of $250 thousand dollars on non-economic, pain and suffering damages, in a medical malpractice lawsuit.

1. Strongly Favor/34%
2. Somewhat Favor/33%
3. Somewhat Oppose/13%
4. Strongly Oppose/10%
5. Can't Say/10%

THAT COMPLETES THE MAJOR PART OF THE SURVEY. NOW FOR A FEW QUESTIONS FOR STATISTICAL PURPOSES ONLY.

39. Please tell me, in which age group are you? **(READ LIST)**

1.	18-24,/8%	4.	45-54,/22%	7.	Refused/1%
2.	25-34,/15%	5.	55-64, or/16%		
3.	35-44,/26%	6.	65 or older./12%		

40. What was the last grade of schooling you have completed? **(READ LIST)**

1. 8th Grade or less,/1%
2. Some high school, a,/3%
3. High school graduate or GED,/30%
4. Some college,/22%
5. 2 year college graduate,/10%
6. 4 year college graduate, or/26%
7. Post graduate./7%
8. Refused **(DO NOT READ)**/1%

41. Do you work for the federal, state, local government, for the local public school system, or do you work for a private company?

1. Federal Government/6%
2. State Government/5%
3. Local Government/5%
4. Public School System/4%
5. Private Company/44%
6. Not in workforce **(VOL.)**/34%
7. Refused/2%

42. What type of work do you do? What is your job called?

Job Description:_____
(be specific)

1. Professional/Executive/Managerial/10%
2. Self-employed/Proprietary/Own Business/White Collar/5%
3. Sales/5%
4. Clerical/Administrative/5%
5. School Teacher/College Professor/3%
6. Information Services **(Computer workers)**/3%
7. Military **(Officer)**/0%
8. Military **(enlisted/civilian)**/1%
9. Self-employed/Proprietary/Own Business/Blue Collar/7%
10. Other Service workers **(Day care/Police/Fire/Waitress)**/10%
11. Commercial Fisherman/Farmer/2%
12. Skilled Technician/Tradesman/9%
13. Semi-skilled labor/Factory worker/Production/3%
14. Unemployed **(not retired)**/4%
15. Retired/15%
16. Housewife/10%
17. Student/2%
18. Refused/5%

43. I need to know if you are registered to vote as a Democrat; as a Republican; registered Non-partisan or Undeclared; as a Libertarian; in the Green Party, the Alaska Independent Party, or as something else?

1. Democrat/22%
2. Republican/33%
3. Non-Partisan/16%
4. Undeclared/19%
5. Libertarian/2%
6. Green Party/0%
7. Alaska Independent Party/3%
8. Something Else/1%
9. Refused/Unsure/4%

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44. What is your race or ethnic group? Is it...

1. Caucasian **(White)**,/84%
2. African American **(Black)**,/1%
3. Native Alaskan/Indian,/10%
4. Pacific Islander/Asian, or/2%
5. Hispanic./1%
6. Other **(DO NOT READ)**/1%
7. Refused **(DO NOT READ)**/1%

Testimony to House Judiciary Committee on CSSB 67 on Medical Liability Reform
By: Rod Betit, President Alaska State Hospital & Nursing Home Association

Madam Chair, members of the Committee, I am offering this testimony on behalf of the membership of the Alaska State Hospital & Nursing Home Association. ASHNHA's membership includes all but one of the 31 hospitals and nursing homes throughout the State.

ASHNHA's members strongly support SB 67. Why?

Passage of SB 67 is important to protecting each Alaskan's ACCESS to needed physician care, particularly OB services and other specialty care including psychiatry, allergy/immunology, neurosurgery, rheumatology, cardiology and gastroenterology.

Some communities are already facing a shortage of physicians in these areas, and more will experience this in the years ahead if medical liability changes are not forthcoming.

My members believe passage of this bill will better balance the individual's non-economic damage entitlement with the need for physician access for all members of a community.

This change in State law will still leave each injured individual with full financial compensation for economic and punitive damages while preserving an insurance market that has only two carriers currently offering coverage to Alaska physicians.

Why do we need to Act Now?

Medical liability premium increases are a major factor contributing to the shortage of physicians in the state. A look at the numbers for Alaska is telling enough, but underneath those numbers it is even more worrisome because it does not reflect those physicians who limit their practice to that which their insurance will cover.

A good example of what happens when high premiums and scope of practice collide is a family practice physician in Soldotna who could not afford to handle prenatal care and delivery because of the added liability cost. This **"practice shrinking"** is happening in other communities and with other physician specialties. **My members could give you more details.**

Where physicians could get coverage for a broader scope of practice, some cannot afford to do so. Unlike other free market enterprises, physicians cannot raise their fees enough to offset the financial impact of dramatic increases in premiums.

This is largely because so much of their business is reimbursed by government programs (Medicare & Medicaid) which do not automatically respond to fee increases, or provided for no reimbursement at all due to bad debt or charity care (approximately 20% of Alaskans are uninsured at this time).

The population forecast for Alaska versus expected growth in physicians adds even more concern to this picture:

Consider these Facts:

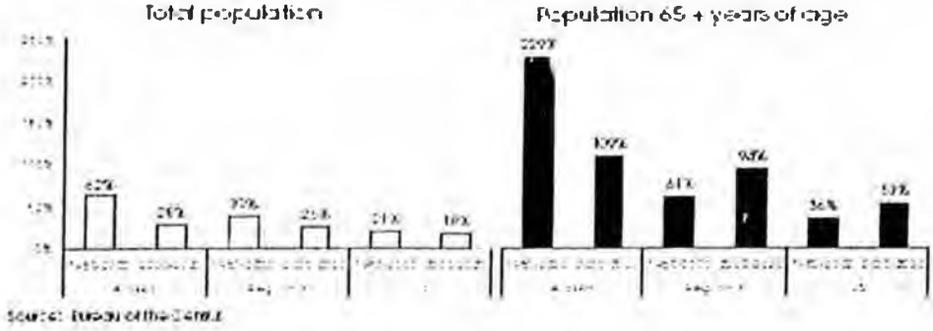
- **The total population of Alaska is projected to grow 28% by 2020. This is in addition to 62% growth between 1980 and 2000.**

- **The population over 65 is projected to grow 109% by 2020. This is in addition to 229% growth in this age group between 1980 and 2000. Note Table below.**

- **In 1998 Alaska ranked 47th in the number of hospital beds per 100,000 population and 49th in the number of nursing home beds for people 65 and older. Yet Alaska will be experiencing the greatest growth rate in the age group that most requires services in these complex environments dependent on a wide range of physician specialists.**

POPULATION PROFILE

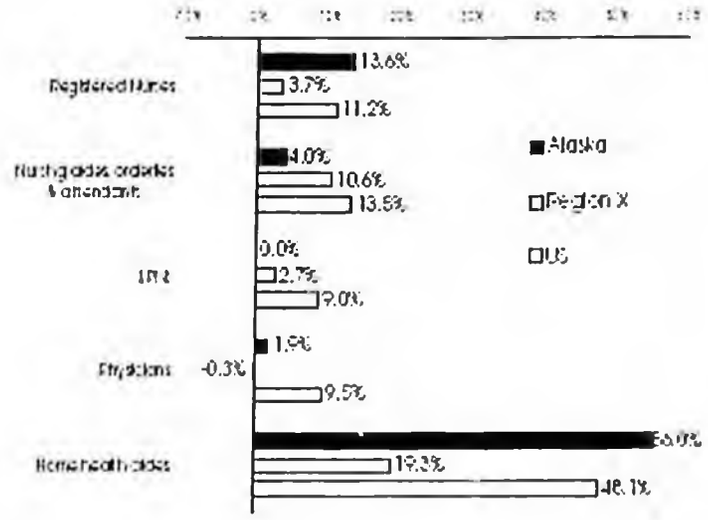
Projected percentage change in total population & population 65 + years of age, 1980-2000 & 2000-2020



What can we expect for Alaska in terms of physicians/100,000 population to serve this growth in population in the years ahead? Here is what the federal government predicts for Alaska.

HEALTH PROFESSIONS

Projected percentage change in employment per 100,000 population in the five most numerous health care occupations in the U.S., 1996-2006



Source: Bureau of Labor Statistics.

Based on these numbers, Alaska's low representation of physicians to every 100,000 population is not expected to improve, yet we will clearly require more physicians per 100,000 in key specialty areas because we will have the fastest growth in seniors of any where in the country.

Summary:

□ Alaska is already experiencing serious trouble retaining and attracting physicians, and the situation will get worse without your intervention to help stabilize the medical liability market.

□ Growth in Alaska's population, particularly the elderly, will far outstrip growth in the number of physicians available to meet this need.

□ The elderly consume at least 2/3rds of all public spending in Medicare and Medicaid because they have chronic conditions, serious prolonged illnesses that are expensive to treat, and rely on an average of 5 medications to address their medical problems.

□ Alaska will not only need many more physicians in the years ahead but we will need more physicians in specialty fields than any other state. This will not occur in my members view without addressing the medical liability insurance market in Alaska.

□ Alaska does not have a medical school or a large residency program so we must keep our physicians in practice as long as possible, and create a fairer medical liability environment to attracting new physicians from outside the State.

For these reasons ASHNHA strongly encourages your support of SB 67.

We believe the narrow nature of this legislation addressing just the non-economic damages cap will go a long way to demonstrate that the State is committed to injured patients receiving fair compensation, but that we are also concerned about insuring a viable environment in which all Alaskans will be able to have timely access to a physician in the years ahead.

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STATE OF ALASKA
DEPARTMENT OF COMMERCE COMMUNITY AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

Frank H. Murkowski, Governor

Impact of Tort Reform
on Availability and Cost of Insurance in Alaska

Alaska Statute 21.06.087 requires the Alaska Division of Insurance (Division) to evaluate the effects of tort reform legislation that became effective in 1997 on the availability and cost of insurance in Alaska.

In November 2003, the Division updated the survey results from those gathered in 2002. The Division mailed 950 surveys to insurers transacting casualty business in the state requesting information related to the effects of tort reform on the costs and availability of insurance in Alaska. The Division received 159 responses. These responses represent 58% of the 2001 property/casualty Alaska earned premium. The Division requested information related to changes in insurance costs and availability already experienced by insurers, as well as how costs and availability will be affected in the future. A copy of the survey may be found on the Division of Insurance website at http://www.commerce.state.ak.us/insurance/bulletins/B03-09survey.pdf

The responses to the survey indicated overwhelmingly that: 1) there has been no change or 2) the insurer has been unable to assess the effect of tort reform on the costs and availability of insurance in Alaska. While most insurers indicated that there has been no change or that they have been unable to assess the effect of tort reform, a few insurers indicated that they have written more business and that rates have gone down or that they anticipate seeing increased availability and lower rates in the future. The following reasons were provided as general comments regarding the responses to the survey.

- Low premium volume makes it difficult to assess the impact
- Some respondents do not currently do business in Alaska
- Some respondents do not offer liability insurance in Alaska
- Still early to accurately judge, but it appears that claim amounts and resulting liability rates have improved

A summary of the answers provided by insurers to the survey follows. The total responses may not add up to the total number of insurers who responded to the survey. Some insurers did not answer all the questions and others gave multiple responses to one question.

Seventy-six respondents did not answer any of the individual questions. The reasons provided were that the insurer is not currently writing business in Alaska, the insurer does not write liability insurance, the insurer is a surplus lines insurer or a reinsurer, or the insurer's book of business is too small to evaluate the impact.

For questions related to the availability of insurance, the survey allowed insurers to select from options that indicated a change in availability, no change in availability, or that the insurer is unable to evaluate how tort reform affects the availability of insurance. If the availability of insurance is affected by tort reform, the effect could be demonstrated by changes in the number of policies an insurer is willing to write or by changes in the amount of premium collected by the

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insurer. Either increased policy count or increased written premium could indicate that insurance is more available due to tort reform. If an insurer selected decreased policy count or decreased written premium, this might indicate that they anticipate tort reform to have an adverse affect on insurance availability.

For questions related to the costs of insurance, the survey allowed insurers to select from options that indicated either a change in rates, a decrease in claims costs, or that the insurer is unavailable to evaluate how tort reform affects or will affect insurance costs. A decrease in claim costs may be an indication of future reductions in costs of insurance. If the cost of insurance is affected by tort reform, the effect could be demonstrated by indicating whether rates used to price a policy had increased or decreased, or if rates used to price a policy were anticipated to increase or decrease.

I. AS 09.17.010 Cap on Non-Economic Damages

What effect has the revised cap on non-economic damages had on the amount of insurance business written by your company in Alaska? If no effect has been noticed to date, what effect is anticipated in the future on the availability of liability insurance provided by your company in Alaska?

Current Availability	Future Availability
67 No change	60 No change
13 Don't know	18 Don't know
1 Increased premium written	3 Increased policy count
	2 Increased premium written

What effect has the revised cap on non-economic damages had on the cost of insurance coverage written by your company in Alaska? If no effect has been noticed to date, what effect is anticipated in the future on the cost of liability insurance provided by your company in Alaska?

Current Cost	Future Cost
60 No change	48 No change
17 Don't know	27 Don't know
4 Decreased liability rates	2 Decreased liability rates

Comments

- Policy types and limits written by company would not be impacted.
- While the company is licensed to write in Alaska, they currently do not write any liability policies.
- The Company's book of business is quite stable and the change in tort reform did not affect their insureds.
- The company does not write business that would be impacted by tort reform.
- Company writes very little premium in Alaska and cannot judge the impact of tort reform.
- One company indicated that if they have more claims affected by tort reform, it could impact our overall profitability and then could result in increased rates.
- If a company observes an adverse trend in losses, they will be forced to re-evaluate the availability and cost of coverage.
- The extent of impact is dependent on future types and amounts of claims.

- One company believes that tort reforms, particularly caps on non-economic damages, stabilize the costs of litigation, make settlements fairer and more predictable, and benefit health care consumers by making more dollars available for health care instead of going into the liability industry.
- One company indicated they recently began writing in Alaska because of the positive change adopted in 1997.
- One company indicated that while they did not write business in Alaska prior to 1997, the presence of the cap will remain an important key to the company's continued writings in Alaska.

II. AS 09.17.020 Cap on Punitive Damages

Thirty respondents indicated their policies cover punitive damages. Fifty-seven respondents indicated their policies do not cover punitive damages.

What effect has the cap on punitive damages had on the amount of liability insurance business written by your company in Alaska? If no effect has been noticed to date, what is anticipated in the future on the availability of liability insurance provided by your company in Alaska?

Current Availability		Future Availability	
25	No change	36	No change
4	Don't know	13	Don't know
1	Increased policy count		

What effect has the cap on punitive damages had on the cost of liability insurance coverage written by your company in Alaska? If no effect has been noticed to date, what is anticipated in the future on the cost of liability insurance provided by your company in Alaska?

Current Cost		Future Cost	
36	No change	34	No change
15	Don't know	15	Don't know
		1	Increased liability rates
		1	Decreased liability rates

Comments

- One insurer wrote that since they follow a market underwriter, they do not set premium or rates. They will continue to write good business in Alaska if they feel like they can do so profitably.
- It is difficult to say if the cap on punitive damages caused the increase in the number of policies or if there was some other reason.
- Our company supports the cap on punitive damages as it helps control the cost of risk which, in turn, allows Alaskan insureds to enjoy lower insurance rates in the long run.
- Most of our policy limits are below the caps. Although no statistics are kept, our claims department has noticed a decrease in the number of liability claims where punitive damages are plead.
- One insurer indicated they wrote more social service agency professional liability policies.

III. AS 09.30.070 Exclusion of Prejudgment Interest

What effect has the exclusion of prejudgment interest had on the amount of insurance business written by your company in Alaska? If no effect has been noticed to date, what effect is anticipated in the future on the availability of liability insurance provided by your company in Alaska?

Current Availability	Future Availability
62 No change	52 No change
18 Don't know	23 Don't know
1 Increased policy count	3 Increased policy count
1 Increased premium written	3 Increased premium written

What effect has the exclusion of prejudgment interest had on the cost of liability insurance coverage written by your company in Alaska? If no effect has been noticed to date, what effect is anticipated in the future on the cost of liability insurance provided by your company in Alaska?

Current Cost	Future Cost
56 No change	48 No change
23 Don't know	26 Don't know
2 Decreased liability rates	1 Decrease in incurred claim amounts
	2 Decreased liability rates

Comments

- Several companies indicated that they do not write liability policies in Alaska.
- One company indicated that they use advisory organizations loss costs.
- One company has not focused in on pre-judgment interest rate as a major rating factor affecting premium levels in their lines.
- While the exclusion of prejudgment interest is a significant benefit by itself, it is insufficient to alter rates or availability since so few of our policyholders actually go to trial and lose. Thus, in the big picture, any savings realized would be proportionately very small.
- This change has helped to move settlements closer to actual damages.
- For one company, this had more to do with market availability than with rates.
- If there is any effect on the cost of liability insurance, it would be a slight decrease since a component of the claim cost had been eliminated. However, we believe the cost reduction is negligible.

IV. AS 09.65.096 Hospital Liability for Emergency Room Physicians

Four respondents said they sell hospital liability policies.
Eighty-one respondents said they do not sell hospital liability policies.

Four respondents said that prior to the law change, their policies did not cover negligence of emergency room physicians acting as independent contractors.
Since there was no change in coverage, there has been no change in rates or availability.

V. AS 09.10.055 Statute of Repose for Construction and Design Defects

What effect has the revised statute of repose had on the amount of insurance business written by your company in Alaska? If no effect has been noticed to date, what effect is anticipated in the future on the availability of liability insurance provided by your company in Alaska?

Current Availability	Future Availability
62 No change	57 No change
12 Don't know	18 Don't know
1 Decreased premium written	2 Increased policy count
2 Decreased premium written	2 Decreased policy count
	1 Increased premium written

What effect has the revised statute of repose had on the cost of liability insurance coverage written by your company in Alaska? If no effect has been noticed to date, what effect is anticipated in the future on the cost of liability insurance provided by your company in Alaska?

Current Cost	Future Cost
57 No change	52 No change
15 Don't know	21 Don't know
2 Decreased liability rates	1 Decreased liability rates

Comments

- It is unlikely that an action involving the statute of repose as respects to construction and design defects would arise from one of our insureds.
- Not applicable in medical malpractice.

VI. AS 09.30.070(a) Interest Rate

What effect has the revised interest rate had on the amount of insurance business written by your company in Alaska? If no effect has been noticed to date, what effect is anticipated in the future on the availability of liability insurance provided by your company in Alaska?

Current Availability	Future Availability
65 No change	60 No change
15 Don't know	18 Don't know
1 Increased policy count	2 Increased policy count
1 Increased premium written	1 Increased premium written

What effect has the revised interest rate had on the cost of liability insurance coverage written by your company in Alaska? If no effect has been noticed to date, what effect is anticipated in the future on the cost of liability insurance provided by your company in Alaska?

Current Cost	Future Cost
60 No change	51 No change
20 Don't know	25 Don't know
1 Decreased liability rates	3 Decrease in incurred claim amounts

Comments

- The cost of claims is higher than it would be without prejudgment interest, but we did not write coverage prior to 1997.
- Due to the extremely small number of malpractice claims that proceed through verdict, it is difficult to accurately measure the effect, but we believe it will have a stabilizing effect on the cost of liability insurance. Any savings achieved through this or other tort reforms will directly benefit policyholders by keeping future rates lower than they would otherwise be.
- We expect that the lower interest rates will reduce total settlement costs in the small number of claims that are tried to verdict, particularly those in which pre-judgment interest is an issue. To the extent that this reduces the overall trend in loss costs, policyholders will benefit by virtue of paying lower premiums in the future than would otherwise be required.

The Division welcomes your comments, questions, or suggestion on this report.

Respectfully submitted,

Linda S. Hall
Director

APPENDIX

VII. Alaska Experience

Every year all insurers provide an Annual Statement to the division. The Annual Statement provides information that is used to monitor the solvency of insurers. The Annual Statement includes, among other information, premiums, losses, assets, and surplus of the insurer. Some of the information is countrywide data and some of it is specific to the insurer's Alaska business. The exhibits attached to this report are taken from these Annual Statements. We have included this information because it is the most readily available factual information related to premiums, claims, losses, and solvency of the company as a whole. These exhibits show overall trends and include all factors that influence an insurer's operations. The available information is not adequate to make any conclusions about the effects of tort reform on the costs and availability of insurance.

VIII. Solvency

To evaluate the solvency of the insurer as a whole, the attached Aggregate Assets and Surplus for Insurers Writing Business in Alaska exhibit shows how assets and surplus have changed over the period from 1996 to 2002. The average change is an average of the individual insurer asset and surplus levels. Because an insurer's entire surplus is available to support losses that occur in any state, it is difficult to make a meaningful allocation of surplus to a particular state. Therefore, aggregate totals for assets and surplus are shown by year for all insurers writing business in Alaska. Assets and surplus have increased by approximately the same amount per year between 1996 and 2000. For 2001 and 2002, the increase in assets increased more than the change in surplus.

IX. Alaska Premium and Loss Experience From 1990 – 2002

For the liability lines of business, the attached exhibits show

- Aggregate Alaska premium earned
- Losses incurred
- Number of insurers

Premium and loss information is generally available for the period from 1990 – 2002. This information is from Annual Statements submitted by insurers to the division. Because this information is based on losses incurred and premiums earned during a calendar year, it is useful for showing trends but should not be used to make determinations about the adequacy or excessiveness of insurance premiums.[1] Aggregate expense information is not included in these exhibits as it is not readily available

The data in these exhibits include all factors that affect insurance premiums, not just the effects of tort reform.

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[1] Calendar year data does not match losses with the premiums used to pay the losses. Some of the losses incurred in one calendar year may be from policies that were issued in prior years.

COMMERCIAL LINES

Aircraft

Because the aircraft line includes property and liability coverages, any effect of tort reform will be difficult to isolate from this data. The number of insurers decreased from 47 to 40 from 1990 to 2000, increased in 2001 to 43, and has returned to 40 in 2002. Losses increased 5.82% annually for a total increase of 86.34% over the thirteen-year period. Premiums increased an average of 9.04% annually for a total increase of 159.06% over the thirteen-year period.

The top 20 insurers wrote 99.96% of the total premium volume in 2002. The top 4 insurers wrote 57.64% of the total premium. This compares to 82.36% and 62.29%, respectively, in 2001.

Commercial Auto

Between 1990 and 2002, the number of insurers offering commercial auto insurance grew from 162 to 201, for an annual increase of 1.59% or 18.90% for the thirteen-year period. Losses grew 3.05% annually or 39.22% over the thirteen-year period. Premium grew 2.04% annually or 24.85% over the thirteen-year period.

The top 20 insurers wrote 72.22% of the total premium volume in 2002. The top 20 insurers wrote 67.97% of the total premium volume in 2001.

Commercial Multiperil

The liability portion of commercial multiperil insurance (CMP) was first reported separately from the property portion in 1992, so the exhibit includes data on premiums and losses beginning in 1992. The number of insurers increased from 137 to 169, between 1992 and 2002 for an average annual change of 2.18% or an eleven-year increase of 35.58%. During the same period, premium increased by approximately 0.19% annually or 2.16% overall. Losses decreased 2.24% annually for a total decrease of 22.06% from 1992 to 2002.

The top 20 insurers wrote 82.03% of the total premium volume in 2002. The top 20 insurers wrote 82.18% of the total premium volume in 2001.

Medical Malpractice

Between 1990 and 2002, the number of companies writing medical malpractice insurance (coverage for all type of licensed health care providers and entities) grew from 35 to 39, down from a high of 44 in 1999, for an average annual increase of 1.32%, or 15.53% over the thirteen-year period from 1990 to 2002. During the same period, losses increased on average by 6.64% annually, for a total thirteen-year increase of 102.86%, and premium decreased by 0.91% annually, for a total thirteen-year decrease of 9.61%.

The top 20 insurers wrote 99.91% of the total 2002 premium volume. The top two insurers wrote 69.35% of the total premium volume in 2002. This compares to 99.65% and 65.21%, respectively, for 2001.

Other Liability

The number of insurers writing other liability grew from 198 in 1990 to 244 in 2002 for an average annual increase of 2.09% or 25.61% for the thirteen-year period. Losses decreased 3.30% annually or approximately 30.89% over the thirteen-year period. Premium increased by 0.11% annually, for a total thirteen-year increase of 1.24%.

The top 20 insurers wrote 72.78% of the total 2002 premium volume. The top 2 insurers wrote 23.27% of the total 2002 premium volume. This compares to 76.32% and 25.3%, respectively, for 2001.

Product Liability

Between 1991 and 2002, the number of insurers providing product liability increased slightly, from 107 in 1991 to 111 in 2002. Losses increased 29.40% annually and premiums decreased 0.34% annually. Because of the volatility of the data for this line, and the small amount of business written, it is difficult to summarize the trends by the average changes.

The top 20 insurers wrote 96.73% of the total 2002 premium volume. The top 2 insurers wrote 28.62% of the total 2002 premium volume. This compares to 95.13% and 22.95%, respectively, for 2001.

PERSONAL LINES

Homeowners

Because homeowners insurance is a package policy that includes both liability and property coverages, the effect of tort reform is especially difficult to isolate. The number of insurers writing homeowners insurance has decreased from 70 in 1990 to 57 in 2002. This is an average annual decrease of approximately 2.00% or a total decrease of about 19.93% over the thirteen-year period. During the same period, premium increased an average of 6.80% annually or approximately 106.21% for the thirteen-year period. Losses increased an average of 2.81% annually or by 35.62% for the thirteen-year period.

The top 20 insurers wrote 99.54% of the total 2002 premium volume. The top 2 insurers wrote 63.46% of the 2002 premium volume. This compares to 99.17% and 63.79%, respectively, for 2001.

Private Passenger Auto Liability

Between 1990 and 2002, the number of insurers offering private passenger auto insurance decreased from 111 to 98, however, the number of insurers has increased to 103 in 2002. This is an annual average decrease of approximately 1.19%, or a thirteen-year overall decrease of 12.37%. Losses increased annually by 5.54%, for a 81.05% increase over the thirteen-year period. Premiums increased 4.92% annually or 69.58% over the thirteen-year period.

The top 20 insurers wrote 90.19% of the total 2002 premium volume. The top two insurers wrote 40.23% of the 2002 auto liability premium. This compares to 89.75% and 42.24%, respectively, for 2001.

Aggregate Assets and Surplus for Insurers Writing Business in Alaska

Year	Assets	Average Change by Co	Surplus	Average Change by Co
1996	661,393,007		219,179,535	
1997	749,194,654	21.24%	272,838,734	25.31%
1998	762,824,973	7.04%	296,359,655	9.14%
1999	779,096,896	1.46%	307,798,191	2.68%
2000	772,868,467	6.58%	280,096,626	7.95%
2001	788,176,003	20.72%	261,698,959	8.10%
2002	859,228,587	7.94%	260,321,037	2.34%

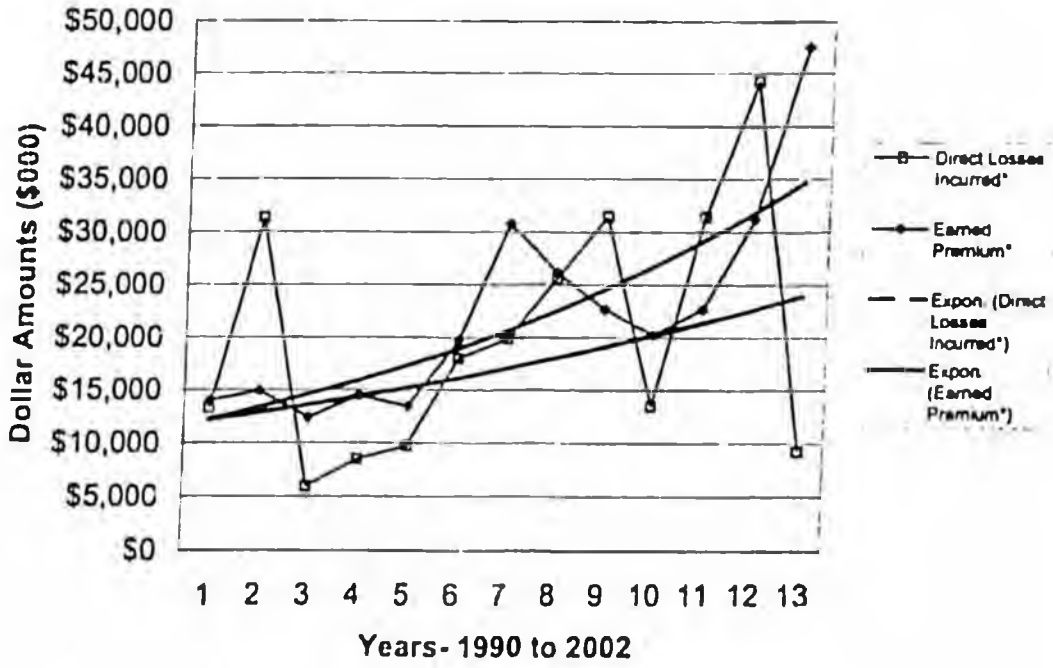
Notes:
(1) The assets and surplus amounts are in thousands.
(2) The average change is calculated by company
(3) The assets and surplus figures are countrywide amounts and do not represent an allocation to Alaska business only.

Aircraft

Calander Year	*Number of Companies*	*Direct Losses Incurred**	*Earned Premium**
1990	47	$13,304	$14,034
1991	44	$31,341	$14,929
1992	42	$5,976	$12,433
1993	45	$8,513	$14,465
1994	45	$9,797	$13,488
1995	48	$18,045	$19,790
1996	47	$19,868	$30,799
1997	46	$25,588	$26,195
1998	39	$31,455	$22,681
1999	40	$13,500	$20,263
2000	40	$31,455	$22,669
2001	43	$44,284	$31,273
2002	40	$9,314	$47,525
Average Annual % Change	-1.07%	5.82%	9.04%
1991 to 2002 % change	-11.17%	86.34%	159.06%

*Dollar amounts are in ($000)

Selected Trends

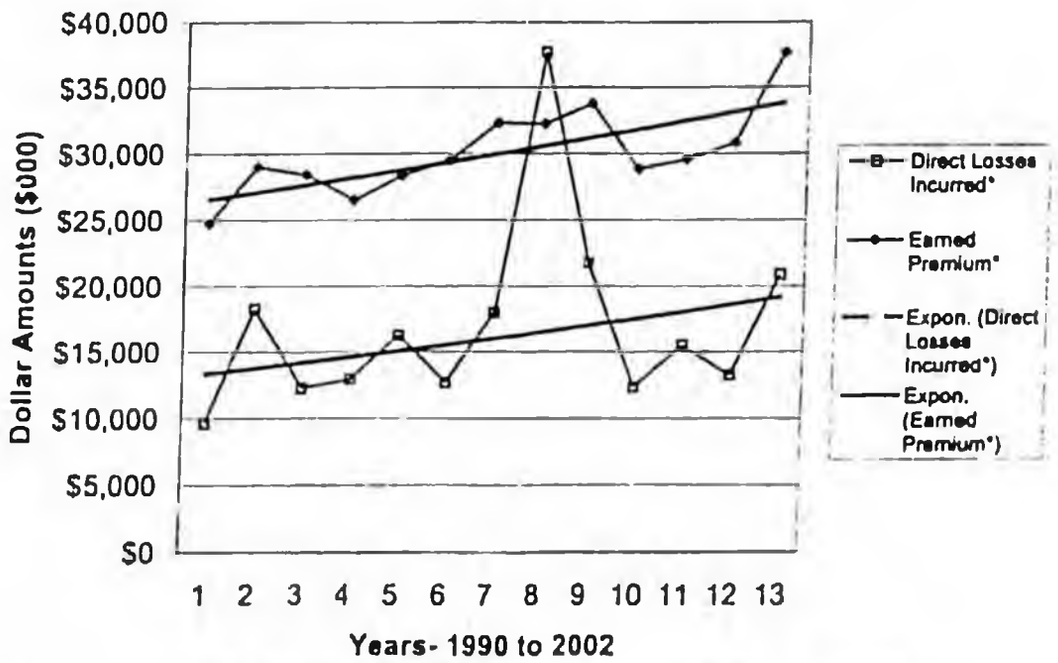


Commercial Auto

Calander Year	*Number of Companies*	*Direct Losses Incurred**	*Earned Premium**
1990	162	$9,660	$24,752
1991	171	$18,286	$29,042
1992	175	$12,307	$28,435
1993	168	$12,956	$26,529
1994	180	$16,279	$28,361
1995	191	$12,723	$29,536
1996	175	$17,988	$32,333
1997	183	$37,682	$32,277
1998	189	$21,775	$33,818
1999	191	$12,384	$28,904
2000	197	$15,506	$29,598
2001	195	$13,254	$30,831
2002	201	$20,888	$37,636
Average Annual % Change	1.59%	3.05%	2.04%
1991 to 2002 % change	18.90%	39.22%	24.85%

**Dollar amounts are in ($000)*

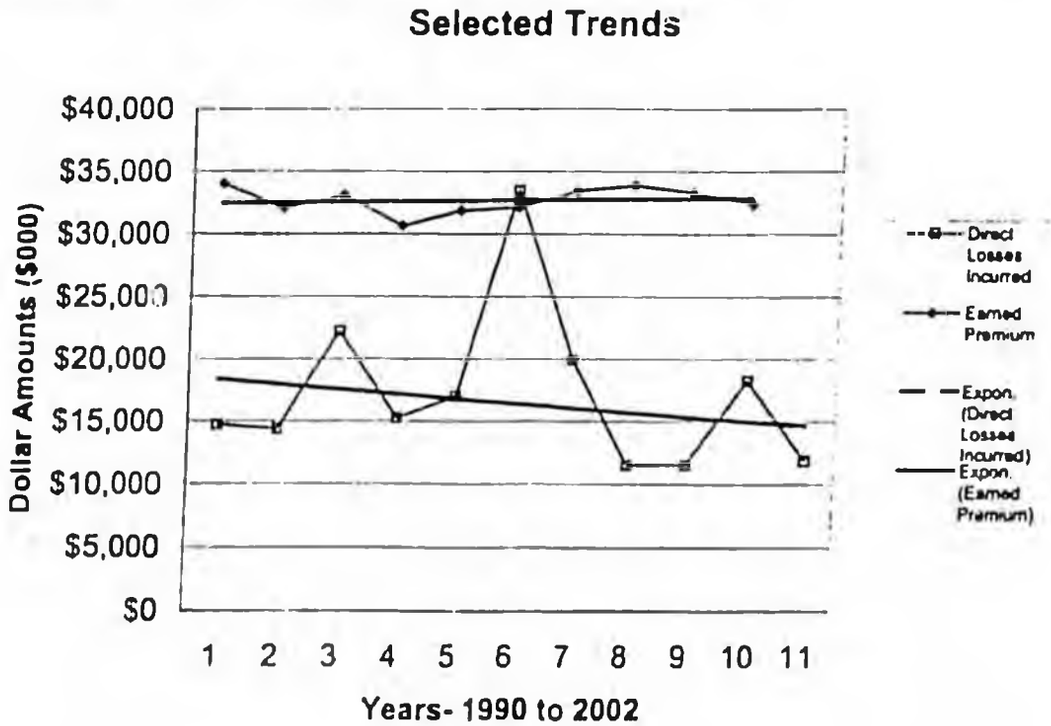
Selected Trends



Commercial Multiperil

Calander Year	Number of Companies	Direct Losses Incurred*	Earned Premium*
1990	xxx	xxx	xxx
1991	xxx	xxx	xxx
1992	137	$14,756	$34,036
1993	131	$14,422	$32,099
1994	140	$22,233	$33,107
1995	140	$15,281	$30,661
1996	151	$17,021	$31,898
1997	153	$33,483	$32,149
1998	163	$19,960	$33,461
1999	166	$11,560	$33,920
2000	166	$11,560	$33,334
2001	171	$18,308	$32,433
2002	169	$11,876	$33,374
Average Annual % Change	2.81%	-2.24%	0.19%
1991 to 2002 % change	35.58%	-22.06%	2.16%

*Dollar amounts are in ($000)

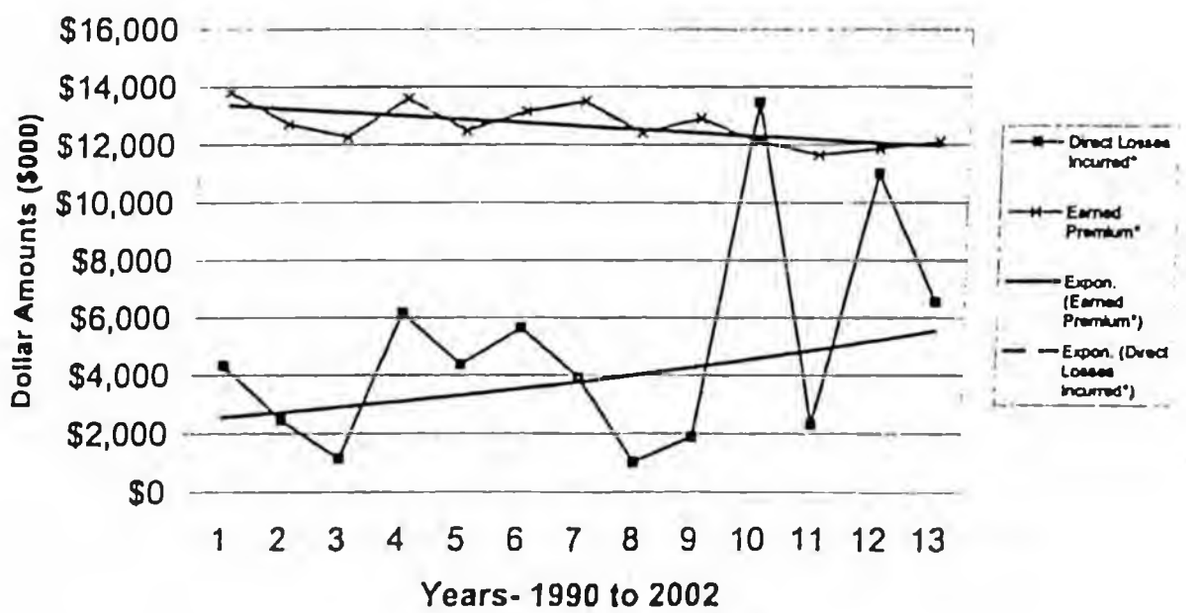


Medical Malpractice

Calander Year	Number of Companies	Direct Losses Incurred*	Earned Premium*
1990	35	$4,336	$13,812
1991	35	$2,470	$12,707
1992	38	$1,150	$12,264
1993	37	$6,165	$13,604
1994	38	$4,377	$12,488
1995	39	$5,656	$13,156
1996	40	$3,933	$13,500
1997	39	$1,019	$12,411
1998	41	$1,886	$12,911
1999	44	$13,461	$12,106
2000	42	$2,311	$11,652
2001	40	$11,023	$11,869
2002	39	$6,564	$12,119
Average Annual % Change	1.32%	6.64%	-0.91%
1991 to 2002 % change	15.53%	102.86%	-9.61%

*Dollar amounts are in ($000)

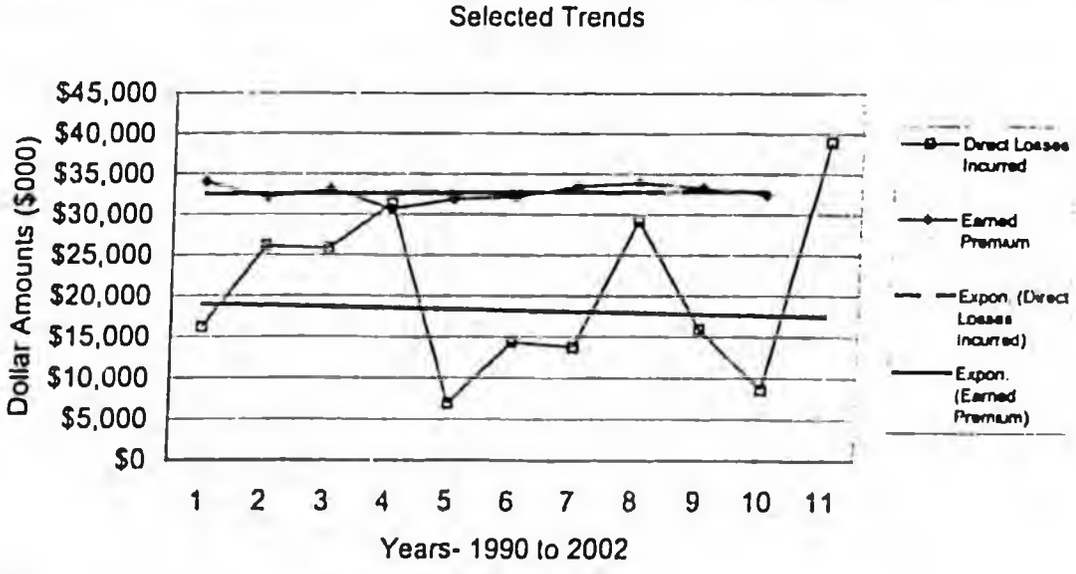
Selected Trends



Other

Calander Year	*Number of Companies*	*Direct Losses Incurred**	*Earned Premium**
1990	198	$18,658	$44,363
1991	204	$49,953	$48,725
1992	202	$16,189	$34,482
1993	201	$26,144	$40,199
1994	212	$25,868	$47,464
1995	225	$31,360	$55,499
1996	232	$6,901	$53,219
1997	234	$14,393	$44,679
1998	241	$13,793	$40,694
1999	243	$29,200	$38,156
2000	243	$15,940	$37,880
2001	245	$8,658	$42,012
2002	244	$38,952	$54,644
Average Annual % Change	2.09%	-3.30%	0.11%
1991 to 2002 % change	25.61%	-30.89%	1.24%

*Dollar amounts are in ($000)



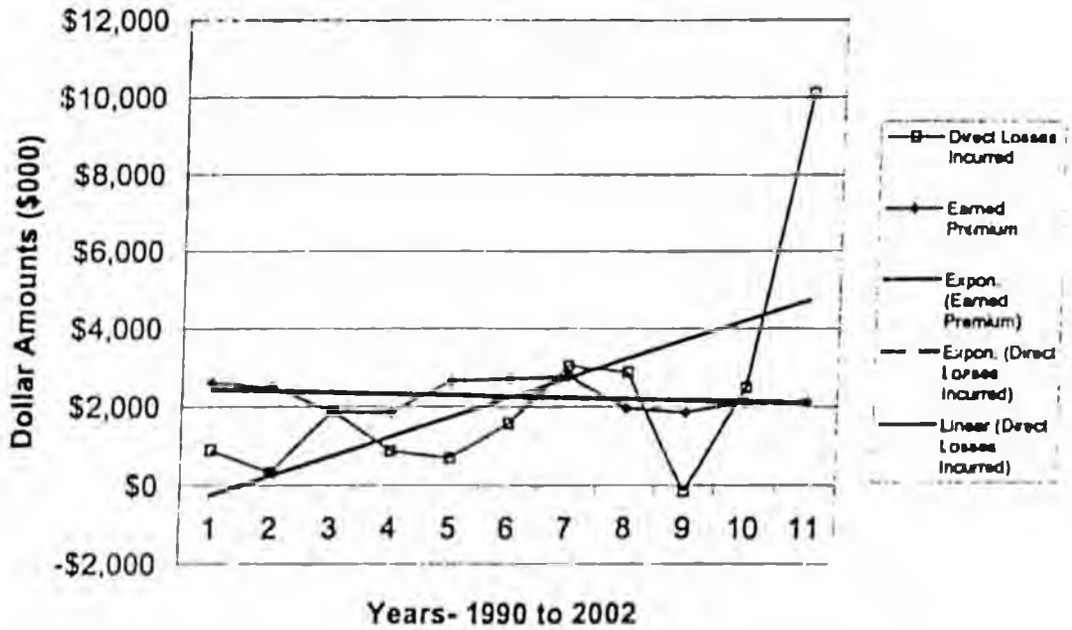
Product Liability

Calandei Year	Number of Companies	Direct Losses Incurred*⊗	Earned Premium*
1990	xxx	xxx	xxx
1991	107	-$429	$2,610
1992	94	$904	$2,516
1993	99	$331	$1,882
1994	101	$1,902	$1,869
1995	105	$879	$2,660
1996	102	$696	$2,721
1997	103	$1,595	$2,782
1998	111	$3,047	$1,961
1999	116	$2,883	$1,861
2000	109	-$151	$2,129
2001	111	$2,499	$2,117
2002	111	$10,118	$2,765
Average Annual % Change	1.21%	29.40%	-0.34%
1991 to 2002 % change	12.79%	686.07%	-3.34%

*Dollar amounts are in ($000)

⊗ Dollar amounts for 1991 and 2000 are not included in average change totals.

Selected Trends

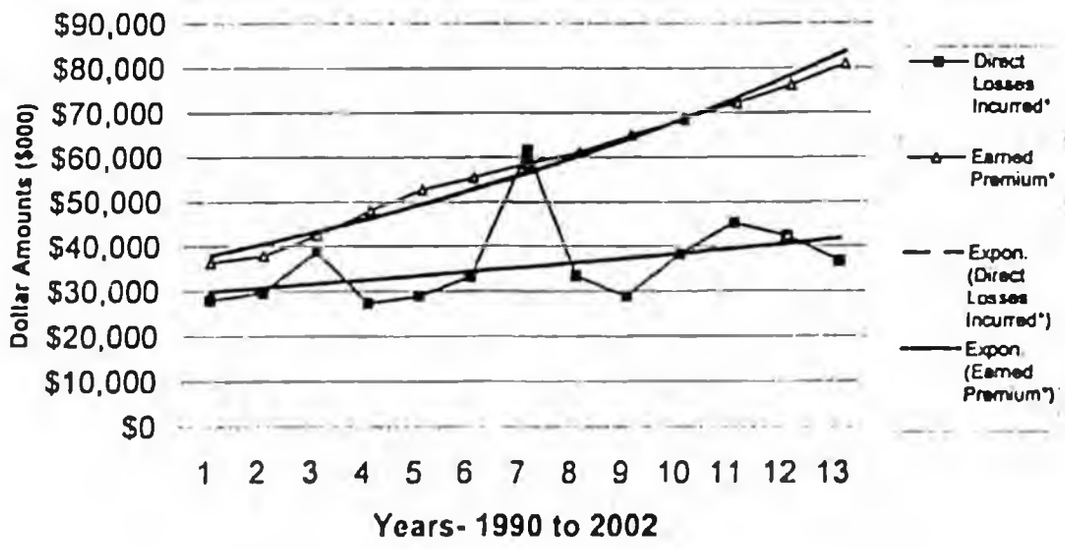


Homeowners

Calander Year	*Number of Companies*	*Direct Losses Incurred**	*Earned Premium**
1990	70	$28,070	$36,489
1991	71	$29,695	$37,949
1992	65	$38,812	$42,501
1993	64	$27,334	$48,079
1994	59	$28,973	$52,736
1995	56	$33,321	$55,502
1996	55	$61,628	$58,660
1997	54	$33,483	$61,151
1998	50	$28,987	$65,054
1999	55	$38,367	$68,628
2000	57	$45,353	$72,198
2001	57	$42,351	$76,206
2002	57	$36,770	$80,998
Average Annual % Change	-2.00%	2.81%	6.80%
1991 to 2002 % change	-19.93%	35.62%	106.21%

**Dollar amounts are in ($000)*

Selected Trends

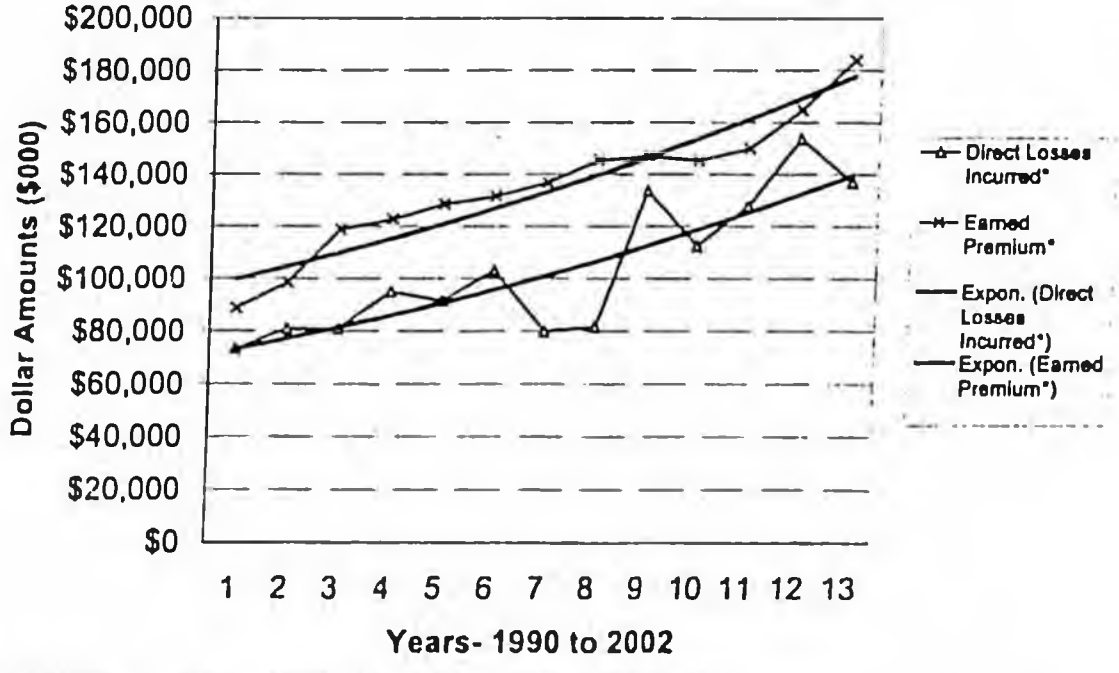


Private Passenger Auto

Calander Year	Number of Companies	Direct Losses Incurred*	Earned Premium*
1990	111	$73,323	$88,766
1991	110	$80,894	$98,587
1992	115	$81,067	$118,981
1993	102	$94,989	$122,877
1994	105	$91,594	$128,603
1995	88	$103,152	$131,694
1996	90	$79,946	$136,792
1997	88	$81,614	$145,589
1998	92	$133,761	$146,990
1999	95	$112,524	$145,426
2000	97	$127,827	$150,060
2001	98	$153,771	$164,758
2002	103	$137,133	$183,865
Average Annual % Change	-1.19%	5.54%	4.92%
1991 to 2002 % change	-12.37%	81.05%	69.58%

**Dollar amounts are in ($000)*

Selected Trends



Alaska State Medical Association

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

April 19, 2005

Honorable Lesil McGuire and
House Judiciary Committee
Alaska State House
State Capitol, Room 120
Juneau, AK 99801

Re: SB 67 – Medical Liability Reform

Dear Representative McGuire and House Judiciary Committee Members:

The Alaska State Medical Association (ASMA) represents physicians statewide and is primarily interested in ensuring that Alaska's citizens have access to high quality health care. ASMA strongly supports SB 67, which provides for meaningful medical liability reform and urges you to support it as well.

SB 67 establishes a $250,000 maximum for the unquantifiable damages known as non-economic damages. Non-economic damages are also known as "pain and suffering" damages. SB 67 does not limit the quantifiable economic damages such as lost wages, and post and future medical care costs. (SB 67 defines economic damages, which are not currently defined in Alaska statutes.)

ASMA asserts that enactment of SB 67 will provide for equitable and more predictable settlements in medical injury cases. The result will be a more stable professional liability insurance marketplace and, most importantly, will help us recruit physicians to help fill our chronic shortage of physicians.

The American Academy of Actuaries[1] has stated that medical liability reform establishing a $250,000 limit is imperative in stabilizing the physician professional liability insurance marketplace. A recent study[2] of medical students found the legal environment and the availability of affordable liability insurance plays a major part in a graduate's decision as to where to set up practice.

Access to medical services is limited in much of the state. Alaska has one of the smallest numbers of physicians per capita in the country. An American Medical News story pertaining to the special Medical payment reform for Alaska noted our precarious situation: "Alaska has long ranked among the worst states in terms of physician supply. In 2002, the state had fewer than 1,350 doctors in private practice and another few hundred in the military or other government posts…only six states had a lower doctor to patient ratio."[3] This data indicates that to reach the national average, Alaska would need about 500 more actively practicing physicians. This determination is further substantiated in Molly Southworth, MD, July 2004 Masters of Public Health Thesis, titled "Alaska's Physician Workforce: An Overview, a Summary of Training Background, and the Impact of the WWAMI Program".[4] Exacerbating the problem is the aged physician workforce. ASMA's database shows nearly 50% of our physician workforce over age 50. Dr. Southworth's Thesis[5] as well as Leslie Gallant of the State Medical Board[6] further validates that fact. The Providence Alaska Medical Center confirmed in its 2002 study that physicians in its service area were getting older and highlighted immediate acute shortages in psychiatrists, surgeons, and general internists, among

others.[7] In 2002, the total shortage identified in primarily the Anchorage bowl area totaled about 200. The Providence study was updated for 2005 and projected the physician workforce needs to 2009.[8] The Shortage in 2005 is still at around 200, with a projected shortage in 2009 of 261.

Further exacerbating the recruiting challenges for us is the predicted national shortage of doctors. US News and World Report, in an article appearing in its January 31, 2005 edition[9], reported a predicted national shortage of physicians by 2020 of between 90,000 and 200,000.

The recruitment challenge is the main reason medical liability reform is so important to Alaska. Unfortunately, the state does not have the capacity to "grow" its own physicians. Alaska has no medical school, and of the small number of students graduating annually from the WWAMI program, some do not return to practice. Likewise, the state's lone residency training program is small. Alaska is, and will continue to be a net importer of doctors. As such, we have to compete with other states facing physician shortages, a competition that is influenced significantly by the state's medical-legal practice environment.

ASMA asserts that SB 67 is a critical element in helping us improve our practice environment so as to help in physician recruitment. Well trained physicians in sufficient numbers are ASMA's greatest concern so that all Alaskans have access to high quality care when it is needed. Alaskans need and deserve local health care without having to be flown out of state for treatment.

ASMA urges you to support SB 67.

Sincerely,

Paul Worrell, M.D.

By: Paul Worrell, MD President
For: The Alaska State Medical Association

cc: Senator Ralph Seekins
Representative Tom Anderson, Vice Chair
Representative John Coghill, Jr.
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg, Jr.

Footnotes:

① Issue Brief, American Academy of Actuaries, "Medical Malpractice Tort Reform: Lessons from the States", Fall, 1996, p. 4.
② "AMA Survey: Medical Students' Opinions of the Current Medical Liability Environment: American Medical Association Division of Market Research and Analysis, November 2003.
③ "Medicare Law Aims to Bring Alaska Physicians in from the Cold." AM News, 1/19/2004.
④ "Alaska's Physician Workforce: An Overview, A Summary of Training Backgrounds, and the Impact of the WWAMI Program", Molly B. Southworth, MD, 7/2004, Masters of Public Health thesis, pp 26-33.
⑤ See Southworth④, pp 12-14.
⑥ "Shingle Shortage?", Anchorage Daily News, Ann Potempa, 9/3/2002
⑦ "Physician Workforce Analysis", Providence Health System Alaska, November 2002, pp 17-18.
⑧ "PAMC Physician Supply and Physician Need Estimate: Summary", Providence Alaska Medical Center, February 2005.
⑨ "Doctors Vanish From View", US News and World Report, Katherine Hobson, 1/31/2005

V- Bill Packet p 13 - L

A N P A
Alaska Nurse Practitioner Association

2207 East Tudor Road, Suite #34
Anchorage, Alaska 99507
907-222-6847

Representative Lesil McGuire
State Capitol, Room 118
Juneau, AK 99801-1182

April 17, 2005

Dear Representative McGuire,

The Alaska Nurse Practitioner Association supports Senate Bill 67, a bill that limits financial compensation on noneconomic damages in medical malpractice determinations.

While much discussion has centered on the impact of these issues on physicians, Alaskan Advanced Nurse Practitioners and their patients are also being affected. Through out Alaska there are over 500 ANPs practicing in rural, urban, out-patient and hospital settings. Advanced Nurse Practitioners provide about 18% of the independent primary healthcare to Alaskans and provide an increasing proportion of specialty care. While Advanced Nurse Practitioners are rarely sued for malpractice in Alaska (only 3 occurrences in the last 15 years in Alaska), our malpractice insurance rates have increased 20-30%, with some specialty premiums tripling in 2005.

We believe that maintaining high quality, cost-effective, accessible health care to all Alaskans is vital. Senate Bill 67 is a valuable piece in preserving this high standard of care. Currently, the cost and expectations for disproportionate increases in malpractice insurance, required for all healthcare providers in Alaska are creating a financial burden and disincentive to practicing in Alaska. In addition, the costs for protection against increasing liability insurance premiums are being passed on to consumers.

Please support SB 67 (version B). If we do nothing, we will ensure a worsening of the situation.

I am available and will be happy to discuss issues related to malpractice reform and preservation of access to high quality health care. Please do not hesitate to contact me.

Respectfully,
Mary Margaret Hillstrand ANP
Mary Margaret Hillstrand ANP
President Alaska Nurse Practitioner Association

ALASKA AFL-CIO

2501 Commercial Drive · Anchorage, Alaska 99501 · 907-258-6284 · Fax 274-0570

JIM SAMPSON
Executive President

BRUCE LUDWIG
Secretary / Treasurer

April 19, 2005

Mr. John Harris
Speaker of the House
Alaska State House of Representatives
State Capitol
Juneau, AK 99801

Re: Senate Bill No. 67

Dear Speaker Harris,

This letter is sent in opposition to Senate Bill No. 67, "An Act relating to claims for personal injury or wrongful death against health care providers".

This legislation will harm Alaskans, many of whom have already suffered injury. It will limit the ability of Alaskans injured through negligence or recklessness to seek appropriate redress for their injuries. Even more troublesome is that there is no corresponding assurance from insurance companies that this legislation will have any affect whatsoever on medical malpractice rates. In 1997, when the legislature enacted "tort reform", it was stated that insurance premiums would be reduced. This has not occurred. The only thing that will happen if this legislation passes, is that Alaskans, many of whom are retired or elderly, those with limited income or children, will be prohibited from being treated fairly.

Please vote against this legislation.

Sincerely,

Jim Sampson
President

cc: Members of the Alaska House of Representatives

Alaska Action Trust
813 West Third Avenue
Anchorage, Alaska 99501
(907) 258-4040
Akactiontrust@aol.com

Information in Opposition to Senate Bill 67

I. Position Paper

II. Chart: Number of Alaska Medical Malpractice Payouts reported to the National Practioner Data Bank

Payouts not increasing

III. Chart: Number of Physicians in Alaska: 1996 to 2003

Increased from 1146 to 1545

IV. Chart: Number of OBGYNs in Alaska

Number of OBGYNs increasing

V. Analysis: Medical Malpractice Mismanagement

Mismanaged underwriting practices, not claims, have driven insurers out of the market

THE ALASKA ACTION TRUST
PO BOX 102323
ANCHORAGE, ALASKA 99501
907-258-4040
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POSITION PAPER ON SENATE BILL 67

INTRODUCTION

In Alaska, to suggest that there is a medical malpractice crisis is at best disingenuous and at worse fraudulent. In short, there is no empirical evidence to support the proposition of a relationship between medical malpractice premiums, medical malpractice litigation and availability of health care providers.

If this proposed legislation passes, you will be responsible for eliminating the ability of stay at home moms and dads, retired or elderly citizens, children, and those with subsistence lifestyles or limited incomes to bring claims against negligent or even reckless doctors or other health care providers. This will be true even when they are blinded, maimed, suffer serious neurological injuries, rendered sexually dysfunctional or even killed by medical malpractice. What makes this proposed legislation even more egregious is that the entire premise for its utility is based upon anecdotal information, unsupported by credible empirical evidence and indeed is contrary to conclusions reached in existing and reliable studies.[1] Even more appalling, there is no corresponding assurance from those most benefited (the insurance industry) that the legislation will have *any* effect whatsoever on medical malpractice rates.

THE HISTORY OF TORT REFORM IN ALASKA

While the following discussion will illustrate the points referenced above, a brief chronological history of similar tort reform efforts in the State of Alaska demonstrates that capping or limiting damages will have absolutely no effect on medical malpractice insurance rates or the availability of medical malpractice insurance to doctors in Alaska or the availability of health care in Alaska.

---

[1] Studies repeatedly relied upon by the insurance industry and health care providers pushing similar legislation have been widely discredited. The Milliman report, for instance, relies on data from the National Practitioner Data Bank (NPDP) that has been slammed by the Government Accounting Office (GAO). (*See, e.g.*, GAO: "National Practitioner Data Bank: Major Improvements are Needed to Enhance Data Bank's Reliability," Nov. 2000; Mary Jane Fisher, "GAO Report Slams National Practitioner Data Bank," *National Underwriter*, Jan. 1, 2001). It also fails to adjust any of its figures for medical inflation to offset its conclusion that medical malpractice losses have risen 32% over the last decade in states without caps. When adjusted for 51% in medical inflation for the same time period, paid losses are actually *falling*.

Dating back to 1976 with the passage of A.S. 09.55.548, medical malpractice insurers and health care providers have enjoyed a unique benefit unavailable to other insurers or private citizens. A.S. 09.55.548(b) in effect immunizes these entities and individuals from payment for all past medical expenses incurred as a result of physician and/or health care malpractice paid by private health care plans.

This has resulted in a significant windfall to medical malpractice carriers (and uninsured health care providers) since a private health care plan has no subrogation rights under the statute. The only exception to this windfall is when the collateral source of payment is governmental or quasi governmental such as under Medicare, Medicaid or federal employees who are insured under the federal health care plan. In many cases, this results in savings totaling hundreds of thousands of dollars which are absorbed, unfairly, by other health care plans and ultimately by the citizens of this state through higher health care premiums.

In 1978, again at the urging of medical malpractice insurance carriers and health care providers, the Legislature passed A.S. 09.55.536 requiring the appointment of expert advisory panels in all medical malpractice actions. These panels were appointed by the court and reviewed claims brought by injured Alaskans to determine whether or not malpractice had occurred and, if so, whether the malpractice had caused the patient's injuries. The purported basis for this legislation (as argued by its proponents) was to eliminate or at least minimize frivolous malpractice claims. While the efficacy of the expert advisory panel was always questionable, it has been all but abandoned by health care providers themselves and is no longer requested (it is waived in virtually all cases).

In 1986, the Legislature enacted tort reform legislation placing damage caps on non-economic damage. That legislation capped non-economic damages for injuries that did not result in severe permanent physical impairment or severe disfigurement to $500,000. There was no cap, however, on those injuries that did result in severe permanent impairment or severe disfigurement.

In 1997, sweeping tort law revision was enacted by the Legislature. The previous cap on non-economic damages in cases involving physical injury was reduced to $400,000 (or the injured person's life expectancy multiplied by $8,000) A definitive cap was placed on cases involving severe permanent physical impairment and severe disfigurement of $1,000,000 or the injured persons life expectancy in years multiplied by $25,000. In other words, to exceed the $1,000,000 limitation, a person's life expectancy would have to exceed 40 years.[2]

While the 1997 changes benefited all insurance carriers in the state of Alaska, health care providers were given additional protection in the form of limiting expert witnesses who could testify on behalf of an injured Alaskan in medical malpractice actions.

A.S. 09.20.185 was enacted requiring that only board certified physicians having

expertise and training directly related to the particular field or matter at issue would be allowed to testify regarding standard of care. This requirement is now necessary even though the offending doctor is not board certified in any practice group or specialty. Needless to say, this has made it even more difficult to obtain expert witnesses to testify against offending doctors, particularly since the same doctors belong to national organizations and often know each other personally.

In the face of these sweeping reforms, the insurance industry has repeatedly argued that tort reform benefits policyholders and the public at large. To date, there have been *no* reductions to my knowledge in any insurance rates charged to individual Alaskans. The current legislation that will benefit only health care providers will result in the same outcome. There will be no reduction in health care costs and no reduction in medical malpractice premiums charged in the state of Alaska. As discussed below, this has been repeatedly demonstrated throughout the United States.

THE HISTORY OF MALPRACTICE PREMIUMS IN ALASKA

To best illustrate this point, it is helpful to review the medical malpractice premiums charged in this state dating back to 1993 and compare those to California, the state much touted by the insurance industry because of its previously imposed caps on non-economic damages through the Medical Injury Compensation Reform Act (MICRA). Although the only published premium information readily available deals with the specialties of Internal medicine, General Surgery and OB/GYN, these seem to be the specialties of most concern at least by those physicians and health care providers who testified before the House Judiciary last week.[3]

A cursory review of the premiums charged illustrates the utter lack of credibility of the positions taken by this legislation's proponents. An important thing to remember when reviewing the premiums discussed below is that these are the amounts *charged* by the malpractice carriers. Both NORCAL and MIEC (the current and historical dominant carriers in the Alaska market) give credits back to their insureds. These credits are *not* reported in the data available but it is highly likely that these credits would further substantially reduce the published premiums paid by individual health care providers.[4]

In 1993, NORCAL's premium rates were $12,102 for Internal Medicine doctors, $37,750 for General Surgeons, and $64,518 for OB/GYN's. MIEC's premium rates for the same specialties were $5,487, $19,752, and $32,916 respectively. From 1994 through 1996, NORCAL's rates remained relatively stable. In 1994, MIEC raised its premiums for

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[3] Medical Liability Monitor [MLM] of Chicago publishes annual rate surveys from premium submissions provided by medical malpractice carriers or obtained directly from state insurance departments throughout the United States.

[4] MLM notes in all of its annual surveys that such credits, discounts and other factors can greatly diminish and sometimes completely offset rate increases. None of the surveys reflect this data, however.

General Surgeons and OB/GYN's to $38,228 and $63,712 respectively. In 1995, MIEC reduced those rates by about 10 percent.[5]

Between 1997 and 1999, premium rates actually decreased significantly. NORCAL's rates dropped to $8,770 for Internal Medicine doctors, $28,587 for General Surgeons, and $48,706 for OB/GYN's. MIEC reduced its rates to $8,172, $29,420, and $49,032 respectively.[6]

There is no dispute that during this time frame and extending into 2001, most carriers in most states were reducing malpractice premiums because of intense competition in the industry. This competition was reflected in the state of Alaska by the joining of at least two other malpractice carriers to the competitive market.[7] The introduction of new carriers into the competitive market was a national phenomenon. Fierce competition continued to drive down rates for medical professional liability insurance in 1997.[8] In 1999, medical malpractice carriers had been battered from several years of brutal competition, with price cutting the name of the game, even when it meant selling *below* the break-even point.[9]

Back then, leaders in the industry were optimistic that the market would "harden" over the next three years.[10] Then vice president of Florida Physicians Insurance Company, Melodee Dixon, stated, "It will take that amount of time [three years] for claims on policies written at today's grossly inadequate rates to shake out."

Everyone in the industry during this time frame recognized that the amount of competition in the industry was causing drastic price cutting and exposing numerous carriers to significant future financial. These risks were self-inflicted and the resulting losses from malpractice claims were anticipated and predicted by competent actuaries.

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5 MLM annual surveys for 1993-1995.

6 MLM annual surveys for 1997-1999.

7 Although other carriers may have been in the Alaska market during this time frame, the only entities reporting premiums to MLM appear to be NORCAL, MIEC and joined in 1996 by Physicians Ins. Ex. of Washington and Doctors Co. in 1997. Northwest Physicians Mutual began reporting in 1999. It is unknown when CNA began writing coverage in Alaska.

8 MLM annual survey comments, 1997.

9 "Medical professional liability writers express a very pragmatic, but somewhat optimistic outlook about their market niche. Battered from several years of brutal competition, with price-cutting the name of the game, even when it means selling below the break-even point, these insurers nevertheless think that a market shake-out will come." MLM annual survey, 1999.

10 Market "hardening" is discussed, *infra*.

The trend of lower malpractice premiums continued through 2000 in the state of Alaska. In 2001, as competition in Alaska and the national market waned, the predicted market "hardening" began to take form. Those carriers that had engaged in risky if not reckless underwriting began to pull out of markets in this state and across the United States. Notwithstanding, the malpractice premium rates in Alaska remained unchanged at MIEC through 2002 and were increased only slightly by NORCAL. In 2001, NORCAL raised its rates to $9,580 for Internal Medicine doctors, $30,872 for General Surgeons, and $52,600 for OB/GYN's.[11]

In 2003, with the market firmly "hardened," the rates from both carriers increased. NORCAL raised its rates for Internal Medicine doctors to $11,209, for General Surgeons to $36,122 and for OB/GYN's to $61,545. MIEC's premium rates were $7,432, $26,748, and $44,580 respectively. Notwithstanding, the premiums charged for 2003 were *less* than those charged by NORCAL for the same practice specialties in 1993, 1994, 1995, 1996 and only slightly higher than those charged in 1997 and 1998. The premium rates charged by MIEC in 2003 were less than those charged by the carrier in 1994, 1995, 1996, 1997, 1998, 1999, and only slightly higher than the premiums charged in 2001 and 2002.[12]

The significance of this rate comparison is even greater when comparing the discounted value of 2003 dollars with the previous years of lower premium rates. In short, these figures reflect an actual *reduction* in malpractice premiums over this time period when viewed in that light without considering the premium credits refunded to health care providers over this same time period. Moreover, when comparing these premiums to the inflation rate of health care costs (and resulting income to physicians), it is clear that these rates have not resulted in *any* increase to the cost of malpractice insurance premiums to health care providers in Alaska through 2003.

THE CALIFORNIA EXPERIENCE

Since California's non-economic damage cap legislation is the model being touted by the proponents of this legislation, it is helpful to review the medical malpractice premiums charged in that state.

Between 1991 and 1997 In California, the medical malpractice premiums for internal medicine doctors, general surgeons and OB/GYNs remained relatively constant between 1991 and 1997. The premium rates charged by NORCAL over that time period for Internal Medicine doctors ranged from $5,692 to $9,472, for General Surgeons, $18,916 to $29,440, and for OB/GYN's, from $31,624 to $49,208. MIEC's premium rates were $5,776, $20,792, and between $34,648 and $39,268 respectively.[13]

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11 MLM annual survey 2000-2001.

12 MLM annual survey 2003.

13 MLM annual surveys, 1991-1997.

Of particular note, and as recognized by numerous commentators, the reason for the relative consistency over this time period had little or nothing to do with medical malpractice non-economic damage caps.

In 1975, California enacted the Medical Injury Compensation Reform Act (MICRA) that placed a cap of $250,000 on non-economic damages in medical malpractice actions. MICRA was touted by the insurance industry and health care practitioners as the solution to the "malpractice crisis" and the solution to increasing malpractice insurance rates. By 1988, however, medical malpractice premiums were 190% higher than 1976 levels (40% when adjusted for inflation to 2001 levels).[14]

In 1988 California voters passed Proposition 103, an insurance reform proposal. This proposition rolled back insurance rates 20% and froze rates for one year. It mandated billions of dollars worth of refunds to policyholders and created a system that required approval of insurance rates, allowing the insurance Commissioner to deny rate proposals that were too high or too low to be actuarially justified. It is following this proposition through 1996 that malpractice insurance rates actually stabilized.[15]

Beginning in 1997, insurance rates in California *again* began to increase substantially. In 1997, NORCAL's premium rates for Internal Medicine doctors ranged up to $9,472, for General Surgeons, up to $29,440 and for OB/GYN's, up to $49,208. The rates continued to increase slightly between 1999 and 2001. Since that time, through 2003, the rates have increased to ranges up to $25,178, $58,830, and $77,814 respectively. During this same time period, MIEC's premium rates have increased from their 1996 -- 1998 rates to a range up to $9,305, $27,682, and $50,340 respectively. Accordingly, even with MICRA reform, malpractice rates have steadily *risen* in California and are comparable to or substantially greater than malpractice premium rates charged in this state by the same companies notwithstanding the lack of additional caps on non-economic damages.[16]

THE INSURANCE INDUSTRY ADMITS THAT CAPS WILL NEITHER REDUCE PREMIUMS NOR ARE CAPS RELATED IN ANY WAY TO THE AVAILABILITY OF HEALTH CARE

Misinformation regarding the efficacy of caps on non-economic damages and purported decreases in medical malpractice premiums has been disseminated by health care providers and malpractice insurers in other states as well.

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14 *How Insurance Reform Lowered Doctors Medical Malpractice Rates in California*, The Foundation for Taxpayer and Consumer Rights, February 10, 2003, excerpted from N.C. trial lawyers expose on malpractice rates in N.C.

15 *Id.*

16 MLM annual surveys, 1996-2003.

In Florida, after pushing through a sweeping medical malpractice bill with a promise to reduce ever-increasing insurance premiums for Florida's physicians, malpractice insurance carriers followed up the bill's passage with a request to increase premiums by as much as 45 percent.[17]

In 2003, Oklahoma passed a tort reform bill that included a severe cap on compensation available to certain medical malpractice victims. Following passage of that bill, the insurance company owned by the state medical association requested an astounding 83 percent rate hike which was subsequently approved on the condition that it be phased-in over three years.[18]

In January 2003, Ohio lawmakers enacted a cap on compensation for patients injured by medical malpractice. Almost immediately, all five major malpractice insurance companies in Ohio announced that they would not reduce their rates. One insurance executive predicted his company would seek a 20 percent rate increase.[19]

This should come as no surprise to those familiar with the insurance industry and particularly with malpractice carriers.

Bob White, president of First Professional Insurance Co., the largest medical malpractice insurer in Florida stated that "no responsible insurer can cut its rates after a [medical malpractice tort reform] bill passes."[20] Cliff Webster representing the Washington State Medical Association and Chairman of the Washington Liability Reform Coalition told the Washington State Legislature, House Judiciary Committee in 2003 that "I don't think we would argue that the premiums are likely to go down."[21] Sherman Joyce, President of the American Tort Reform Association candidly acknowledged, "We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates."[22] James Robertson, Assistant Vice President and

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17 *See, e.g.*, Julie Kay, "Medical Malpractice; Despite Legislation that Promised to Rein in Physicians Insurance Premiums, Three Firms File For Big Rate Increases," *Palm Beach Daily Business Review*, Nov.20, 2003.

18 *BestWire*, Dec. 2, 2003.

19 Laura Bischoff, "Taft Signs Malpractice Reform Bill; Cap on Awards for Pain and Suffering," *Dayton Daily News*, Jan. 11, 2003; Andrew Welsh-Huggins, "Doctors Pushing for Short-Term Relief From Malpractice Rates," *Associated Press*, Jan. 10, 2003; "Despite New Law, Insurance Companies Won't Lower Rates Right Away," *Associated Press*, Jan. 9, 2003.

20 *Palm Beach Post*, Jan. 29, 2003.

21 Testimonial excerpt from testimony before the Washington State Legislature, House Judiciary, Feb. 21, 2003.

22 "Study Finds No Link Between Tort Reforms and Insurance Rates," *Liability Week*, July 19, 1999.

Associate Actuary for SCPIE Indemnity Company (California's second largest medical malpractice insurer) stated "while MICRA was the Legislature's attempt at remedying the medical malpractice crisis in California in 1975, it did not substantially reduce the relative risk of medical malpractice insurance in California." He made that statement in a written response to a question from an administrative law judge overseeing the case in which his company had requested another 15.6% rate hike.

In short, virtually every reliable source underscores the certainty that limiting an injured persons access to the court system for damages has little or nothing to do with insurance premiums for the cost of health care delivery.

In January 2004, the Congressional Budget Office (CBO) concluded that legislation to cap damages in medical malpractice lawsuits would do little to hold down health care spending or eliminate the practice of defensive medicine. Moreover, the report found that medical malpractice insurance premiums have increased in part because of reduced income from insurer investments and short-term factors in the insurance market The report found that although malpractice insurance premiums are somewhat lower in states with caps on damages, even a large savings in premiums would have a small impact on total health care spending because malpractice insurance costs account for less than two percent of health care spending. The CBO concluded that caps on damages in malpractice suits would not likely end the practice of defensive medicine. That is because physicians who practice defensive medicine may do so less because they fear liability than to generate more income. Equally compelling, the GAO concluded that many reported shortages of health care services [based on these factors] could not be substantiated or did not widely affect access to health care.[23]

In a sweeping and thorough investigation for AIR under the direction of Mr. Robert Hunter (former Federal Insurance Administrator and Texas Insurance Commissioner) it was determined that insurers make most of their profits from investment income. During years of high interest rates or excellent returns in the market, insurance companies engaged in fierce competition for premium dollars to invest and maximum returns. They severely under price premiums for policies and insure very poor risks to get premium dollars to invest. This is known as the "soft" insurance market. When the investment climate turns sour, however, the industry responds by sharply increasing premiums and reducing coverage, creating a "hard" insurance market, usually

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[23] *Congress Daily,* Jan. 13, 2004. The same argument of "fleeing" doctors and fear of inability to attract new ones has been completely debunked in Washington. Doctors for Medical Liability Reform claimed that 500 doctors had left the state between 1998 and 2004. They failed to mention, and did not research, however, how many doctors had moved to Washington over the same time frame. According to the 2003 GAO report, there were more doctors per capita in 2001 than in 1998. Moreover, despite arguments to the contrary, there was no indication that health care delivery was being curtailed or eliminated. Carol Ostrom, "Contrary to Ads, Doctors Replaced, Clinics Still Open," *Seattle Times*, Feb. 23, 2004.

degenerating into a "liability insurance crisis."[24] This is precisely what is proven conclusively by reviewing the comments and premium surveys discussed above.

Moreover, the Hunter report concluded that since the early 1980's, medical malpractice paid claims per doctor has tracked (approximately) medical inflation. In fact, inflation-adjusted payouts for physicians dropped between 2000 and 2002.[25] This data confirms that neither jury verdicts nor any other factor affecting total claims paid by insurance companies that write medical malpractice insurance have had much impact on the system's overall costs over time. Even more compelling, since 1975, the data shows that in terms of constant dollars, per doctor written premiums, the amount of premiums that doctors have paid insurers have gyrated almost precisely with the insurer's economic cycle which is (again) driven by such factors as changing insurance rates, mismanaged business and accounting practices as well as other causes.[26]

MEDICAL MALPRACTICE IN ALASKA – THE REALITY

In summary, this legislation is without merit. The following facts underscore why this legislation is bad for Alaskans.

1. **Fact:** Citizens who are elderly or retired, citizens living a subsistence lifestyle, stay at home parents, and children will be without any legal remedy for even the most egregious instances of medical malpractice. Since they have little or no economic loss, they will not be able to obtain legal counsel to pursue a medical malpractice claim even if they are blinded, crippled, maimed, rendered sexually dysfunctional, or die after a sustained period of suffering. The cost of bringing such claims will easily exceed any potential recovery.

Real-Life Examples:

Linda McDougal -- this is the much-publicized national case involving the 46-year-old Navy veteran who underwent a double mastectomy after mistakenly being diagnosed with an aggressive breast cancer. Her pathology results had been mistakenly switched with another woman who in fact had breast cancer. This woman is now horribly scarred for life.

Jennifer -- Jennifer was a beautiful and vibrant 12-year-old Alaskan who was misdiagnosed twice over a three-day period with gingivitis. She was actually suffering from acute leukemia, which was very treatable and survivable but requires a timely

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[24] Americans for Insurance Reform, Medical Malpractice Insurance: Stable Losses/Unstable Rates in Wyoming, Feb. 2004.

[25] *Id.*

[26] *Id.*

diagnosis and urgent medical intervention. This could have been determined with a simple and inexpensive blood test. Unfortunately, given the delay in her diagnosis, she hemorrhaged and died before she could be properly diagnosed. Although this was a clear-cut case of negligence, over $100,000 in out-of-pocket costs were expended before the case settled. Under the proposed legislation, this case could never have been prosecuted and Jennifer, her parents, and three siblings would have been without any remedy at all.

Susan -- Susan was an Alaskan in her early 30's when she was misdiagnosed and refused treatment by several health care providers over a five-day period. Unfortunately, she was suffering from a well-known medical and orthopedic emergency known as cauda equina syndrome. By the time she was finally correctly diagnosed, she had suffered permanent saddle anesthesia (no feeling from her waist to her mid thigh); permanent lower extremity neurological injuries requiring leg braces; and intermittent bowel and bladder dysfunction. Under this legislation, since she could still work at her profession, she would be left with a remedy of $250,000. Despite clear-cut negligence, costs of over $200,000 were expended before settlement was reached.

Traven -- Traven was an adventurous eight-year-old Alaskan boy who sustained lower extremity burns that were entirely survivable and treatable. Unfortunately, due to a series of medical mistakes, he languished for days with an increasingly more severe infection and ultimately lapsed into a coma (with his parents present). He was finally flown to Seattle Children's Hospital where he died. Under this legislation, it would be financially difficult or impossible to bring this claim since his entire family, like Jennifer's above, as well as his estate would be limited to $250,000 in non-economic damages. Although an economic loss to his estate could be claimed, those losses are more difficult to establish for children and are usually so low as to not warrant prosecution of a claim absent non-economic damages.

Mrs. Strong -- Mrs. Strong was a 32-year-old Alaskan mother of two children who was drastically over dosed with a highly caustic chemotherapy drug. The overdose was approximately 8 times what she was supposed to be given and was repeatedly administered over the course of 4 days. She died a horrible death, essentially burning up from the inside out over the course of 6 days. She never had a chance to say goodbye to her children, husband, or her parents. Since she was a mom and essentially out of the work force, she would have had little economic loss and, under this bill, her estate and entire family would be limited to $250,000 in losses.

These are only a few of the many actual cases that we can provide this committee as concrete examples of why this bill works such gross inequities on the innocent people in our State who are the most vulnerable.

Fact: The passage of this legislation will have no impact on medical malpractice premiums in this state and will have no impact on the ability to attract health care professionals to practice here. Other than anecdotal and unsupported comments to the

contrary, there is absolutely no evidence to suggest that health care providers stay away from Alaska because of medical malpractice insurance premiums. Indeed, it is considered one of the top 75 places in the United States to practice medicine.[27] This is based in no small part on the lack of managed-care not caps on non-economic damages Further, according to the State Medical Board, the number of medical board licensees has more than doubled since 1985.[28]

Fact: The Institute of Medicine reported three years ago that as many as 98,000 Americans die annually from medical errors in hospitals. On December 12, 2002, the New England Journal of Medicine reported that 4 out of 10 Americans and 1 out of 3 doctors say that they or their family members have been the victims of a preventable medical error; 10% of doctors say that a family member died as a consequence.[29] How will this legislation address these problems other than to make it financially easier on negligent health care providers and their insurance carriers?

Fact: Repeat offender physicians are responsible for most medical errors. According to a study recently conducted in North Carolina, 3.2% of North Carolina doctors had paid out two or more medical malpractice settlements to patients but were responsible for a total of nearly 42% of all payments reported to the National Practitioner Data Bank.[30] A study conducted by researchers at Vanderbilt University found that doctors with a history of malpractice claims can be expected to have "appreciably worse claims experience" than other doctors in the future.[31] This legislation would protect those health care providers by sharply limiting their exposure for continued malfeasance.

Fact: Medical Malpractice insurance costs are declining as a percentage of physician expenses. A recent USA Today report stated that, on average, doctors currently pay 3.2% of their revenue for medical liability insurance.[32] In 1987, medical malpractice insurance costs were, on average, 12.1% of the physician's total expenses. In the ensuing decade that share was cut in half, falling to less than 7% of total expenses in the late 1990's. Based on statistics available from the American Medical Association, there is a clear and consistent decline in medical malpractice costs as a

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27 Modern Physician, "The List" www.modernphysician.com.

28 Chart "Total Medical Board Licensees by Fiscal Year, 1985-2003. Division of Occupational Licensing

29 *New England Journal of Medicine*, December 12, 2002.

30 *Medical Misdiagnosis in North Carolina*, Public Citizens Congress Watch, April 2003.

31 "Medical Malpractice Experience of Physicians: Predictability or Haphazard?" *Journal of the American Medical Association*, 1989--cited in Medical Misdiagnosis, *Id.*

32 "Hype Outraces Facts in Malpractice Debate," *USA Today*, March 3, 2003.

percentage of a physician's total expenses.[33]

Fact: Medical malpractice cases make up a very small percentages of cases filed in Alaska.

Fact: Most medical malpractice verdicts in Alaska are in favor of the defendant doctor.

In conclusion, this is without a doubt the most offensive example of self-interest legislation proposed in the last 25 years in Alaska. It is utterly without any reliable factual support for the premise of its proposed utility. It will only serve to benefit the insurance industry and those physicians who engage in negligent and sometimes reckless misconduct. While there are relatively few cases filed in this state alleging medical malpractice, this legislation will severely impact if not entirely eliminate a substantial portion of legitimate and worthy claims. It will leave horrifically injured patients and their families with a lifetime of misery, pain, and suffering with no remedy.

There is a substantial statistical chance that this legislation will affect one or more of you or a member of your family on a very personal basis during your lifetime. When you consider that it is estimated by health care safety monitors in Alaska that over 30 percent of providers don't even wash their hands before examining a patient, the chances of negligently passing on infectious disease is very high. [34] At least consider your safety and the safety of others before passing this grossly unfair legislation.

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[33] American Medical Association, *Socioeconomic Characteristics of Medical Practice*, 2000 as quoted from N.C. trial lawyer expose.

[34] Anchorage Daily News, March 2, 2004, Page D-1 "Patient Power"

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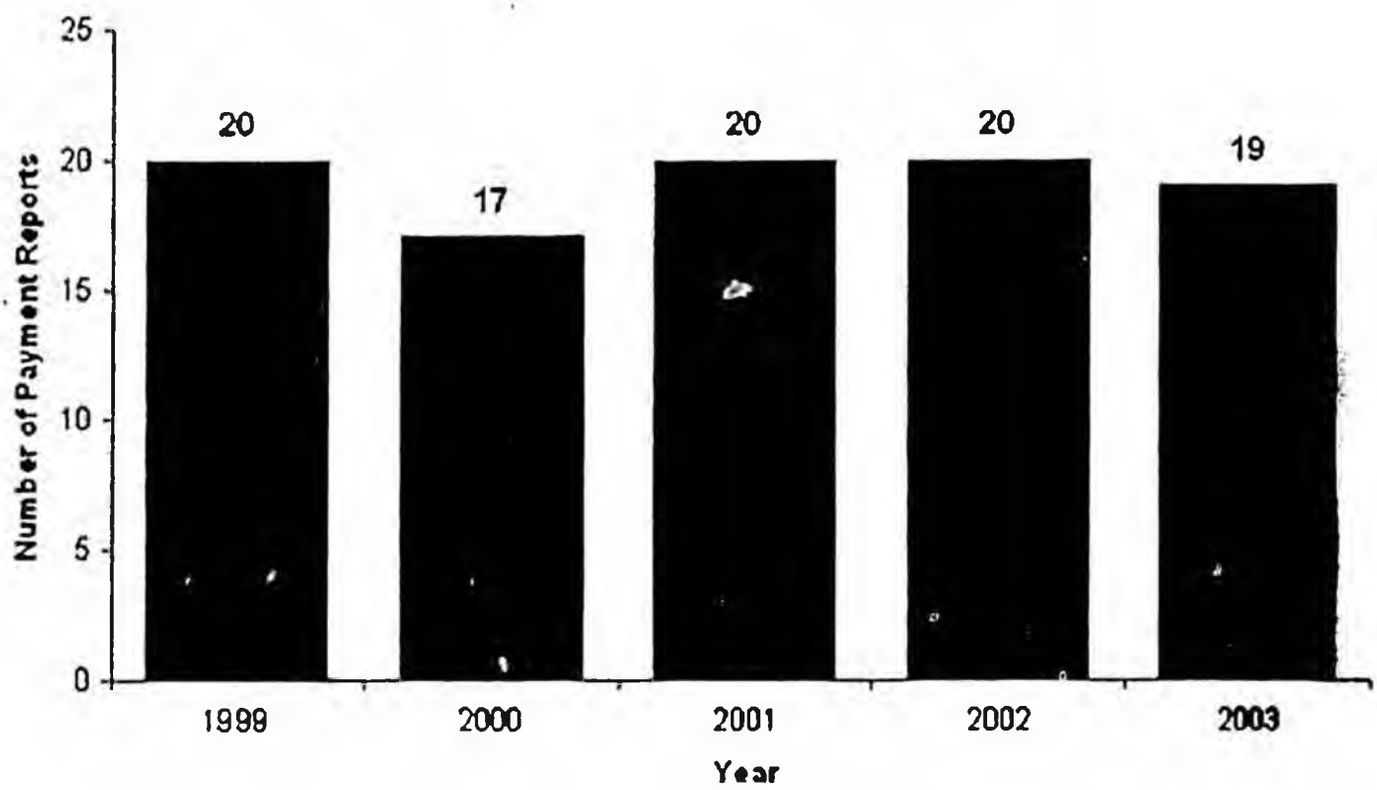
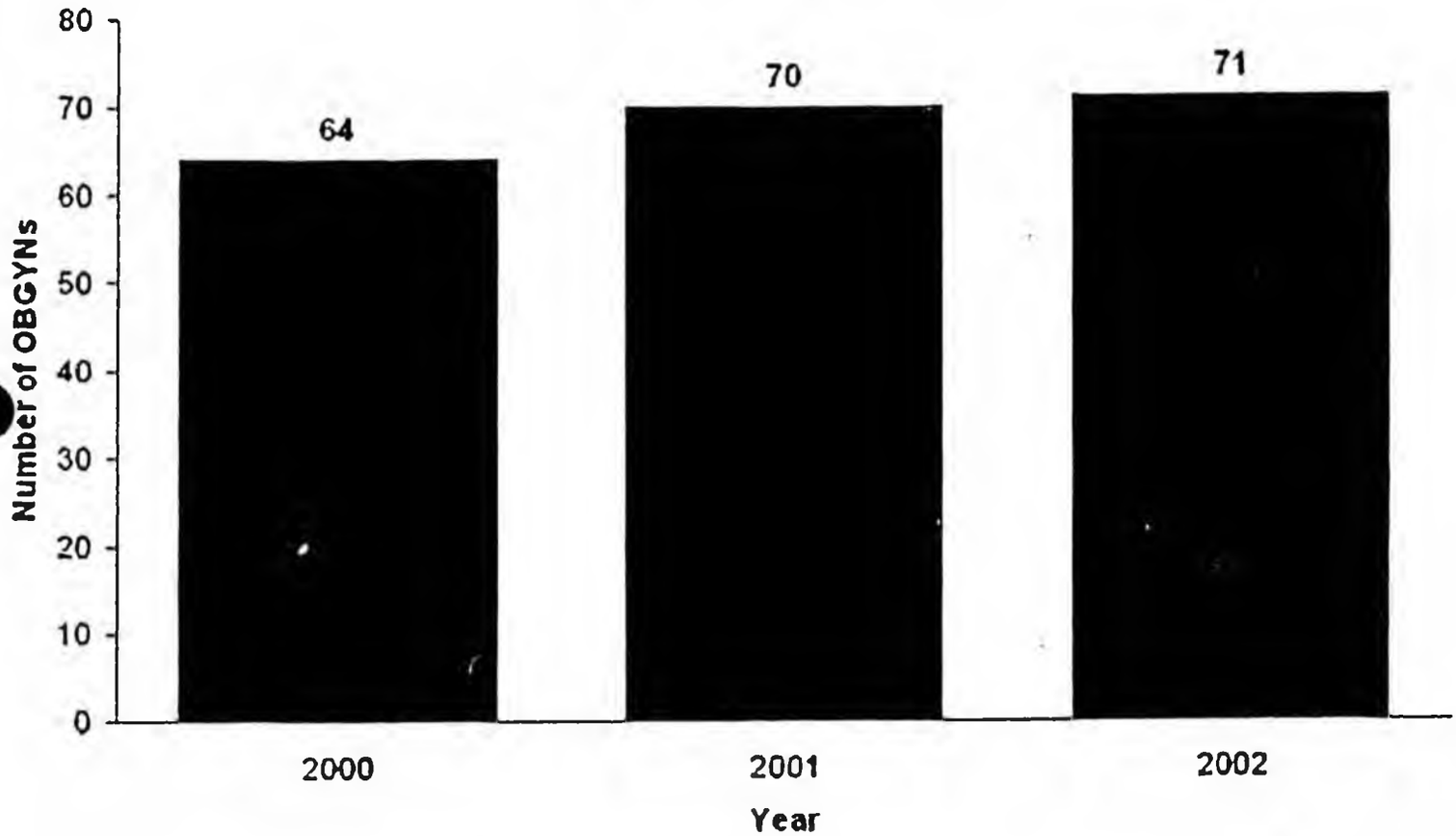
Number of Alaska Medical Malpractice Payments Reported to the National Practitioner Data Bank



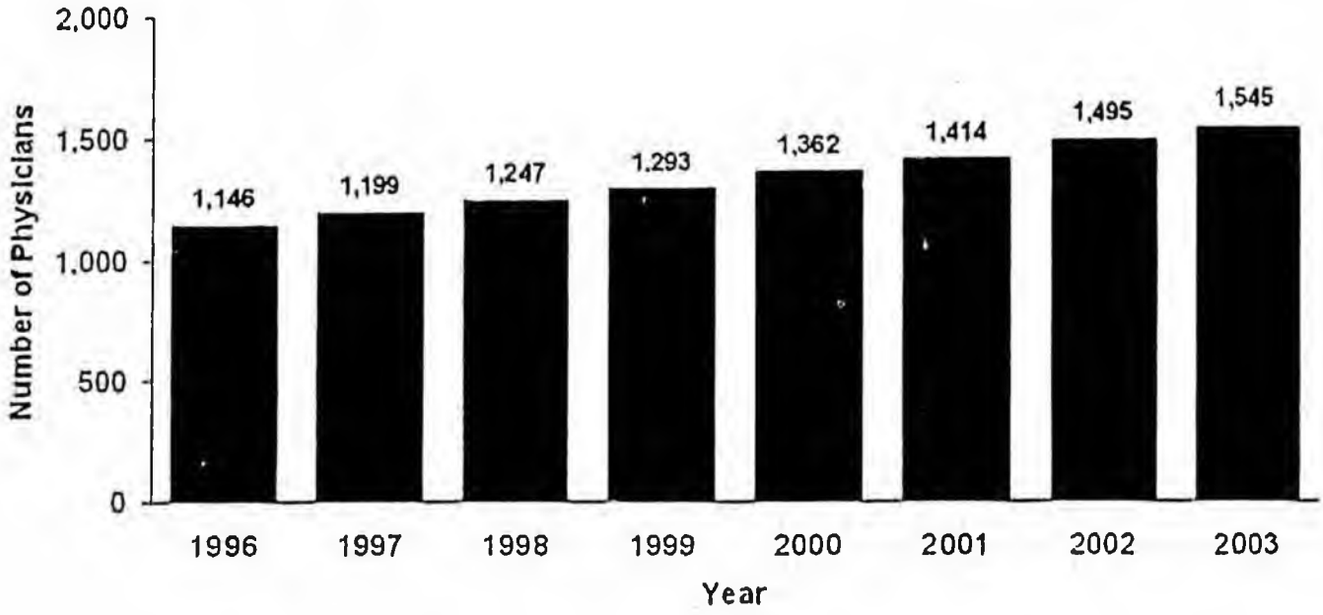
Source: National Practitioner Data Bank Annual Report 2003

Number of OBGYNs in Alaska



Source: American Medical Association, "Physician Characteristics and Distribution in the U.S." (2003-2004 edition)

Number of Physicians in Alaska: 1996 to 2003



Source: Physician Characteristics and Distribution in the U.S., Various Editions, American Medical Association

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MYTHBUSTER!

Medical Malpractice Mismanagement – Why Some Major Insurers Have Pulled Out of the Market

It's a common theme: insurance companies are abandoning policyholders, leaving states or pulling out of the market altogether because jury verdicts are too high and are costing insurers too much money. The solution, they say, is to limit what judges and juries are allowed to give injured patients.

Yet insurance insiders know that jury verdicts aren't to blame. Rather, the collapse of many med mal insurance companies has been directly brought on by the mismanaged underwriting practices of the industry as a whole.

As one insider recently put it, "The [medical malpractice insurance] market is in chaos.... Throughout the 1990s ... insurers were ... driven by a desire to accumulate large amounts of capital with which to turn into investment income. Regardless of the level of ... tort reform, the fact remains that if insurance policies are consistently underpriced, the insurer will lose money."[1] Or as the head of a leading medical malpractice insurer put it, "I don't like to hear insurance-company executives say it's the tort [injury-law] system – it's self-inflicted." [2]

The mismanaged underwriting practices of the following companies, which have left thousands of policyholders high and dry, have wreaked havoc on the nation's health care professionals:

ST. PAUL

In 2001, one of the country's largest medical malpractice insurance companies, St. Paul, pulled out of the medical malpractice insurance market, creating significant supply and demand problems in states like Nevada and West Virginia.

According to a June 24, 2002 *Wall Street Journal* front-page investigative article, St. Paul, with 20% share of the national market, pulled out after mismanaging its underwriting and reserves.[3] In the 1980s, the company set aside too much money for malpractice claims. So, using a tricky accounting method, in the 1990s the company "released" $1.1 billion in reserves, which flowed through its income statements and appeared like big profits. Seeing these profits, many new, smaller carriers came into the market. Everyone started slashing prices to attract customers. From 1995 to 2000, rates fell so low that they became inadequate to cover malpractice claims. Many companies collapsed as a result. St. Paul eventually pulled out, creating problems for doctors in many states.

Even after getting out of the medical malpractice business, St. Paul's problems continued to demonstrate that poor business practices, not medical malpractice insurance, have really been at the heart of the company's downfall. In May 2002, the company was placed on credit watch with negative implications,[4] and in July 2002, St. Paul had its ratings lowered again by Standard and Poor's due to its handling of asbestos and other environmental claims.[5]

In May 2002, the Nevada Attorney General's office filed an administrative complaint against St. Paul in connection with its decision to pull out of the medical malpractice market.[6] The complaint cites St. Paul for alleged unlawful business practices, unauthorized policy modifications, payment of commissions to unlicensed agents, unlawful policy cancellations and nonrenewals and failure to return unearned premium payments.

A group of Charleston surgeons have sued St. Paul for "grossly poor management" that led St. Paul to drop malpractice coverage.[7] The case is still pending.

PHICO

In November 2001, Pennsylvania regulators filed a civil fraud suit against the Pennsylvania Hospital Insurance Co. (Phico), which filed for bankruptcy in December. The company's board was allegedly misled about the adequacy of Phico's premium rates and funds set aside to pay claims. According to the *Wall Street Journal*, "On the way to becoming the nation's seventh-largest malpractice insurer, the company had suffered mounting losses on policies for medical offices and nursing homes as far away as Miami."[8]

More specifically, the suit accuses Phico officials of "fundamentally unsound" financial practices.[9] Regulators claim that company officials and directors knew "the strategy of offering low prices in highly competitive and unfamiliar markets was fraught with risk" yet "pushed for still higher dividends as the premium volume increased."[10] The state also alleges that Phico's chairwoman and two other directors engaged in self-dealing when they pressed for dividends despite knowing that the company's surplus was "declining drastically and significant strengthening of loss reserves was required."[11]

A Pennsylvania court placed the company into liquidation in February 2002 after an insurance department investigation revealed that the extent of Phico's insolvency made rehabilitation "futile" – as of June 30, 2001, Phico had been under-reserved by more than $250 million for losses and loss-adjustment expenses.[12]

RELIANCE

In October 2001, a Pennsylvania court placed Reliance into liquidation "after concluding that it was insolvent by $1.05 billion as of March 31 and would run out of cash to pay claims before the end of 2001."[13]

In June 2002, the Pennsylvania Insurance Commissioner filed suit against directors of the defunct Reliance Insurance Co., alleging breach of fiduciary duty and negligence. From 1998 through the first half of 2000, the company's directors allowed more than half a billion dollars in dividend and other payments to be distributed to holding companies of which Reliance directors were major shareholders. According to an August 2002 Insurance Information Institute *Insurance Issues*

Update, the Commissioner charged the executives with "draining cash from the company to support their 'lavish lifestyle.'" [14]

As reported by the Insurance Information Institute, "[a]ccording to the last publicly available financial data, filed in June 2001, Reliance's liabilities exceeded assets by about $1.2 billion. Every state has been affected by the insolvency, but those most severely impacted are California, New York and Texas."[15]

FRONTIER INSURANCE CO.

In March 2001, the company stopped writing new and renewal business because of mismanaged underwriting and pricing of medical malpractice policies in the early and mid-1990s.[16] Frontier's CEO and president, Harry W. Rhulen said, "The problem really was we lacked the underwriting controls and infrastructure to properly do that type of business."[17]

According to *BestWire* (March 20, 2001),

> Rhulen said the company started writing med-mal in New York, where the business did turn a profit. Medical malpractice in New York is different than any other states, because the insurance department sets the rates, Rhulen said. "We weren't competing based on rates, like in any other state," he said. The company believed medical malpractice was a profitable line because of the long-tail nature of the claims.
>
> However, the company expanded the business to competitive medical malpractice states, such as Florida and Texas, where many companies were doing "cash-flow underwriting" – underpricing premiums with the expectation that lost revenue would be made up through investments. "That's where we really got ourselves in trouble," Rhulen said. "We didn't realize companies were intentionally writing at a very significant underwriting loss... we priced to that level, but reserved to our historic profitable levels (from New York business)."
>
> In the early days, as much as 50% of the company's business was medical malpractice. That percentage was later dropped down to as low as 25%, but the losses from the medical malpractice business began to outweigh the rest of the company's business and dragged the bottom line into the red. "When you're writing $100 million in premium at a 150 combined ratio, you're losing $50 million a year. To make up that profitability... it's almost impossible," Rhulen said.[18]

In August 2001, Frontier entered voluntary rehabilitation, allowing the New York Insurance Department to take control of the insurer.[19] As of October 2002, the Department was still attempting to rehabilitate the company.[20]

MIXX

In May 2002, the seventh-largest medical malpractice insurer in the United States announced that it would shut down operations after losing $200 million in a little more than a year, leaving 17,000 policyholders in 24 states without replacement coverage.[21] As explained by *Medical Economics* in September 2002, "MIIX achieved much of its out-of-state growth by offering low premiums to gain a share of what had become a highly competitive market. In a rush to sign up new policyholders, MIIX may also have taken on an unhealthy amount of high-risk business."[22]

And according to a June 2, 2002 *New York Times* investigative article, the company "performed well enough through much of the 1980's and early 90's. But by the end of the decade it was in trouble after it embarked on a rapid national expansion and went public at the height of the stock market boom."[23]

Notes

[1] Charles Kolodkin, Gallagher Healthcare Insurance Services, "Medical Malpractice Insurance Trends? Chaos!" (September 2001), found at http://www.irmi.com/expert/articles/kolodkin001.asp.

[2] Quotation of Donald J. Zuk, chief executive of Scpie Holdings Inc., a leading malpractice insurer in California, from Christopher Oster and Rachel Zimmerman, "Insurers' Missteps Helped Provoke Malpractice 'Crisis,'" *Wall Street Journal*, June 24, 2002.

[3] Christopher Oster and Rachel Zimmerman, "Insurers' Missteps Helped Provoke Malpractice 'Crisis,'" *Wall Street Journal*, June 24, 2002.

[4] "S&P downgrades The St Paul and subsidiaries," *Insurance Day*, July 18, 2002; Sheryl Jean, "St. Paul Cos.' rating falls," *Saint Paul Pioneer Press*, July 17, 2002.

[5] *Ibid.*

[6] "Late News," *Business Insurance*, June 3, 2002; "Nevada Complaint Blames St. Paul Cos. For Med-Mal Crisis," *BestWire*, May 31, 2002; Brendan Riley, "Nevada moves against St. Paul Cos. in docs' insurance crisis," *Associated Press*, May 30, 2002.

[7] Mary Massingale, "Judge delays proceedings in surgeons' lawsuit against insurer," *Associated Press*, August 30, 2002; Lawrence Messina, "West Virginia Judge Refuses to Dismiss Malpractice Insurance Suit," *Charleston Gazette*, July 9, 2002; Lawrence Messina, "Charleston, W. Va. Surgeons Demand Refund from Insurer," *Charleston Gazette*, July 8, 2002; "Surgeons file brief seeking refund from insurer," *Associated Press*, July 8, 2002.

[8] Christopher Oster and Rachel Zimmerman, "Insurers' Missteps Helped Provoke Malpractice 'Crisis,'" *Wall Street Journal*, June 24, 2002.

[9] Lawrence Messina, "Medical insurer bankrupt," *Charleston Gazette*, December 20, 2001.

[10] Tim Darragh, "Past business ties cloud regulators' tasks," *Morning Call*, April 21, 2002.

[11] *Ibid.*

[12] David Wenner, "Pennsylvania Medical Malpractice Insurer Declared Insolvent," *Patriot-News*, February 24, 2002; Lori Litchman, "Court Places Insurer Into Liquidation," *Pennsylvania Law Weekly*, February 11, 2002; "Pennsylvania's Phico Placed In Liquidation," *BestWire*, February 4, 2002.

[13] Dudley Price, "Business failure will cost state a lot," *News and Observer*, June 4, 2002; Lori Litchman, "Court Places Insurer Into Liquidation," *Pennsylvania Law Weekly*, February 11, 2002.

[14] Ruth Gastel (ed.), "Insolvencies/Guaranty Funds," *III Insurance Issues Update* (August 2002).

[15] *Ibid.*

[16] "Rhulen: Frontier Will No Longer Bear Risk, But Legacy Will Live On," *BestWire*, March 20, 2001.

[17] *Ibid.*

[18] *Ibid.*

[19] "Frontier Enters Rehabilitation; Frontier Insurance Co.," *Best's Review*, October 1, 2001; "Updates," *Business Insurance*, September 3, 2001; Joseph P. Fried, "Albany Seizes Insurance Company; Seeking to Rescue It From Insolvency," *New York Times*, August 31, 2001.

[20] "Court Orders Segregation of Amount Liquidated From Trust Fund," *New York Law Journal*, October 31, 2002.

[21] Berkeley Rice, "How a malpractice insurer grew too big too fast," *Medical Economics*, September 23, 2002; Susan Warner, "Practicing Without A Net," *New York Times*, June 2, 2002; "Northeast Zone: MedMal Insurer Halting in N.J.," *Insurance Chronicle*, May 13, 2002; "MIIX Reorganization Spotlights National Med-Mal Woes," *BestWire*, May 10, 2002.

[22] Berkeley Rice, "How a malpractice insurer grew too big too fast," *Medical Economics*, September 23, 2002.

[23] Susan Warner, "Practicing Without A Net," *New York Times*, June 2, 2002.

April 18, 2005

House Judiciary Committee
House of Representatives
Juneau, Alaska 99801

Dear House Judiciary Committee:

I am a longshoreman and a resident of Anchorage, Alaska. I learned this week that the legislation that would limit damages for pain and suffering in medical negligence cases to $250,000 is back and that the Senate has passed the bill. I was surprised to learn that the Senate actually voted to apply this limit even in cases where doctors are reckless or grossly negligent.

I am writing to tell you why passing this legislation would be wrong. My wife, Elizabeth, wasn't murdered by a reckless driver. If she had been, at least the perpetrator would have been jailed. Instead, she was killed by a seasoned, professionally trained doctor and her nurses. They killed my wife by administering an 8 times overdose of chemotherapy, not once, not twice but four times. Please see the attached Anchorage Daily News article that describes the case. When my wife was killed by Dr. Stewart and her nurses, we had two young children. My son was ten and my daughter was twelve. If the $250,000 cap were in place I doubt I would have even been able to find a lawyer to help me bring the case because most of the harm my wife and my family suffered had nothing to do with economic loss.

Capping the responsibilities of conglomerates, such as insurance companies, seems very wrong. It certainly won't give the doctors and nurses in Alaska any incentive to be careful or thoughtful in caring for their patients. The medical professionals who killed my wife were not thrown in jail and as far as I know they still practice medicine. The case I was able to bring was the only way I could seek justice. The jury is the people's last line of defense against these kinds of unconscionable mistakes.

I hope that you will oppose this legislation.

Sincerely,

Mike Strong
740 Dogwood Street
Anchorage, AK 99501

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Information in Opposition to Senate Bill 67

I. Sectional analysis

II. Position Paper

III. Chart: Number of Alaska Medical Malpractice Payouts reported to the national Practioner Data Bank
Payouts not increasing

IV. Chart: Number of Physicians in Alaska: 1996 to 2003
Number of Doctors Increased from 1146 to 1545

V. Chart: Number of OBGYNs in Alaska
Number of OBGYNs increasing

VI. Analysis: Medical Malpractice Mismanagement
Mismanaged underwriting practices, not claims, have driven insurers out of the market

VI. Analysis: National Practitioner Databank
Evidence shows system is working - the greatest medical malpractice problem is patient safety - not big payouts

"TRIAL BY JURY IN CIVIL CASES IS AS ESSENTIAL TO SECURE THE LIBERTY OF THE PEOPLE AS ANY ONE OF THE PRE-EXISTENT RIGHTS OF NATURE." (1789)

JAMES MADISON

Senate Bill 67
House Judiciary CS

Creates an exemption for health care providers from the current caps on non-economic damages of $400,000 and $1,000,000 for death or injury to patients.

Lists which non-economic damages may be awarded:

- compensation for pain,
- suffering,
- inconvenience,
- physical impairment,
- disfigurement,
- loss of enjoyment of life (but not "hedonic damages")
- loss of consortium,
- other nonpecuniary damage,

States that the cap of $250,000 applies

- regardless of the number of injuries
- or the number of health care providers who brought about the injuries
- Or the number of survivors (in the case of death) bringing a claim

UNLESS the malpractice has resulted in death or a 70% disability, in which case the cap is $400,000.

Defines Economic Damages

Refers to "health care provider as defined in 09.55.560 (see below)

Defines hedonic damages

09.55.560
(1) "health care provider" means an acupuncturist licensed under AS 08.06; an audiologist or speech-language pathologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist

licensed under AS 08.84; a physician or physician assistant licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 18.20.130 . including a governmentally owned or operated hospital; an employee of a health care provider acting within the course and scope of employment; an ambulatory surgical facility and other organizations whose primary purpose is the delivery of health care, including a health maintenance organization, individual practice association, integrated delivery system, preferred provider organization or arrangement, and a physical hospital organization;

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POSITION PAPER ON SENATE BILL 67

INTRODUCTION

In Alaska, to suggest that there is a medical malpractice crisis is at best disingenuous and at worse fraudulent. In short, there is no empirical evidence to support the proposition of a relationship between medical malpractice premiums, medical malpractice litigation and availability of health care providers.

If this proposed legislation passes, you will be responsible for eliminating the ability of stay at home moms and dads, retired or elderly citizens, children, and those with subsistence lifestyles or limited incomes to bring claims against negligent or even reckless doctors or other health care providers. This will be true even when they are blinded, maimed, suffer serious neurological injuries, rendered sexually dysfunctional or even killed by medical malpractice. What makes this proposed legislation even more egregious is that the entire premise for its utility is based upon anecdotal information, unsupported by credible empirical evidence and indeed is contrary to conclusions reached in existing and reliable studies.[1] Even more appalling, there is no corresponding assurance from those most benefited (the insurance industry) that the legislation will have *any* effect whatsoever on medical malpractice rates.

THE HISTORY OF TORT REFORM IN ALASKA

While the following discussion will illustrate the points referenced above, a brief chronological history of similar tort reform efforts in the State of Alaska demonstrates that capping or limiting damages will have absolutely no effect on medical malpractice insurance rates or the availability of medical malpractice insurance to doctors in Alaska or the availability of health care in Alaska.

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[1] Studies repeatedly relied upon by the insurance industry and health care providers pushing similar legislation have been widely discredited. The Milliman report, for instance, relies on data from the National Practitioner Data Bank (NPDP) that has been slammed by the Government Accounting Office (GAO). (*See, e.g.*, GAO: "National Practitioner Data Bank: Major Improvements are Needed to Enhance Data Bank's Reliability," Nov. 2000; Mary Jane Fisher, "GAO Report Slams National Practitioner Data Bank," *National Underwriter*, Jan. 1, 2001). It also fails to adjust any of its figures for medical inflation to offset its conclusion that medical malpractice losses have risen 32% over the last decade in states without caps. When adjusted for 51% in medical inflation for the same time period, paid losses are actually *falling*.

Dating back to 1976 with the passage of A.S. 09.55.548, medical malpractice insurers and health care providers have enjoyed a unique benefit unavailable to other insurers or private citizens. A.S. 09.55.548(b) in effect immunizes these entities and individuals from payment for all past medical expenses incurred as a result of physician and/or health care malpractice paid by private health care plans.

This has resulted in a significant windfall to medical malpractice carriers (and uninsured health care providers) since a private health care plan has no subrogation rights under the statute. The only exception to this windfall is when the collateral source of payment is governmental or quasi governmental such as under Medicare, Medicaid or federal employees who are insured under the federal health care plan. In many cases, this results in savings totaling hundreds of thousands of dollars which are absorbed, unfairly, by other health care plans and ultimately by the citizens of this state through higher health care premiums.

In 1978, again at the urging of medical malpractice insurance carriers and health care providers, the Legislature passed A.S. 09.55.536 requiring the appointment of expert advisory panels in all medical malpractice actions. These panels were appointed by the court and reviewed claims brought by injured Alaskans to determine whether or not malpractice had occurred and, if so, whether the malpractice had caused the patient's injuries. The purported basis for this legislation (as argued by its proponents) was to eliminate or at least minimize frivolous malpractice claims. While the efficacy of the expert advisory panel was always questionable, it has been all but abandoned by health care providers themselves and is no longer requested (it is waived in virtually all cases).

In 1986, the Legislature enacted tort reform legislation placing damage caps on non-economic damage. That legislation capped non-economic damages for injuries that did not result in severe permanent physical impairment or severe disfigurement to $500,000. There was no cap, however, on those injuries that did result in severe permanent impairment or severe disfigurement.

In 1997, sweeping tort law revision was enacted by the Legislature. The previous cap on non-economic damages in cases involving physical injury was reduced to $400,000 (or the injured person's life expectancy multiplied by $8,000) A definitive cap was placed on cases involving severe permanent physical impairment and severe disfigurement of $1,000,000 or the injured persons life expectancy in years multiplied by $25,000. In other words, to exceed the $1,000,000 limitation, a person's life expectancy would have to exceed 40 years.[2]

While the 1997 changes benefited all insurance carriers in the state of Alaska, health care providers were given additional protection in the form of limiting expert witnesses who could testify on behalf of an injured Alaskan in medical malpractice actions.

A.S. 09.20.185 was enacted requiring that only board certified physicians having

expertise and training directly related to the particular field or matter at issue would be allowed to testify regarding standard of care. This requirement is now necessary even though the offending doctor is not board certified in any practice group or specialty. Needless to say, this has made it even more difficult to obtain expert witnesses to testify against offending doctors, particularly since the same doctors belong to national organizations and often know each other personally.

In the face of these sweeping reforms, the insurance industry has repeatedly argued that tort reform benefits policyholders and the public at large. To date, there have been *no* reductions to my knowledge in any insurance rates charged to individual Alaskans. The current legislation that will benefit only health care providers will result in the same outcome. There will be no reduction in health care costs and no reduction in medical malpractice premiums charged in the state of Alaska. As discussed below, this has been repeatedly demonstrated throughout the United States.

THE HISTORY OF MALPRACTICE PREMIUMS IN ALASKA

To best illustrate this point, it is helpful to review the medical malpractice premiums charged in this state dating back to 1993 and compare those to California, the state much touted by the insurance industry because of its previously imposed caps on non-economic damages through the Medical Injury Compensation Reform Act (MICRA). Although the only published premium information readily available deals with the specialties of Internal medicine, General Surgery and OB/GYN, these seem to be the specialties of most concern at least by those physicians and health care providers who testified before the House Judiciary last week.[3]

A cursory review of the premiums charged illustrates the utter lack of credibility of the positions taken by this legislation's proponents. An important thing to remember when reviewing the premiums discussed below is that these are the amounts *charged* by the malpractice carriers. Both NORCAL and MIEC (the current and historical dominant carriers in the Alaska market) give credits back to their insureds. These credits are *not* reported in the data available but it is highly likely that these credits would further substantially reduce the published premiums paid by individual health care providers.[4]

In 1993, NORCAL's premium rates were $12,102 for Internal Medicine doctors, $37,750 for General Surgeons, and $64,518 for OB/GYN's. MIEC's premium rates for the same specialties were $5,487, $19,752, and $32,916 respectively. From 1994 through 1996, NORCAL's rates remained relatively stable. In 1994, MIEC raised its premiums for

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[3] Medical Liability Monitor [MLM] of Chicago publishes annual rate surveys from premium submissions provided by medical malpractice carriers or obtained directly from state insurance departments throughout the United States.

[4] MLM notes in all of its annual surveys that such credits, discounts and other factors can greatly diminish and sometimes completely offset rate increases. None of the surveys reflect this data, however.

General Surgeons and OB/GYN's to $38,228 and $63,712 respectively. In 1995, MIEC reduced those rates by about 10 percent.[5]

Between 1997 and 1999, premium rates actually decreased significantly. NORCAL's rates dropped to $8,770 for Internal Medicine doctors, $28,587 for General Surgeons, and $48,706 for OB/GYN's. MIEC reduced its rates to $8,172, $29,420, and $49,032 respectively.[6]

There is no dispute that during this time frame and extending into 2001, most carriers in most states were reducing malpractice premiums because of intense competition in the industry. This competition was reflected in the state of Alaska by the joining of at least two other malpractice carriers to the competitive market.[7] The introduction of new carriers into the competitive market was a national phenomenon. Fierce competition continued to drive down rates for medical professional liability insurance in 1997.[8] In 1999, medical malpractice carriers had been battered from several years of brutal competition, with price cutting the name of the game, even when it meant selling *below* the break-even point.[9]

Back then, leaders in the industry were optimistic that the market would "harden" over the next three years.[10] Then vice president of Florida Physicians Insurance Company, Melodee Dixon, stated, "It will take that amount of time [three years] for claims on policies written at today's grossly inadequate rates to shake out."

Everyone in the industry during this time frame recognized that the amount of competition in the industry was causing drastic price cutting and exposing numerous carriers to significant future financial. These risks were self-inflicted and the resulting losses from malpractice claims were anticipated and predicted by competent actuaries.

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5 MLM annual surveys for 1993-1995.

6 MLM annual surveys for 1997-1999.

7 Although other carriers may have been in the Alaska market during this time frame, the only entities reporting premiums to MLM appear to be NORCAL, MIEC and joined in 1996 by Physicians Ins. Ex. of Washington and Doctors Co. in 1997. Northwest Physicians Mutual began reporting in 1999. It is unknown when CNA began writing coverage in Alaska.

8 MLM annual survey comments, 1997.

9 "Medical professional liability writers express a very pragmatic, but somewhat optimistic outlook about their market niche. Battered from several years of brutal competition, with price-cutting the name of the game, even when it means selling below the break-even point, these insurers nevertheless think that a market shake-out will come." MLM annual survey, 1999.

10 Market "hardening" is discussed, *infra*.

The trend of lower malpractice premiums continued through 2000 in the state of Alaska. In 2001, as competition in Alaska and the national market waned, the predicted market "hardening" began to take form. Those carriers that had engaged in risky if not reckless underwriting began to pull out of markets in this state and across the United States. Notwithstanding, the malpractice premium rates in Alaska remained unchanged at MIEC through 2002 and were increased only slightly by NORCAL. In 2001, NORCAL raised its rates to $9,580 for Internal Medicine doctors, $30,872 for General Surgeons, and $52,600 for OB/GYN's.[11]

In 2003, with the market firmly "hardened," the rates from both carriers increased. NORCAL raised its rates for Internal Medicine doctors to $11,209, for General Surgeons to $36,122 and for OB/GYN's to $61,545. MIEC's premium rates were $7,432, $26,748, and $44,580 respectively. Notwithstanding, the premiums charged for 2003 were *less* than those charged by NORCAL for the same practice specialties in 1993, 1994, 1995, 1996 and only slightly higher than those charged in 1997 and 1998. The premium rates charged by MIEC in 2003 were less than those charged by the carrier in 1994, 1995, 1996, 1997, 1998, 1999, and only slightly higher than the premiums charged in 2001 and 2002.[12]

The significance of this rate comparison is even greater when comparing the discounted value of 2003 dollars with the previous years of lower premium rates. In short, these figures reflect an actual *reduction* in malpractice premiums over this time period when viewed in that light without considering the premium credits refunded to health care providers over this same time period. Moreover, when comparing these premiums to the inflation rate of health care costs (and resulting income to physicians), it is clear that these rates have not resulted in *any* increase to the cost of malpractice insurance premiums to health care providers in Alaska through 2003.

THE CALIFORNIA EXPERIENCE

Since California's non-economic damage cap legislation is the model being touted by the proponents of this legislation, it is helpful to review the medical malpractice premiums charged in that state.

Between 1991 and 1997 In California, the medical malpractice premiums for internal medicine doctors, general surgeons and OB/GYNs remained relatively constant between 1991 and 1997. The premium rates charged by NORCAL over that time period for Internal Medicine doctors ranged from $5,692 to $9,472, for General Surgeons, $18,916 to $29,440, and for OB/GYN's, from $31,624 to $49,208. MIEC's premium rates were $5,776, $20,792, and between $34,648 and $39,268 respectively.[13]

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11 MLM annual survey 2000-2001.

12 MLM annual survey 2003.

13 MLM annual surveys, 1991-1997.

Of particular note, and as recognized by numerous commentators, the reason for the relative consistency over this time period had little or nothing to do with medical malpractice non-economic damage caps.

In 1975, California enacted the Medical Injury Compensation Reform Act (MICRA) that placed a cap of $250,000 on non-economic damages in medical malpractice actions. MICRA was touted by the insurance industry and health care practitioners as the solution to the "malpractice crisis" and the solution to increasing malpractice insurance rates. By 1988, however, medical malpractice premiums were 190% higher than 1976 levels (40% when adjusted for inflation to 2001 levels).[14]

In 1988 California voters passed Proposition 103, an insurance reform proposal. This proposition rolled back insurance rates 20% and froze rates for one year. It mandated billions of dollars worth of refunds to policyholders and created a system that required approval of insurance rates, allowing the insurance Commissioner to deny rate proposals that were too high or too low to be actuarially justified. It is following this proposition through 1996 that malpractice insurance rates actually stabilized.[15]

Beginning in 1997, insurance rates in California *again* began to increase substantially. In 1997, NORCAL's premium rates for Internal Medicine doctors ranged up to $9,472, for General Surgeons, up to $29,440 and for OB/GYN's, up to $49,208. The rates continued to increase slightly between 1999 and 2001. Since that time, through 2003, the rates have increased to ranges up to $25,178, $58,830, and $77,814 respectively. During this same time period, MIEC's premium rates have increased from their 1996 -- 1998 rates to a range up to $9,305, $27,682, and $50,340 respectively. Accordingly, even with MICRA reform, malpractice rates have steadily *risen* in California and are comparable to or substantially greater than malpractice premium rates charged in this state by the same companies notwithstanding the lack of additional caps on non-economic damages.[16]

THE INSURANCE INDUSTRY ADMITS THAT CAPS WILL NEITHER REDUCE PREMIUMS NOR ARE CAPS RELATED IN ANY WAY TO THE AVAILABILITY OF HEALTH CARE

Misinformation regarding the efficacy of caps on non-economic damages and purported decreases in medical malpractice premiums has been disseminated by health care providers and malpractice insurers in other states as well.

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14 *How Insurance Reform Lowered Doctors Medical Malpractice Rates in California*, The Foundation for Taxpayer and Consumer Rights, February 10, 2003, excerpted from N.C. trial lawyers expose on malpractice rates in N C.

15 *Id.*

16 MLM annual surveys, 1996-2003.

In Florida, after pushing through a sweeping medical malpractice bill with a promise to reduce ever-increasing insurance premiums for Florida's physicians, malpractice insurance carriers followed up the bill's passage with a request to increase premiums by as much as 45 percent.[17]

In 2003, Oklahoma passed a tort reform bill that included a severe cap on compensation available to certain medical malpractice victims. Following passage of that bill, the insurance company owned by the state medical association requested an astounding 83 percent rate hike which was subsequently approved on the condition that it be phased-in over three years.[18]

In January 2003, Ohio lawmakers enacted a cap on compensation for patients injured by medical malpractice. Almost immediately, all five major malpractice insurance companies in Ohio announced that they would not reduce their rates. One insurance executive predicted his company would seek a 20 percent rate increase.[19]

This should come as no surprise to those familiar with the insurance industry and particularly with malpractice carriers.

Bob White, president of First Professional Insurance Co., the largest medical malpractice insurer in Florida stated that "no responsible insurer can cut its rates after a [medical malpractice tort reform] bill passes."[20] Cliff Webster representing the Washington State Medical Association and Chairman of the Washington Liability Reform Coalition told the Washington State Legislature, House Judiciary Committee in 2003 that "I don't think we would argue that the premiums are likely to go down."[21] Sherman Joyce, President of the American Tort Reform Association candidly acknowledged, "We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates."[22] James Robertson, Assistant Vice President and

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17 *See, e.g.*, Julie Kay, "Medical Malpractice; Despite Legislation that Promised to Rein in Physicians Insurance Premiums, Three Firms File For Big Rate Increases," *Palm Beach Daily Business Review*, Nov.20, 2003.

18 *BestWire*, Dec. 2, 2003.

19 Laura Bischoff, "Taft Signs Malpractice Reform Bill; Cap on Awards for Pain and Suffering," *Dayton Daily News*, Jan. 11, 2003; Andrew Welsh-Huggins, "Doctors Pushing for Short-Term Relief From Malpractice Rates," *Associated Press*, Jan. 10, 2003; "Despite New Law, Insurance Companies Won't Lower Rates Right Away," *Associated Press*, Jan. 9, 2003.

20 *Palm Beach Post*, Jan. 29, 2003.

21 Testimonial excerpt from testimony before the Washington State Legislature, House Judiciary, Feb. 21, 2003.

22 "Study Finds No Link Between Tort Reforms and Insurance Rates," *Liability Week*, July 19, 1999.

Associate Actuary for SCPIE Indemnity Company (California's second largest medical malpractice insurer) stated "while MICRA was the Legislature's attempt at remedying the medical malpractice crisis in California in 1975, it did not substantially reduce the relative risk of medical malpractice insurance in California." He made that statement in a written response to a question from an administrative law judge overseeing the case in which his company had requested another 15.6% rate hike.

In short, virtually every reliable source underscores the certainty that limiting an injured persons access to the court system for damages has little or nothing to do with insurance premiums for the cost of health care delivery.

In January 2004, the Congressional Budget Office (CBO) concluded that legislation to cap damages in medical malpractice lawsuits would do little to hold down health care spending or eliminate the practice of defensive medicine. Moreover, the report found that medical malpractice insurance premiums have increased in part because of reduced income from insurer investments and short-term factors in the insurance market. The report found that although malpractice insurance premiums are somewhat lower in states with caps on damages, even a large savings in premiums would have a small impact on total health care spending because malpractice insurance costs account for less than two percent of health care spending. The CBO concluded that caps on damages in malpractice suits would not likely end the practice of defensive medicine. That is because physicians who practice defensive medicine may do so less because they fear liability than to generate more income. Equally compelling, the GAO concluded that many reported shortages of health care services [based on these factors] could not be substantiated or did not widely affect access to health care.[23]

In a sweeping and thorough investigation for AIR under the direction of Mr. Robert Hunter (former Federal Insurance Administrator and Texas Insurance Commissioner) it was determined that insurers make most of their profits from investment income. During years of high interest rates or excellent returns in the market, insurance companies engaged in fierce competition for premium dollars to invest and maximum returns. They severely under price premiums for policies and insure very poor risks to get premium dollars to invest. This is known as the "soft" insurance market. When the investment climate turns sour, however, the industry responds by sharply increasing premiums and reducing coverage, creating a "hard" insurance market, usually

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[23] *Congress Daily*, Jan. 13, 2004. The same argument of "fleeing" doctors and fear of inability to attract new ones has been completely debunked in Washington. Doctors for Medical Liability Reform claimed that 500 doctors had left the state between 1993 and 2004. They failed to mention, and did not research, however, how many doctors had moved to Washington over the same time frame. According to the 2003 GAO report, there were more doctors per capita in 2001 than in 1998. Moreover, despite arguments to the contrary, there was no indication that health care delivery was being curtailed or eliminated. Carol Ostrom, "Contrary to Ads, Doctors Replaced, Clinics Still Open," *Seattle Times*, Feb. 23, 2004.

degenerating into a "liability insurance crisis."[24] This is precisely what is proven conclusively by reviewing the comments and premium surveys discussed above.

Moreover, the Hunter report concluded that since the early 1980's, medical malpractice paid claims per doctor has tracked (approximately) medical inflation. In fact, inflation-adjusted payouts for physicians dropped between 2000 and 2002.[25] This data confirms that neither jury verdicts nor any other factor affecting total claims paid by insurance companies that write medical malpractice insurance have had much impact on the system's overall costs over time. Even more compelling, since 1975, the data shows that in terms of constant dollars, per doctor written premiums, the amount of premiums that doctors have paid insurers have gyrated almost precisely with the insurer's economic cycle which is (again) driven by such factors as changing insurance rates, mismanaged business and accounting practices as well as other causes.[26]

MEDICAL MALPRACTICE IN ALASKA – THE REALITY

In summary, this legislation is without merit. The following facts underscore why this legislation is bad for Alaskans.

1. **Fact:** Citizens who are elderly or retired, citizens living a subsistence lifestyle, stay at home parents, and children will be without any legal remedy for even the most egregious instances of medical malpractice. Since they have little or no economic loss, they will not be able to obtain legal counsel to pursue a medical malpractice claim even if they are blinded, crippled, maimed, rendered sexually dysfunctional, or die after a sustained period of suffering. The cost of bringing such claims will easily exceed any potential recovery.

Real-Life Examples:

Linda McDougal -- this is the much-publicized national case involving the 46-year-old Navy veteran who underwent a double mastectomy after mistakenly being diagnosed with an aggressive breast cancer. Her pathology results had been mistakenly switched with another woman who in fact had breast cancer. This woman is now horribly scarred for life.

Jennifer -- Jennifer was a beautiful and vibrant 12-year-old Alaskan who was misdiagnosed twice over a three-day period with gingivitis. She was actually suffering from acute leukemia, which was very treatable and survivable but requires a timely

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[24] Americans for Insurance Reform, Medical Malpractice Insurance: Stable Losses/Unstable Rates in Wyoming, Feb. 2004.

[25] *Id.*

[26] *Id.*

diagnosis and urgent medical intervention. This could have been determined with a simple and inexpensive blood test. Unfortunately, given the delay in her diagnosis, she hemorrhaged and died before she could be properly diagnosed. Although this was a clear-cut case of negligence, over $100,000 in out-of-pocket costs were expended before the case settled. Under the proposed legislation, this case could never have been prosecuted and Jennifer, her parents, and three siblings would have been without any remedy at all.

Susan -- Susan was an Alaskan in her early 30's when she was misdiagnosed and refused treatment by several health care providers over a five-day period. Unfortunately, she was suffering from a well-known medical and orthopedic emergency known as cauda equina syndrome. By the time she was finally correctly diagnosed, she had suffered permanent saddle anesthesia (no feeling from her waist to her mid thigh); permanent lower extremity neurological injuries requiring leg braces; and intermittent bowel and bladder dysfunction. Under this legislation, since she could still work at her profession, she would be left with a remedy of $250,000. Despite clear-cut negligence, costs of over $200,000 were expended before settlement was reached.

Traven -- Traven was an adventurous eight-year-old Alaskan boy who sustained lower extremity burns that were entirely survivable and treatable. Unfortunately, due to a series of medical mistakes, he languished for days with an increasingly more severe infection and ultimately lapsed into a coma (with his parents present). He was finally flown to Seattle Children's Hospital where he died. Under this legislation, it would be financially difficult or impossible to bring this claim since his entire family, like Jennifer's above, as well as his estate would be limited to $250,000 in non-economic damages. Although an economic loss to his estate could be claimed, those losses are more difficult to establish for children and are usually so low as to not warrant prosecution of a claim absent non-economic damages.

Mrs. Strong -- Mrs. Strong was a 32-year-old Alaskan mother of two children who was drastically over dosed with a highly caustic chemotherapy drug. The overdose was approximately 8 times what she was supposed to be given and was repeatedly administered over the course of 4 days. She died a horrible death, essentially burning up from the inside out over the course of 6 days. She never had a chance to say goodbye to her children, husband, or her parents. Since she was a mom and essentially out of the work force, she would have had little economic loss and, under this bill, her estate and entire family would be limited to $250,000 in losses.

These are only a few of the many actual cases that we can provide this committee as concrete examples of why this bill works such gross inequities on the innocent people in our State who are the most vulnerable.

Fact: The passage of this legislation will have no impact on medical malpractice premiums in this state and will have no impact on the ability to attract health care professionals to practice here. Other than anecdotal and unsupported comments to the

contrary, there is absolutely no evidence to suggest that health care providers stay away from Alaska because of medical malpractice insurance premiums. Indeed, it is considered one of the top 75 places in the United States to practice medicine.[27] This is based in no small part on the lack of managed-care not caps on non-economic damages. Further, according to the State Medical Board, the number of medical board licensees has more than doubled since 1985.[28]

Fact: The Institute of Medicine reported three years ago that as many as 98,000 Americans die annually from medical errors in hospitals. On December 12, 2002, the New England Journal of Medicine reported that 4 out of 10 Americans and 1 out of 3 doctors say that they or their family members have been the victims of a preventable medical error; 10% of doctors say that a family member died as a consequence.[29] How will this legislation address these problems other than to make it financially easier on negligent health care providers and their insurance carriers?

Fact: Repeat offender physicians are responsible for most medical errors. According to a study recently conducted in North Carolina, 3.2% of North Carolina doctors had paid out two or more medical malpractice settlements to patients but were responsible for a total of nearly 42% of all payments reported to the National Practitioner Data Bank.[30] A study conducted by researchers at Vanderbilt University found that doctors with a history of malpractice claims can be expected to have "appreciably worse claims experience" than other doctors in the future.[31] This legislation would protect those health care providers by sharply limiting their exposure for continued malfeasance.

Fact: Medical Malpractice insurance costs are declining as a percentage of physician expenses. A recent USA Today report stated that, on average, doctors currently pay 3.2% of their revenue for medical liability insurance.[32] In 1987, medical malpractice insurance costs were. on average, 12.1% of the physician's total expenses. In the ensuing decade that share was cut in half, falling to less than 7% of total expenses in the late 1990's. Based on statistics available from the American Medical Association, there is a clear and consistent decline in medical malpractice costs as a

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27 Modern Physician, "The List" www.modernphysician.com.

28 Chart "Total Medical Board Licensees by Fiscal Year, 1985-2003. Division of Occupational Licensing

29 *New England Journal of Medicine*, December 12, 2002.

30 *Medical Misdiagnosis in North Carolina*, Public Citizens Congress Watch, April 2003.

31 "Medical Malpractice Experience of Physicians: Predictability or Haphazard?" *Journal of the American Medical Association*, 1989--cited in Medical Misdiagnosis, *Id.*

32 "Hype Outraces Facts in Malpractice Debate," *USA Today*, March 3, 2003.

percentage of a physician's total expenses.[33]

Fact: Medical malpractice cases make up a very small percentages of cases filed in Alaska.

Fact: Most medical malpractice verdicts in Alaska are in favor of the defendant doctor.

In conclusion, this is without a doubt the most offensive example of self-interest legislation proposed in the last 25 years in Alaska. It is utterly without any reliable factual support for the premise of its proposed utility. It will only serve to benefit the insurance industry and those physicians who engage in negligent and sometimes reckless misconduct. While there are relatively few cases filed in this state alleging medical malpractice, this legislation will severely impact if not entirely eliminate a substantial portion of legitimate and worthy claims. It will leave horrifically injured patients and their families with a lifetime of misery, pain, and suffering with no remedy.

There is a substantial statistical chance that this legislation will affect one or more of you or a member of your family on a very personal basis during your lifetime. When you consider that it is estimated by health care safety monitors in Alaska that over 30 percent of providers don't even wash their hands before examining a patient, the chances of negligently passing on infectious disease is very high. [34] At least consider your safety and the safety of others before passing this grossly unfair legislation.

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[33] American Medical Association, *Socioeconomic Characteristics of Medical Practice*, 2000 as quoted from N.C. trial lawyer expose.

[34] Anchorage Daily News, March 2, 2004, Page D-1 "Patient Power"