

233

HJ

FCC

MALPRACTICE

(INCLUDING HB 574)

FCC

MAC.

PRACT.

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

# Mal Practice

Summary of Medical Malpractice Insurance Bill (FCCS SCS CSHB 574)

Prepared by Representative Ted Smith

1. Authorizes Dept. of Commerce & Economic Development to provide investigative service to licensing boards.
2. Provides that for the following disciplines, upon a finding by the Director of Insurance that malpractice insurance is unavailable and the unavailability is impairing delivery of services, all licensees may be required to obtain insurance from the Medical Indemnity Corporation of Alaska. Also expands the licensing boards of these disciplines by adding two lay members, and provides additional disciplinary power to the boards:

Chiropractors	Pharmacists
Dental Hygienists	Physical Therapists
Dentists	Psychologists
Nurses	Psychological Associates
Opticians	
Optometrists	
3. Expands the State Medical Board of Examiners by adding lay people and deletes the requirement that members be nominated by the Alaska Medical Association. Requires each physician licensed by the state to purchase insurance from the Medical Indemnity Corporation of Alaska in the amount of \$200,000 per occurrence and \$600,000 per year. Imposes a continuing education requirement for license renewal. Broadens disciplinary authority of the board.
4. Provides that a voluntary arbitration agreement may be entered into and, if such an agreement is in effect, sets up arbitration procedures.

5. Provides an expert advisory panel as a preliminary to court trial in any malpractice suit not covered by an arbitration agreement.
6. Revises tort law pertaining to medical malpractice as follows:
  - a. Changes the standard of care from that of the community to a national standard.
  - b. Provides for advance payments.
  - c. Prohibits ad damnum clause in suits.
  - d. Provides for periodic payments, with cost of living increases.
  - e. Provides that an award must be made by category of loss.
  - f. Provides that awards may be only for an amount exceeding awards from collateral sources unless those sources by law must seek subrogation.
  - g. Prohibits *res ipsa loquitur*.
  - h. Prohibits suits based on oral contracts.
  - i. Defines informed consent.
  - j. Revises "good samaritan" law to include hospital emergencies.
7. Requires hospitals as a condition of licensure to obtain insurance from the Medical Indemnity Corporation of Alaska in the amount of \$200,000 per occurrence, up to \$1,000,000 per year, with an additional \$20,000 per bed for each bed over 50. Provides for a self-insured deductible and coverage by a carrier other than the Medical Indemnity Corporation of Alaska if certain conditions are met. Requires hospitals to have a risk management program.
8. Limits liability for persons providing information to a review organization and for members of a review organization. Provides that records of a review organization are immune from discovery in a suit.
9. Establishes a medical mutual insurance corporation called Medical Indemnity Corporation of Alaska, and provides for its administration:
  - a. Specifies membership of its board of governors by profession.
  - b. Requires a plan of operation approved by the director of insurance.

- c. Requires an occurrence type policy and permits it to be retroactive to January 1, 1975.
- d. May provide added coverage to a minimum of \$ 1,000,000 for physicians and \$ 5,000,000 for hospitals.
- e. Requires reporting of claim information to director of insurance and licensing boards.
- f. Provides that rates shall be a function of physician revenue or number of beds and may include a minimum for each category or discipline; shall consider individual risk factor disciplines and categories.
- g. Permits the corporation to attempt to obtain reinsurance on the market for two years, after that time it must elect to either (1) retain all risk or (2) reinsure all risk.

10. Establishes a standby Joint Underwriting Association in the event the MICA is unable to reinsure under option (9)(g)(2) above.

11. Establishes a loan fund to loan up to \$ 6,000,000 to the MICA: \$ 3,000,000 for surplus and \$ 3,000,000 to compensate for fluctuating loan experience. Repayment to be in annual installments at an interest rate of 4% over the discount rate.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 27, 1976

SUBJECT: Free Conference CS for Senate CS for CSHB 574

TO: Senator Jalmar Kerttula, Chairman  
Senator Mike Colletta  
Senator Pat Rodey  
Rep. Terry Gardiner  
Rep. Bob Bradley  
Rep. Ted Smith

FROM: Anne Carpeneti, <sup>alc</sup> Legislative Counsel

The following is a list of the parts of the bill where there were minor differences between the Senate and House bills. I have tried to note them all, but probably missed some. Also noted are changes in drafting of a technical nature, dealing with the insurance provisions, which were suggested by Richard Block. I have not noted below the drafting changes made for the purpose of style and clarity only.

Page 16, lines 5 - 8

The court pays the costs of all experts called by the board and for three experts called by each side up to \$150 per day for each witness

Page 17, lines 12 - 19

At the committee's suggestion the questions which may be presented to the expert advisory panel were redrafted

Page 20, lines 20 - 22

At the committee's direction, this sentence was added to clear up the periodic payments provision

Page 23, line 28

The committee accepted Mr. Block's proposal regarding waiver of insurance requirements for hospitals; Mr. Block found an error in his proposal which was corrected

Note: This change removes the power of waiver under this subsection and leaves only the power to permit a deductible

Page 24, lines 24 - 25

The provision requiring the regulations to be submitted to the Administrative Regulation Review Committee before adoption was deleted; prior review is beyond the present statutory power of the committee. The committee's power to review after adoption remains the same.

Page 30, line 1

The name of the corporation was changed to one less cumbersome

Page 30, lines 19 - 21

This is the House version which allows attorneys to be on the board of governors; attorneys may have something to contribute??

Page 33, lines 22 - 23

Provides that the corporation is exempt from membership in the Alaska Insurance Guaranty Corporation

Page 35, lines 3 - 4

The power to contract for management service is from the House version

Page 36, lines 11 - 12

The minimum rate provision is from the House bill; it is tied to the House provisions adopted by the committee on lines 7 - 10 of page 36

Page 37, lines 8 - 9 ("as developed....")

This is from the House bill

Page 37, lines 18 - 19

This is a House provision which provides for repayment of loans as a factor in rate making

Page 37, lines 27 - 28

Effective date of cancellation changed to 30 days from date of posting; the former provision (10 days from receipt) was not workable; e.g. in a case where the provider is out of state for an extended period

Page 38, line 12 (after "state.")

"except that any disability insurer may elect to pay any tax or assessment due without otherwise participating as a member." was deleted due to a constitutional defect (art. IX, sec. 7, DEDICATED FUNDS PROVISION).

Page 40, lines 23 - 24

Provides that the JUA is not a member of the Alaska Insurance Guaranty Association

Page 42, lines 15 - 21

These provisions were added in an attempt to avoid the dedicated funds problem

Page 44, lines 19-29 - page 45, lines 1-6

This excludes the corporation and JUA from participation in the Alaska Insurance Guaranty Association

The following are suggestions for changes by the Department of Commerce and Economic Development. As they are of a substantive nature, they are not included in the draft but are passed on for your consideration.

Page 15, lines 2 - 5

Mr. Block would prefer seeing the period changed to seven days with a provision excusing persons who are disabled from the seven-day limit.

Page 18, line 17 after "opinion" insert

"except that the nonappearance of a panel member for cross-examination may not for that reason alone render the report inadmissible

Page 18, lines 20 - 21

Mr. Block would limit considerably the discretion of the court to allow discovery before the report is complete

Page 38, line 24

Mr. Block would rather have the Director of Insurance appoint the board members of the JUA; his position is that this is the practice for other similar entities

Page 45, line 22

Mr. Block would have the bill apply retroactively to all cases which have arisen but have not gone to trial on the effective date of the Act



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 23, 1976

Free Conference Committee on  
House Bill 574  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Re: SCS CS HB 574 am S (Medical Malpractice)

Gentlemen:

I would like to take this opportunity to provide written comments to the Free Conference Committee on House Bill 574 to follow up on verbal discussions that my Staff Counsel had last week with Senator Rodey and Representative Gardiner concerning the payment of expert witness expenses by the Court under the Senate's proposed arbitration provisions.

Both the mandatory and voluntary arbitration provisions (Pages 11 and 13 of the Bill as amended by the Senate) require that the Court will pay the costs of experts required by the board in addition to paying compensation to each member of the arbitration board. We do not have any objections to payment of the board members' compensation, but believe there is potential for unreasonably high costs for expert witnesses under the Bill as written. We appreciate the concern that the alternative of arbitration be made as attractive as possible to litigants. We do not, however, believe that requiring the parties to bear the costs of their medical experts will substantially undermine the use of arbitration. We would, therefore, urge that the Bill provide that expert witness costs will be borne by the parties, as is the case with all other types of personal injury litigation.

Should the Committee wish to retain the provision requiring payment of experts by the Court, however, we would urge that some limitations on costs be provided in the Statute. It is not unusual for an expert medical witness from outside Alaska to charge as much as \$10,000. Without any limitations on either the maximum

Free Conference Committee on  
House Bill 574 - 2

March 23, 1976

fee allowable or on the number of experts that may be called, a single arbitration proceeding could result in the State's having to pay very large amounts of money in expert witness costs. We would suggest that the Bill provide for a maximum fee chargeable to the Court for each expert of \$150 per day, including expenses, and a limitation of no more than three experts for each party. Any excess in costs would then be paid by the party or parties.

Finally, we have attempted to develop a meaningful estimate of the costs of the arbitration process under the present provisions of the Bill, but without being able to estimate with any degree of accuracy the number, type, or local availability of expert witnesses that might be required in an arbitration proceeding, we cannot provide hard figures. However, under the limitations on costs we have suggested, and assuming each arbitration proceeding averaged five days and four experts, the cost of the expert witnesses would be approximately \$3,000.

I appreciate the opportunity to provide this Committee with these comments. If you require further information, please let me know.

Very truly yours,

  
Arthur H. Snowden, II  
Administrative Director

SB-AHS/bd

JAY S. HAMMOND  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 26, 1976

Honorable Jalmar Kerttula  
Chairman  
Free Conference Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Kerttula:

I am advised that the Free Conference Committee has made excellent progress in harmonizing the Senate and House versions of the Medical Malpractice Insurance Bill and, considering the complexities of this piece of legislation, each member of the Committee is to be commended for his dedication to this important issue.

From the outset, I have maintained that the solution to this problem required the participation of all involved segments of the medical delivery system, the health care providers, the insurers, the judicial system, the Bar and the State.

I am most disturbed, however, by the indications reaching me that your committee is seeking a solution on the insuring mechanism by requiring the State to insure the risk without any opportunity to at least try to obtain in the private market necessary reinsurance.

It was never my intention that the State be placed in the insurance business to the exclusion of the private insurance industry; only that the State provide the mechanism to make private placement more feasible. To establish a State fund which is denied statutory authority to access the private markets is placing the burden upon the State and, as such, one more step from our accepted form of government.

The compromise, I am told, includes a Joint Underwriting Association. The concept of a J.U.A. has been included in the Governor's Medical Malpractice Commission's recommendations and is basically a necessary back-up to protect the continuity of the program. I did, however, reject the concept of a J.U.A. that had no limits as to time, as to exposure, or as to coverage. The function of the J.U.A., which I understand you are now considering, is far too similar in actual economic effect to that which I vetoed last year.

Honorable Jalmar Kerttula

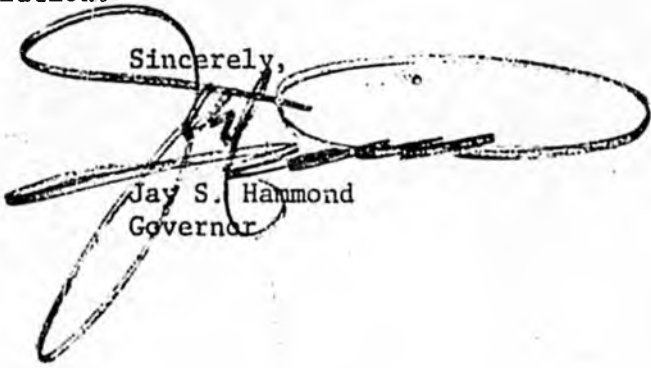
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April 26, 1976

I trust that the legislature will not permit an otherwise exemplary piece of meaningful legislation that they have created to be jeopardized by including an insuring mechanism which causes this Administration much concern.

It would be my pleasure to have you, as Chairman of the Free Conference Committee, call upon me to discuss my concerns and to jointly consider a mutually acceptable solution.

Sincerely,



Jay S. Hammond  
Governor

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

MEDICAL MALPRACTICE BILLS IN FREE CONFERENCE COMMITTEE

*same*  
House Version

Requires the Division of Occupational Licensing to provide investigative services to licensing boards of health care providers

Senate Version

Same provision in Senate bill

*2*  
*side*  
Requires chiropractors and dentists to carry medical malpractice insurance of at least \$200,000/600,000 coverage; requires dental hygienists, nurses, dispensing opticians, optometrists, pharmacists, physical therapists, psychologists and psychological associates to carry medical malpractice insurance of at least \$100,000/300,000 coverage. provides that these health care providers shall be required to purchase their insurance from the Alaska Health Care Providers Indemnity Corporation if, after a hearing, the director of insurance finds that the insurance is not available on the voluntary market and the unavailability is impairing delivery of their services

No similar provision in Senate bill

*3*  
*Abolish time*  
Requires physicians to purchase medical malpractice insurance from the Alaska Health Care Providers Indemnity Corporation (corporation) in amounts of at least \$200,000/600,000 coverage

Same provision in Senate bill

*Senate Version*

No similar provision in House bill

Adds two public members to the licensing boards of all health care providers and staggers the terms of the public members

April 28, 1976

SUGGESTIONS AND CORRECTIONS - FCCS SCSCS HB574

p. 5 l. 9-11 Restore nominations by ASMA

Reason: The governor will need all the help he can get to find physicians who will be willing to serve on a board with vast new and often unpleasant duties. Purely political appointments by governors in the past have often not worked out well.

p. 15 l. 8 Add "," after "hospital"; strike "or"; after "clinic, add "or practitioner" so that the line reads " hospital, clinic, or practitioner."

Reason: No reason to exclude a physician not in a clinic or H.M.O.

p.16 l. 27,28 Delete "unless the court decides" and substitute "unless all parties agree"  
p.45 l. 19,20

Reason: The court has made it very clear that it is opposed to expert advisory panels. It should not have the opportunity to bypass the expert advisory panel.

p.17 l. 10,11 Strike "in the court's discretion"

Reason: Same as above.

p.17 l. 12-19 Add two new questions and re-number:  
After question (1), add new question: What would have been the outcome without medical care? After question (4), add new question: What specifically caused the injury?

Reason: Question (2) describes the seriousness of the situation and is a very important part of "telling the medical story". Question (4) gets to the heart of the case and should obviously not be avoided.

p. 27 between lines 4 & 5. Reinsert guidelines section of SB 113 passed by Senate last year.

"Sec. 18.23.040 Guidelines not admissible in evidence. No guideline established by a review organization is admissible in evidence in a proceeding brought by or against a professional by a person to whom the professional has rendered professional services."

Reason: A review committee guideline standard should not be commandeered to "hang" a plaintiff.

p. 32 l. 18 & l. 20 Strike "who are physicians"

Reason: any employees of a physician or hospital should be insurable under the physician's or hospital's policy. This is current practice. For example, my office secretary and nurse were insured under my policy -- when I had one.

p. 32 l. 28 After hospital add "for any period"

Reason: Make it clear that one doesn't have to reinsure the entire period back to December 31, 1974. He may have just had 1 or 2 short gaps in coverage.

STATE OF ALASKA  
THE LEGISLATURE

FOURTH FLOOR - STATE CAPITOL  
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

MEDICAL MALPRACTICE BILLS IN FREE CONFERENCE COMMITTEE

House Version

*note number*  
36. Page 2, line 2:  
demonstrated lack of competence,  
experience, or education

*note version*  
36. Page 4, line 4:  
The director of insurance or his  
designee may waive

37. Page 13, lines 23-29  
Page 14, lines 1-3  
Mechanical and drafting differences  
in House and Senate bills

38.  
*Adopt*

Senate Version

Page 2, line 5:  
demonstrated problems of competence,  
experience, education or health

Page 4, line 23:  
The director of insurance or his  
designee shall waive

Page 16, lines 15-24

Page 8, after line 29:  
AS 08.80.070 needs to be amended  
to change quorum requirements

*add*  
Creates a revolving loan fund in the Department of Commerce and Economic Development to loan funds to the corporation when necessary for the corporation to maintain adequate reserves; loans shall be repaid by the corporation within four years at an annual interest rate of 7%; the director of insurance may sell notes of the corporation to the Department of Revenue

Creates a revolving loan fund in the Department of Economic Development to loan funds to the JUA when necessary to spread costs over time because of fluctuations in loss experience; loans shall be repaid by the JUA within five years at an annual interest rate of 6%; the director may sell notes of the JUA to the Department of Revenue

*delete  
Version 34*  
No similar provision in House bill

Provides for limited immunity from defamation for members of licensing boards of health care providers

29, line 15

25  
Requires the corporation to insure all those health care providers about which a finding has been made that insurance is not available on the private market

Provides that the corporation may insure health care providers other than physicians and hospitals on an individual basis

House Version 26  
Allows the corporation to provide risk management advice and services to hospitals

No similar provision in Senate bill

Senate 27  
No similar provision in House bill

Assesses a premium tax on the corporation

House Version 28  
Requires that rates for physicians be set as a function of medical revenues, and rates for hospitals be set as a function of the number of beds in the hospital

No similar provision in Senate bill

Senate Version 29  
No similar provision in House bill

Provides that rates may not be unfairly discriminatory

30 House Version  
Requires that disciplines and classifications within license categories be considered in rate making

This is not addressed specifically although the Senate version does require that individual risk factors be considered

30 (A) - Adopt Senate

Take a look at (B) Block + ANNE

31  
Requires that repayment of loan obligations be considered in rate making

No similar provision in Senate bill

32  
No similar provision in House bill

Creates a JUA to provide reinsurance to the corporation for that portion of the risk that the corporation is unable to reinsure on the private market

17 Expands good samaritan rule Same provision in Senate bill

*As of 9/18*  
18 Requires hospitals to purchase medical malpractice insurance from the corporation for \$200,000 per occurrence and an aggregate coverage of \$1,000,000 plus \$20,000 for each bed over 50 *Block drafting compromise* Same provision in Senate bill

*House*  
19 Requires hospitals to have internal risk management programs The same provision passed the Senate in a separate bill

*Same*  
20 Provides limited immunity from defamation claims for members of health care review organizations and persons testifying before health care review organizations Same provisions in Senate bill

*Senate*  
21 Creates the Alaska Health Care Providers Indemnity Corporation Senate bill creates similar corporation

*Senate Version*  
22 Board members are appointed by the director of insurance; the physician and hospital representatives are appointed from lists submitted by their professional organizations Board members are appointed by the governor and confirmed by the legislature, with no requirement that they be appointed from lists submitted by professional organizations

*House Version*  
23 Board members receive \$100 per day while meeting and reasonable travel expenses Board members set their own compensation

*House*  
24 No similar provision in House bill Requires corporation to obtain reinsurance from the private market if possible

9. *Senate* Expands the standard of care required of health care providers to that of other providers in the same field or specialty Same provision in Senate bill
10. *Senate* No similar provision in House bill Provides that advance payment by a health care provider or its insurer is not an admission of liability
11. *Senate* No similar provision in House bill Prohibits use of an ad damnum clause in medical malpractice cases
12. *Article* *Being worked on* 2. Allows damages to be paid on a periodic or lump sum basis; provides that awards paid periodically be increased according to annual increases in the consumer price index The Senate bill has a similar provision regarding lump sum or periodic payment but does not provide for increases according to inflation for periodic payments
13. *Senate* Provides that awards in malpractice cases be decreased by collateral sources received by plaintiff The Senate bill has a similar provision, but allows an amount to be added back to the award or set aside where there is a second injury and insurance benefits are exhausted
14. *Senate* Redrafts provision dealing with jury instructions in malpractice cases Same provision in Senate bill
15. *House* Provides that no action may arise against a provider for breach of an oral contract to provide a specific cure or result No similar provision in Senate bill
16. *House* Provides the circumstances where an action can be brought for failure to obtain informed consent of patient, and also sets out the defenses to a claim based on failure to obtain informed consent Same provision in Senate bill

~~not included in bill~~  
Sua

5  
Senate  
No similar provision in House bill

Deletes the requirement that members of the licensing board; of health care providers be appointed by the governor from a list supplied by the professional society

6  
Senate  
Expands the disciplinary powers of the licensing boards of health care providers

Same provision in Senate bill

7  
House  
Requires physicians to meet continuing education standards set by the State Medical Board

No similar provision in Senate bill

8  
Requires that all medical malpractice claims be submitted to an expert advisory panel to be appointed by the court; expenses of the panel shall be borne by the state, except where a party has made a patently frivolous claim or denial of liability in which case that party shall pay the expenses

Provides three options to encourage fast and fair settlement of malpractice cases:  
Mandatory arbitration of claims against physicians and hospitals unless all parties agree to waive arbitration; the decision of the arbitration board may be appealed to the superior court for a trial de novo unless the parties agreed to binding arbitration; findings of the arbitration board are admissible at the trial de novo if the court finds the arbitration was conducted find; the arbitration was conducted properly;  
Voluntary arbitration of malpractice claims against any health care provider;  
As an alternative to arbitration, the case shall be submitted to an expert advisory panel, unless the court determines an expert advisory panel to be unnecessary for a decision in the case;  
The court bears the costs of the arbitration or the expert advisory panel, except where a party has made a patently frivolous claim or denial of liability, in which case that party pays the expenses of either the arbitration or the expert advisory panel

good bargaining  
stock

The attached bar charts demonstrate the various kinds of reinsurance and a few of the combinations of them used. Many other combinations are possible. For example, facultative reinsurance can be purchased on an excess basis, stop loss aggregate basis, quota share basis, or total treaty. The percentages and limits are variable items. Retentions by the primary insurer are variable.

The charts demonstrate the following types and kinds of reinsurance:

1. No reinsurance
2. 100% treaty quota share
3. Excess of \$50,000.
4. Stop loss aggregate \$500,000.
5. Excess of \$50,000. and stop loss aggregate \$400,000.
6. 80% quota share
7. 80% quota share with \$500,000. stop loss aggregate
8. 100% facultative on risk generating losses 3, 5 & 10
9. M.I.C.A. example

Shaded areas on charts 2 - 9 indicate portion of loss reinsured.

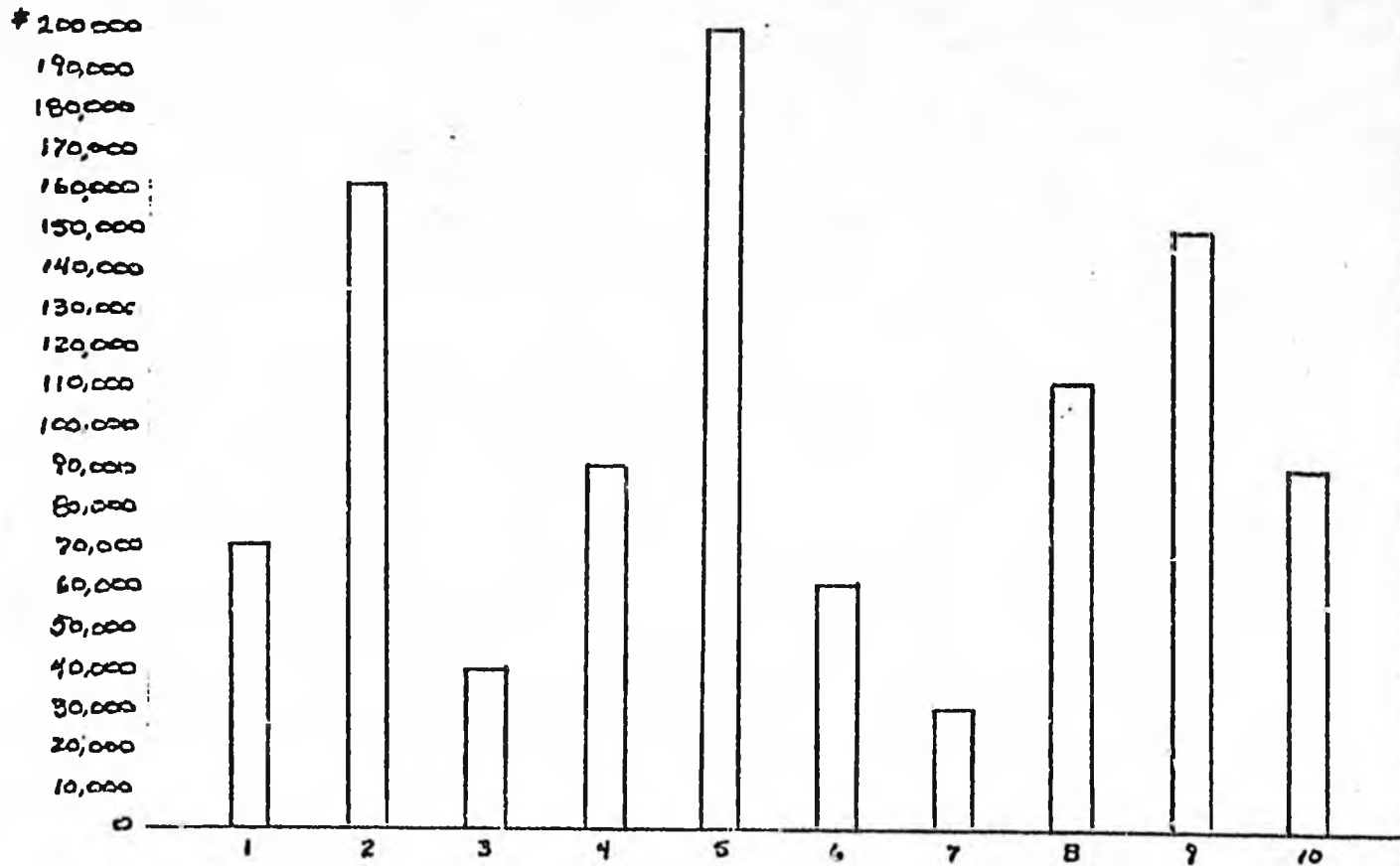
*What happens to JUA under proposal on 3 year division  
change rate of interest*

THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL \$1,000,000.

TYPE OF REINSURANCE: NONE

LOSS RETAINED BY INSURANCE COMPANY: \$1,000,000.

LOSS ASSUMED BY REINSURANCE: \$0.

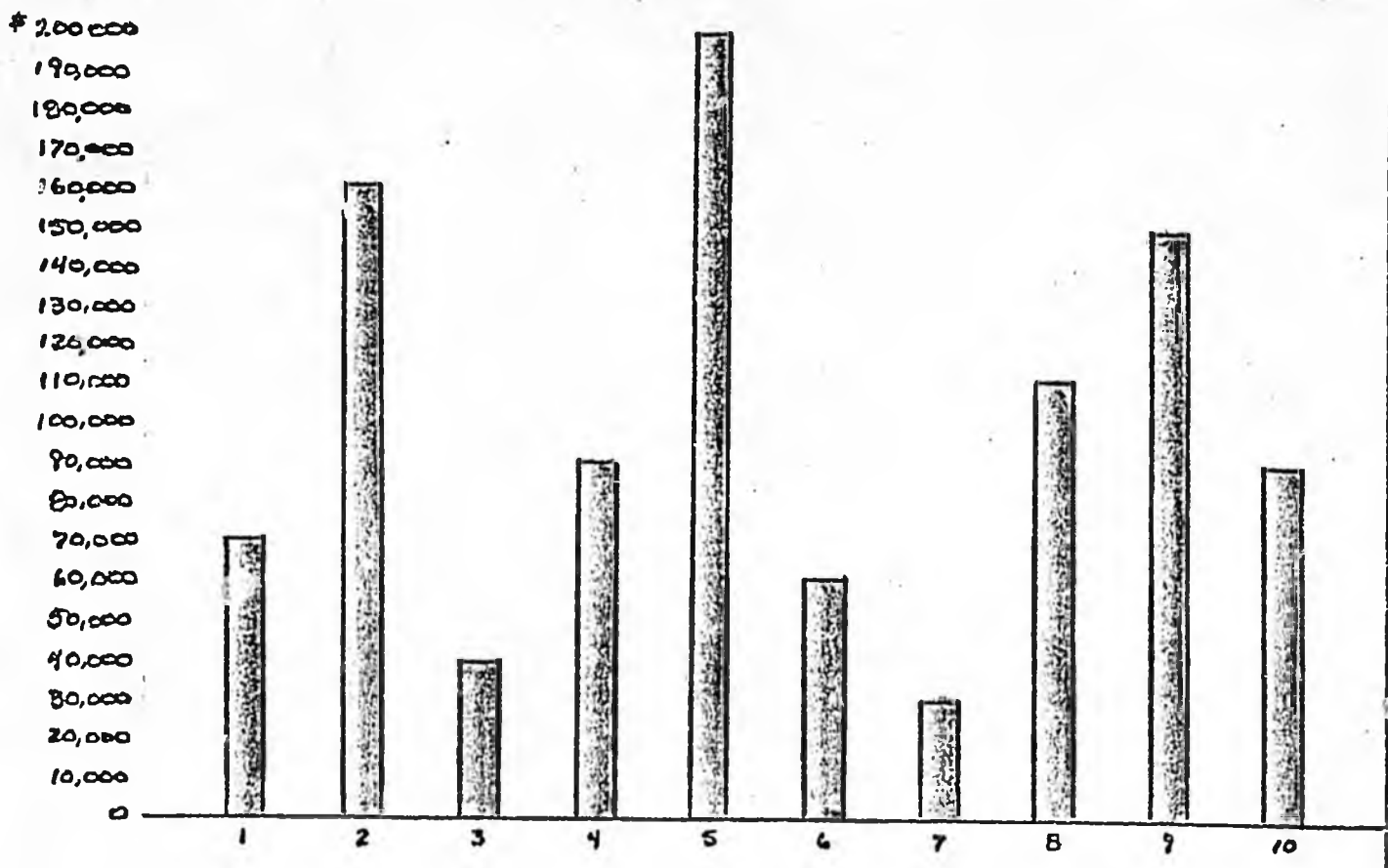


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL \$1,000,000.

TYPE OF REINSURANCE: 100% TREATY QUOTA SHARE

LOSS RETAINED BY INSURANCE COMPANY: \$0

LOSS ASSUMED BY REINSURANCE: \$1,000,000

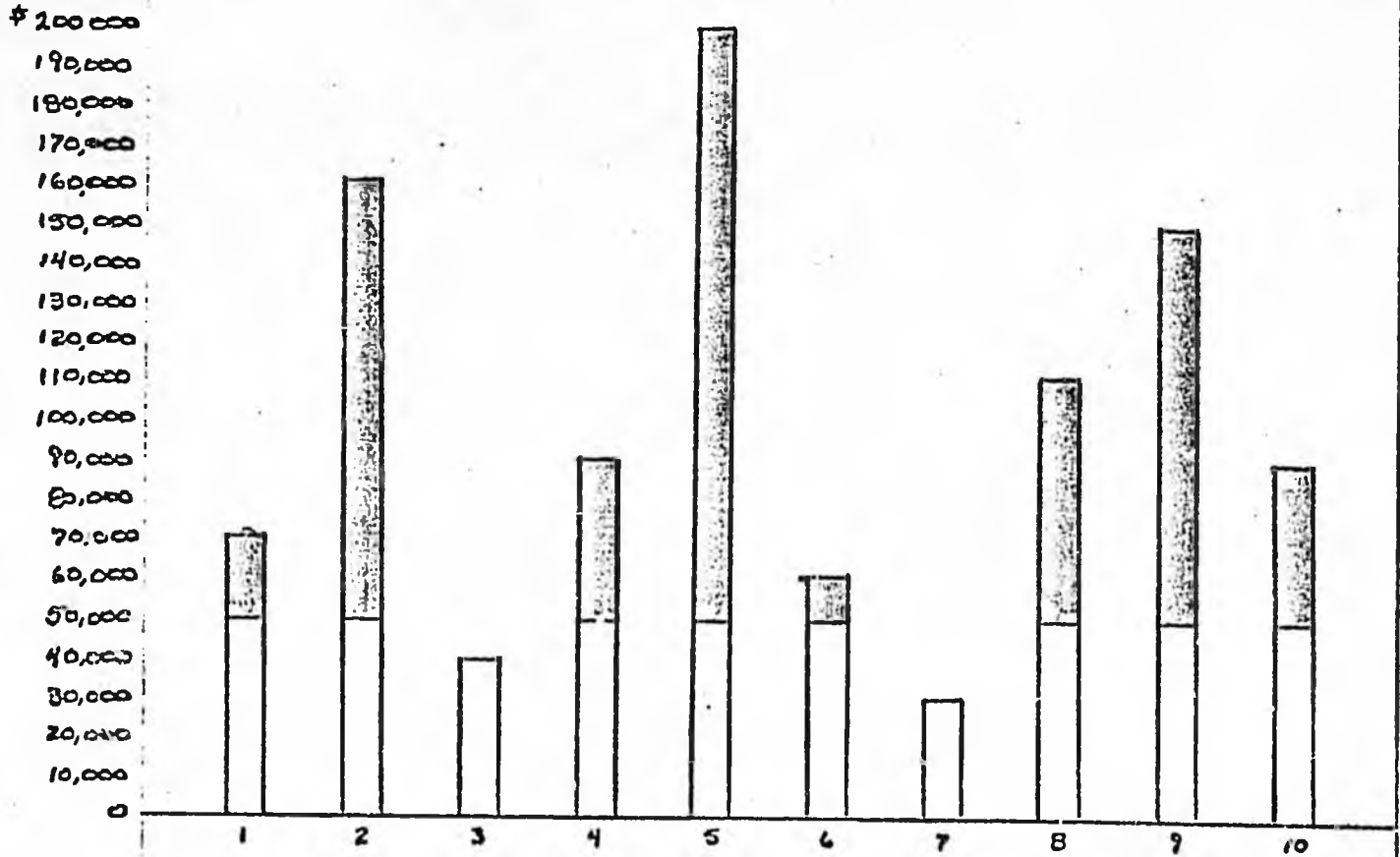


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL \$1,000,000.

TYPE OF REINSURANCE: EXCESS OF \$50,000

LOSS RETAINED BY INSURANCE COMPANY: \$470,000.

LOSS ASSUMED BY REINSURANCE: \$530,000

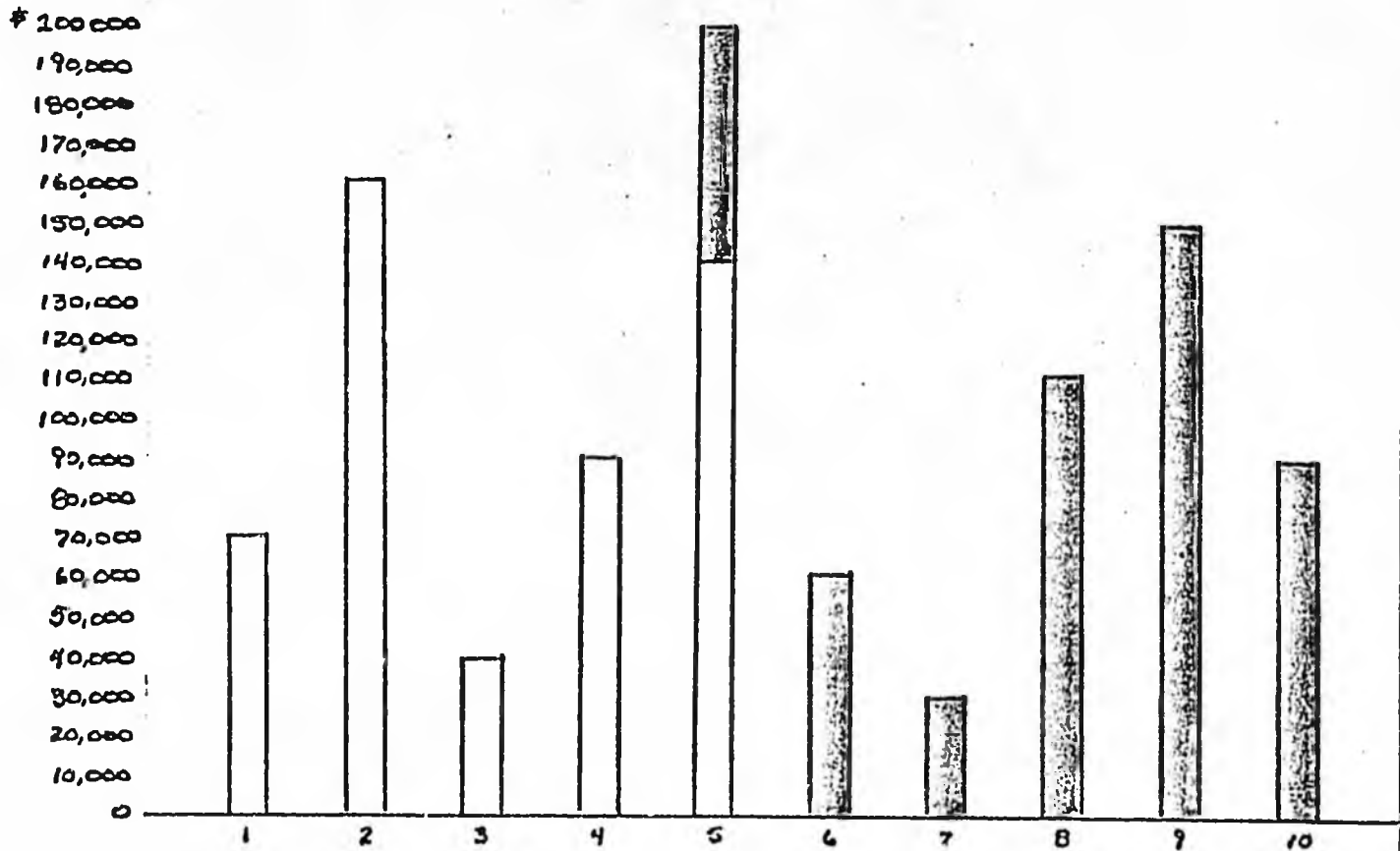


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL \$1,000,000.

TYPE OF REINSURANCE: STOP LOSS AGGREGATE \$500,000.

LOSS RETAINED BY INSURANCE COMPANY: \$500,000.

LOSS ASSUMED BY REINSURANCE: \$500,000.

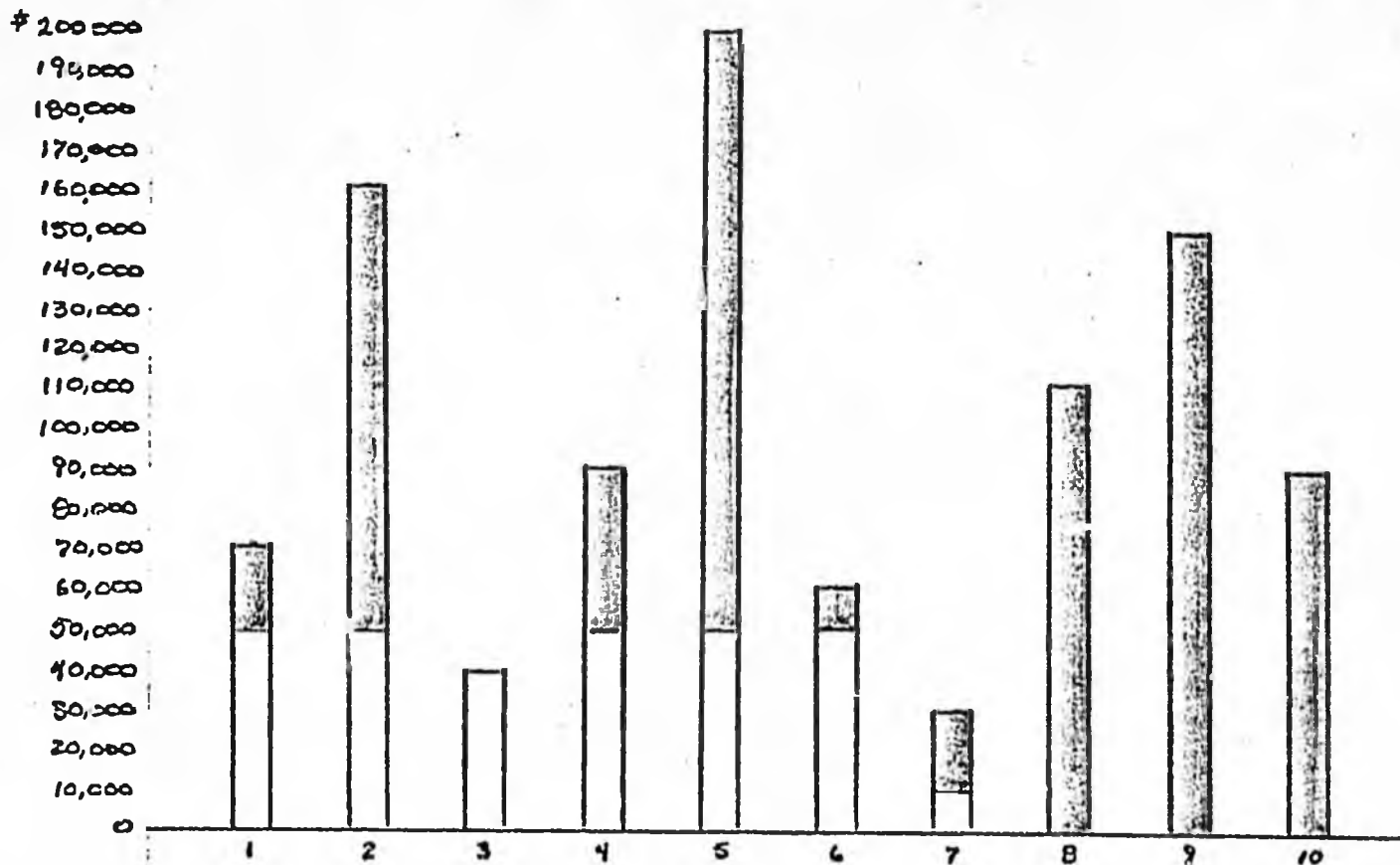


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL \$1,000,000.

TYPE OF REINSURANCE: EXCESS OF \$50,000 AND STOP LOSS AGGREGATE \$300,000.

LOSS RETAINED BY INSURANCE COMPANY: \$300,000.

LOSS ASSUMED BY REINSURANCE: \$700,000.

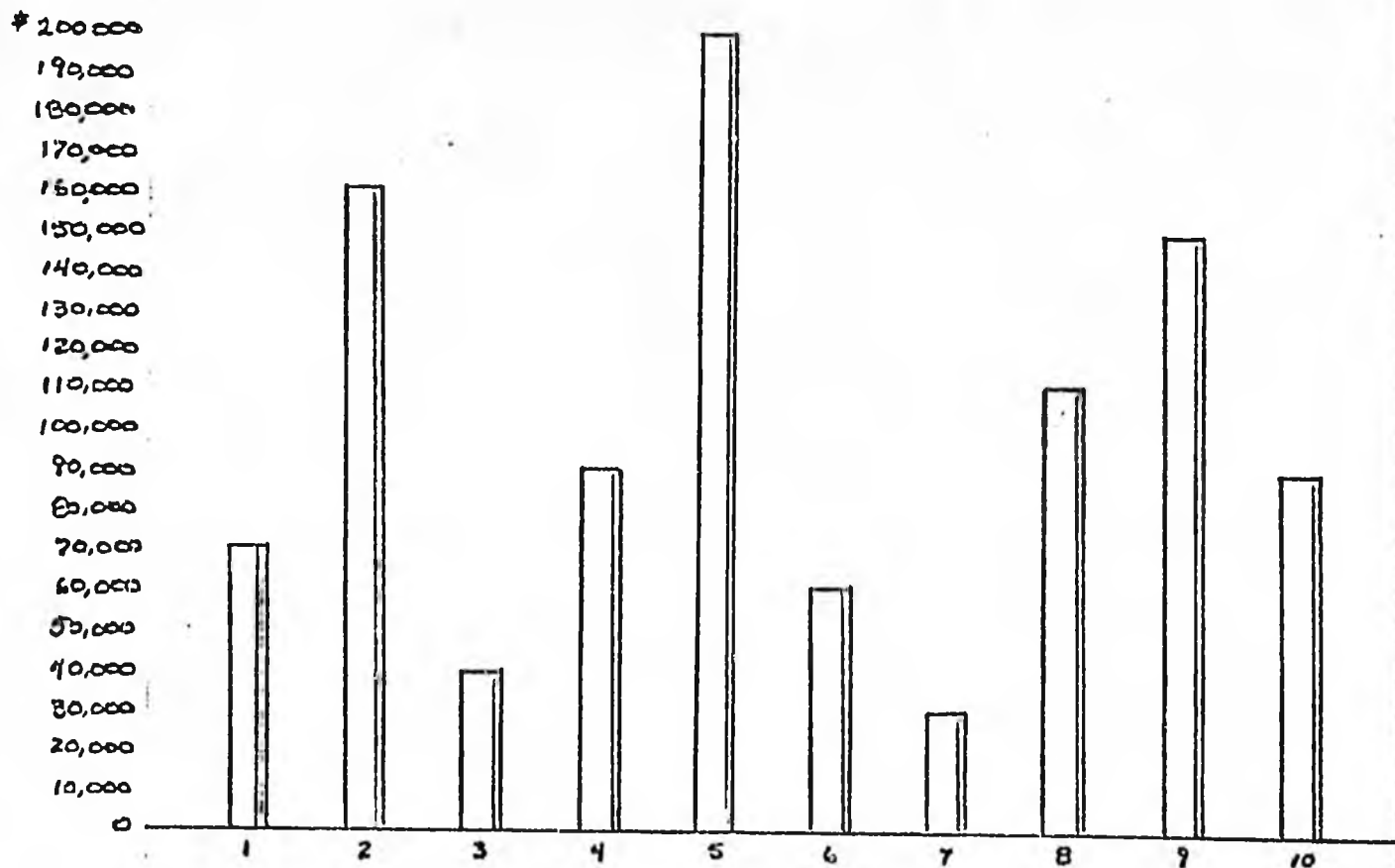


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL \$1,000,000.

TYPE OF REINSURANCE: 80% QUOTA SHARE

LOSS RETAINED BY INSURANCE COMPANY: \$800,000

LOSS ASSUMED BY REINSURANCE: \$200,000

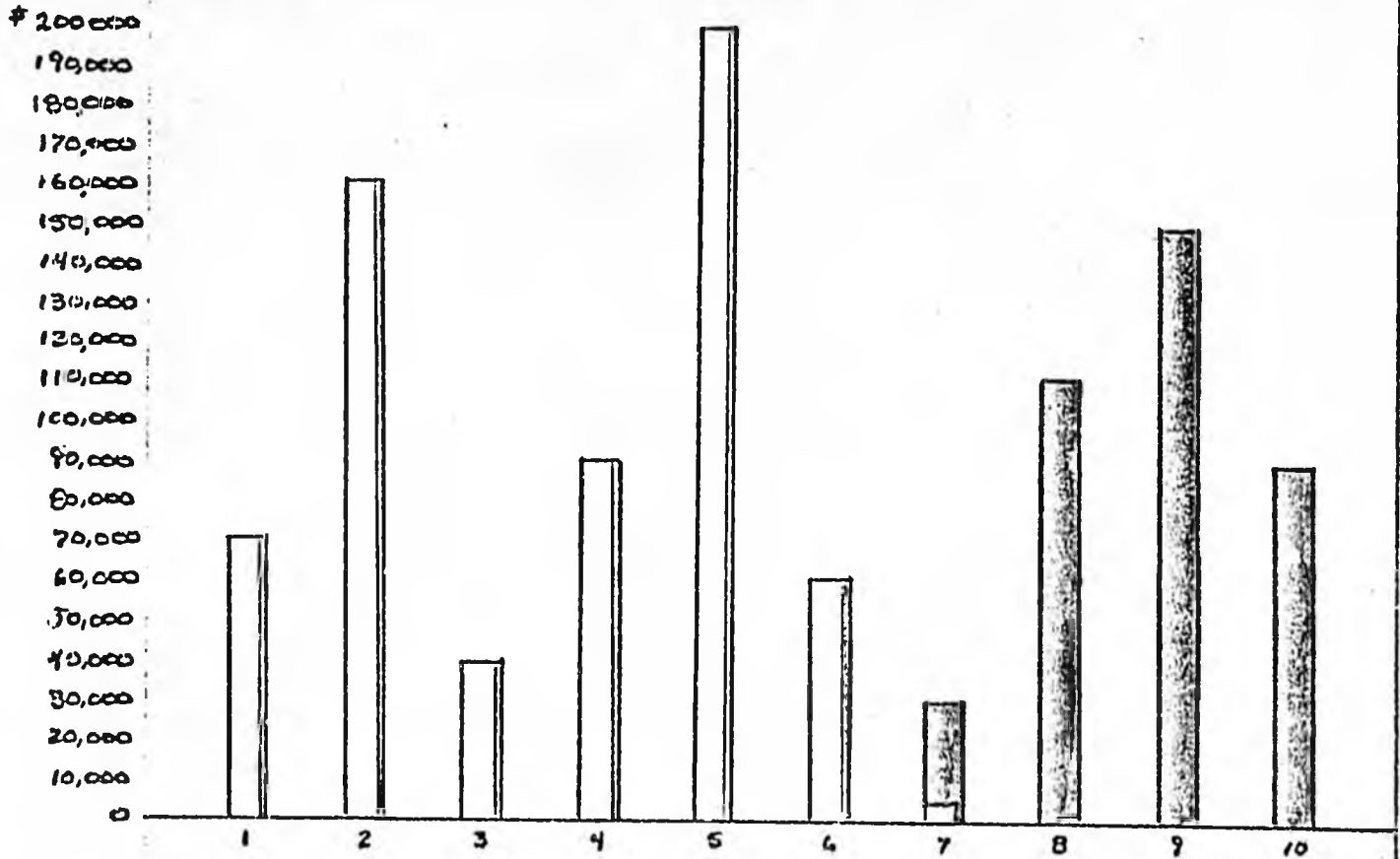


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL \$1,000,000.

TYPE OF REINSURANCE: 80% QUOTA SHARE WITH \$500,000 STOP LOSS (AGGREGATE)

LOSS RETAINED BY INSURANCE COMPANY: \$500,000

LOSS ASSUMED BY REINSURANCE: \$500,000

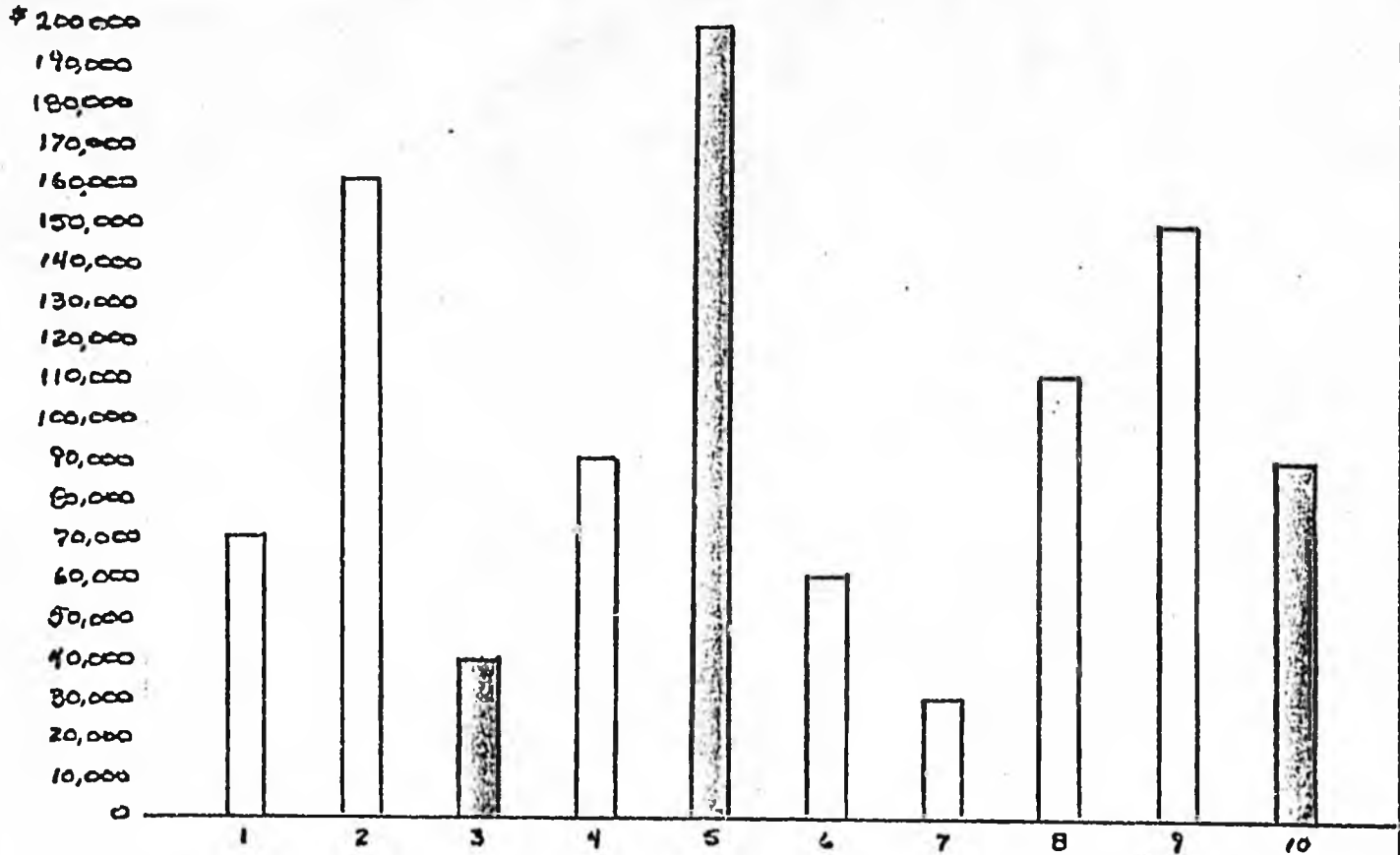


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL \$1,000,000.

TYPE OF REINSURANCE: 100% FACULTATIVE ON RISK GENERATING LOSSES 3,5+10.

LOSS RETAINED BY INSURANCE COMPANY: \$670,000.

LOSS ASSUMED BY REINSURANCE: \$330,000.

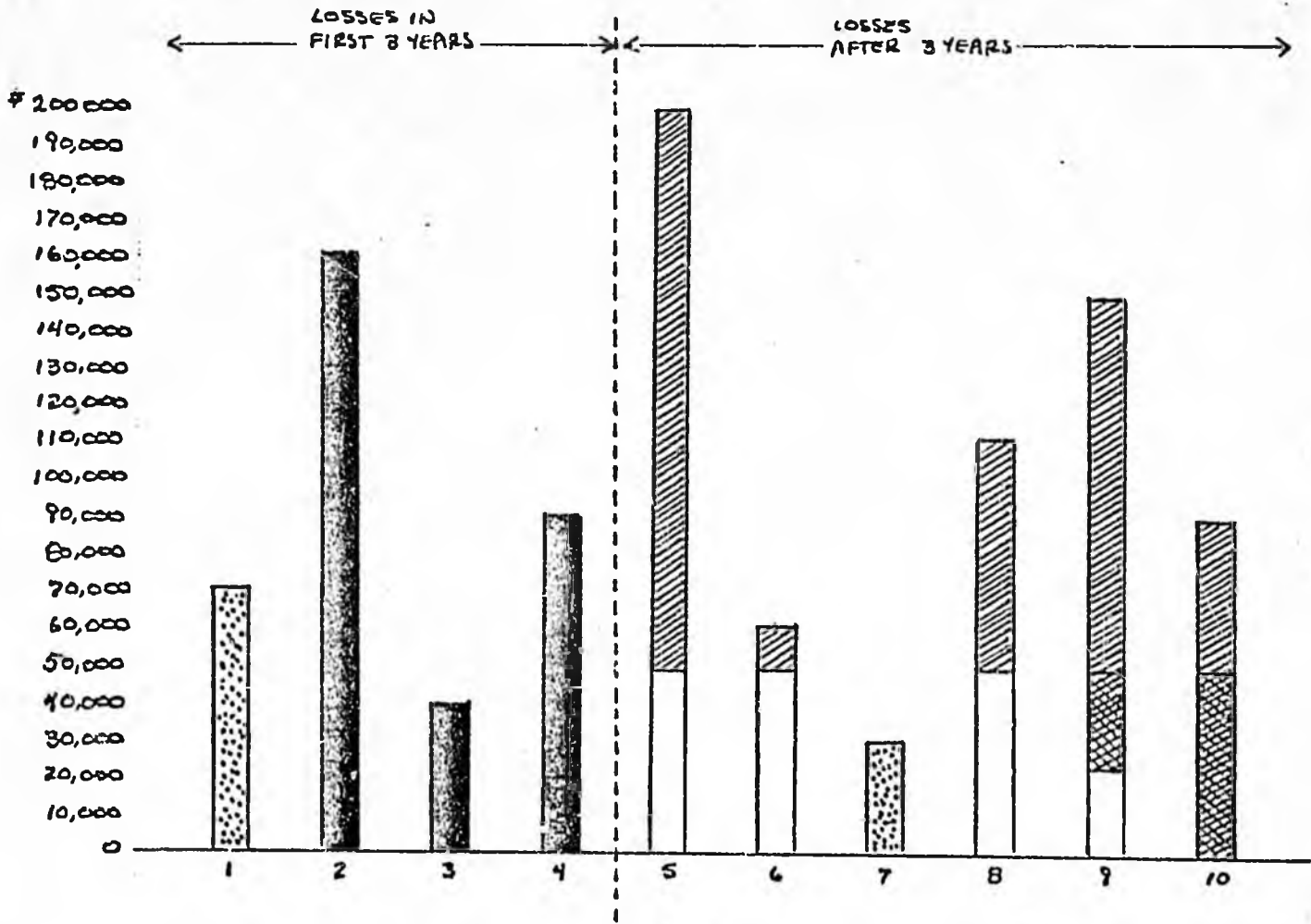


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH THE M.I.C.A. WHICH, IN THE AGGREGATE, TOTAL \$1,000,000.

TYPE OF REINSURANCE: VARIOUS. SEE BELOW

LOSS RETAINED BY M.I.C.A.: \$175,000.

LOSS ASSUMED BY REINSURANCE: \$825,000.



- LOSS RETAINED BY MIC
- HOSPITAL FACULTATIVE
- 100% QUOTA SHARE (TOTALLY REINSURED)
- EXCESS OF \$50,000 ON LOSSES BROUGHT AFTER 3 YEARS
- STOP LOSS AGGREGATE \$175,000 ON LOSSES BROUGHT AFTER 3 YEARS

AMENDMENT

page 17, lines 12 - 20 substitute following language

- (1) What was the disorder for which the plaintiff came to medical care?
- (2) What would have been the outcome without medical care?
- (3) Was the treatment selected appropriate for the case?
- (4) Did an injury arise from the medical care?
- (5) What is the nature and extent of the injury?
- (6) What specifically caused the injury?
- (7) Was the injury caused by unskillful care?
- (8) If an injury had not occurred, how would the plaintiff's condition differ from his present condition?

Amendment To Free Conference CS For Senate CS For CS For House Bill 574

Page 23, line 29  
Subsection (c)

...the policy for a hospital if the hospital demonstrates to the satisfaction of the director of insurance that without indemnity from any other source the hospital has the financial resources to discharge the maximum potential exposure to the hospital by reason of the deductible provision and the conditions of subsection (e) are satisfied.

Page 24, line 4

following subsection (c) insert subsections (d) and (e) with the following language:

(d) The Director of Insurance shall permit a hospital to insure directly all or any portion of its risk with a carrier, authorized to sell Malpractice Liability Insurance in this state if the Director of Insurance finds that permitting direct insurance will not jeopardize the insuring program of the Medical Indemnity Corporation of Alaska and the conditions of subsection (e) are satisfied.

(e) To qualify for authority to use a deductible provision the hospital, in addition to the requirements of subsection (c), or to insurer directly in addition to the requirements of subsection (b), the hospital and insurer, must:

(1) agree to permit the Medical Indemnity Corporation of Alaska to provide the defense to any claim brought against the hospital if any health care provider insured by the corporation is also, or may become, involved in the claim and to reimburse the corporation for a pro rata portion of the costs of defense; and

(2) agree to waive any right of cross complaint, counter claim or subrogation against a health care provider insured by the Medical Indemnity Corporation of Alaska, except that such agreement may provide for arbitration among involved health care providers to determine allocation of liability.

line 10, (c) (3) is changed to (e) (3).

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

Feb. 23

Original sponsor: Rules Committee by  
request of the Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 574

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability for the provision of  
7 health care services; changing the Alaska Supreme  
8 Court's Rules of Civil Procedure; and providing for an  
9 effective date."

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

11 \* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:  
12 (19) provide investigative services to the boards established  
13 under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for  
14 the purpose of assisting those boards in matters of professional dis-  
15 cipline.

16 \* Sec. 2. AS 08.20 is amended by adding new sections to read:  
17 Sec. 08.20.115. INSURANCE REQUIRED. (a) To be eligible for an  
18 active license under this chapter, a person must maintain insurance  
19 against liability to patients for chiropractic malpractice in limits of  
20 not less than \$200,000 per occurrence and \$600,000 aggregate liability  
21 per year. This requirement is satisfied if a person's employer main-  
22 tains insurance for him in the required amounts.

23 (b) The director of insurance may require all persons licensed  
24 under this chapter to obtain the insurance required under (a) of this  
25 section from the Health Care Providers Indemnity Corporation if, after  
26 public hearing, he finds that unavailability of malpractice insurance on  
27 the voluntary market for chiropractors is impairing the delivery of  
28 chiropractic services to the public.

29 Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a)

1 In addition to action under sec. 170 of this chapter, upon a finding  
2 that by reason of demonstrated lack of competence, experience, or educa-  
3 tion the authority to practice chiropractic should be limited or condi-  
4 tioned or the practitioner disciplined, the board may reprimand, censure,  
5 place on probation, restrict practice by specialty, procedure, or  
6 facility, or require continuing education or retraining.

7 (b) The Administrative Procedure Act (AS 44.62) applies to any  
8 action taken by the board under this section.

9 \* Sec. 3. AS 08.32 is amended by adding new sections to read:

10 Sec. 08.32.015. INSURANCE REQUIRED. (a) To be eligible for an  
11 active license under this chapter, a person must maintain insurance  
12 against liability to patients for malpractice in limits of not less than  
13 \$100,000 per occurrence and \$300,000 aggregate liability per year. This  
14 requirement is satisfied if the person's employer maintains insurance  
15 for him in the required amounts.

16 (b) The director of insurance may require all persons licensed  
17 under this chapter to obtain the insurance required under (a) of this  
18 section from the Health Care Providers Indemnity Corporation if, after  
19 public hearing, he finds that unavailability of malpractice insurance on  
20 the voluntary market for dental hygienists is impairing the delivery of  
21 dental hygienists' services to the public.

22 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
23 to action under sec. 160 of this chapter, upon a finding that by reason  
24 of demonstrated lack of competence, experience, or education the author-  
25 ity to practice dental hygiene should be limited or conditioned or the  
26 practitioner disciplined, the board may reprimand, censure, place on  
27 probation, restrict practice by specialty, procedure, or facility, or  
28 require continuing education or retraining.

29 (b) The Administrative Procedure Act (AS 44.62) applies to any

1 action taken by the board under this section.

2 \* Sec. 4. AS 08.36 is amended by adding new sections to read:

3 Sec. 08.36.115. INSURANCE REQUIRED. (a) To be eligible for an  
4 active license under this chapter, a person must maintain insurance  
5 against liability to patients for dental malpractice in limits of not  
6 less than \$200,000 per occurrence and \$600,000 aggregate liability per  
7 year. This requirement is satisfied if a person's employer maintains  
8 insurance for him in the required amounts.

9 (b) The director of insurance may require all persons licensed  
10 under this chapter to obtain the insurance required under (a) of this  
11 section from the Health Care Providers Indemnity Corporation if, after  
12 public hearing, he finds that unavailability of malpractice insurance on  
13 the voluntary market for dentists is impairing the delivery of dentist  
14 services to the public.

15 Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
16 to action under sec. 320 of this chapter, upon a finding that by reason  
17 of demonstrated lack of competence, experience, or education the author-  
18 ity to practice dentistry should be limited or conditioned or the  
19 practitioner disciplined, the board may censure, place on probation,  
20 restrict practice by specialty, procedure, or facility, or require  
21 continuing education or retraining.

22 (b) The Administrative Procedure Act (AS 44.62) applies to any  
23 action taken by the board under this section.

24 \* Sec. 5. AS 08.64 is amended by adding new sections to read:

25 Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an  
26 active license under this chapter, a person must maintain insurance  
27 issued by the Health Care Providers Indemnity Corporation against  
28 liability to patients for medical malpractice in limits of not less than  
29 \$200,000 per occurrence and \$600,000 aggregate liability per year. This

Require counseling

1 requirement is satisfied if a person's employer maintains insurance for  
2 him from the Health Care Providers Indemnity Corporation in the required  
3 amounts.

4 (b) The director of insurance or his designee may waive the  
5 requirement in (a) of this section for a person if that person furnishes  
6 satisfactory evidence of his having other insurance providing coverage  
7 in amounts not less than those specified in (a) of this section. No  
8 waiver granted under this subsection may extend beyond the normal expira-  
9 tion date of the person's insurance policy or January 1, 1977, whichever  
10 occurs first.

11 Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board  
12 shall promote a high degree of competence in the practice of medicine by  
13 requiring every physician licensed in the state to fulfill continuing  
14 education requirements.

15 (b) Before a license may be renewed the licensee shall submit  
16 evidence to the board that continuing education requirements prescribed  
17 by regulations adopted by the board have been met.

18 (c) The board may exempt a physician from the requirements of (b)  
19 of this section upon an application by him giving evidence satisfactory  
20 to the board that he is unable to comply with the requirements because  
21 of extenuating circumstances. However, no person may be exempted from  
22 more than 15 hours of continuing education in a five-year period.

23 Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
24 In addition to action under sec. 330 of this chapter, upon a finding  
25 that by reason of demonstrated lack of competence, experience, or  
26 education the authority to practice under this chapter should be limited  
27 or conditioned or the practitioner disciplined, the board may reprimand,  
28 censure, place on probation, restrict practice by specialty, procedure,  
29 or facility, or require continuing education or retraining.

1 (b) The Administrative Procedure Act (AS 44.62) applies to any  
2 action taken by the board under this section.

3 \* Sec. 6. AS 08.68 is amended by adding new sections to read:

4 Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an  
5 active license as a nurse under this chapter, a person must maintain  
6 insurance against liability to patients for malpractice in limits of not  
7 less than \$100,000 per occurrence and \$300,000 aggregate liability per  
8 year. This requirement is satisfied if a person's employer maintains  
9 insurance for him in the required amounts.

10 (b) The director of insurance may require all persons licensed  
11 under this chapter to obtain the insurance required under (a) of this  
12 section from the Health Care Providers Indemnity Corporation if, after  
13 public hearing, he finds that unavailability of malpractice insurance on  
14 the voluntary market for nurses is impairing the delivery of nurse  
15 services to the public.

16 Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
17 to action under sec. 270 of this chapter, upon a finding that by reason  
18 of demonstrated lack of competence, experience, or education the author-  
19 ity to practice nursing should be limited or conditioned or the practi-  
20 tioner disciplined, the board may reprimand, censure, place on probation,  
21 restrict practice by specialty, procedure, or facility, or require  
22 continuing education or retraining.

23 (b) The Administrative Procedure Act (AS 44.62) applies to any  
24 action taken by the board under this section

25 \* Sec. 7. AS 08.71 is amended by adding new sections to read:

26 Sec. 08.71.085. INSURANCE REQUIRED. (a) To be eligible for an  
27 active license under this chapter, a person must maintain insurance  
28 against liability to patients for malpractice in limits of not less than  
29 \$100,000 per occurrence and \$300,000 aggregate liability per year. This

1 requirement is satisfied if a person's employer maintains insurance for  
2 him in the required amounts.

3 (b) The director of insurance may require that all persons li-  
4 censed under this chapter obtain the insurance required under (a) of  
5 this section if, after public hearing, he finds that unavailability of  
6 malpractice insurance on the voluntary market for dispensing opticians  
7 is impairing delivery of the services of dispensing opticians to the  
8 public.

9 Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
10 In addition to action under sec. 170 of this chapter, upon a finding  
11 that by reason of demonstrated lack of competence, experience, or  
12 education the authority to practice as a dispensing optician under this  
13 chapter should be limited or conditioned or the practitioner disciplined,  
14 the board may reprimand, censure, place on probation, restrict practice  
15 by procedure or facility, or require continuing education or retraining.

16 (b) The Administrative Procedure Act (AS 44.02) applies to any  
17 action taken by the board under this section.

18 \* Sec. 8. AS 08.72 is amended by adding new sections to read:

19 Sec. 08.72.115. INSURANCE REQUIRED. (a) To be eligible for an  
20 active license under this chapter, a person must maintain insurance  
21 against liability to patients for malpractice in limits of not less than  
22 \$100,000 per occurrence and \$300,000 aggregate liability per year. This  
23 requirement is satisfied if a person's employer maintains insurance for  
24 him in the required amounts.

25 (b) The director of insurance may require all persons licensed  
26 under this chapter to obtain insurance required under (a) of this  
27 section from the Health Care Providers Indemnity Corporation if, after  
28 public hearing, he finds that unavailability of malpractice insurance on  
29 the voluntary market for optometrists is impairing delivery of optome-

1           trist services to the public.

2           Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
3           In addition to action under secs. 240 and 250 of this chapter, upon a  
4           finding that by reason of demonstrated lack of competence, experience,  
5           or education the authority to practice optometry under this chapter  
6           should be limited or conditioned or the practitioner disciplined, the  
7           board may reprimand, censure, place on probation, restrict practice by  
8           specialty, procedure, or facility, or require continuing education or  
9           retraining.

10           (b) The Administrative Procedure Act (AS 44.62) applies to any  
11           action taken by the board under this section.

12       \* Sec. 9. AS 80.80 is amended by adding new sections to read:

13           Sec. 08.80.135. INSURANCE REQUIRED. (a) To be eligible for  
14           active registration as a pharmacist, a person must maintain insurance  
15           against liability to patients for malpractice in limits of not less than  
16           \$100,000 per occurrence and \$300,000 aggregate liability per year. This  
17           requirement is satisfied if a person's employer maintains insurance for  
18           him in the required amounts.

19           (b) The director of insurance may require that all persons li-  
20           censed under this chapter obtain the insurance required under (a) of  
21           this section from the Health Care Providers Indemnity Corporation if,  
22           after public hearing, he finds that unavailability of malpractice  
23           insurance on the voluntary market for pharmacists is impairing delivery  
24           of pharmacist services to the public.

25           Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
26           In addition to action under sec. 260 of this chapter, upon a finding  
27           that by reason of demonstrated lack of competence, experience, or  
28           education the authority to practice pharmacy under this chapter should  
29           be limited or conditioned or the practitioner disciplined, the board may

1 reprimand, censure, place on probation, restrict practice by specialty,  
2 procedure, or facility, or require continuing education or retraining.

3 (b) The Administrative Procedure Act (AS 44.62) applies to any  
4 action taken by the board under this section.

5 \* Sec. 10. AS 08.84 is amended by adding new sections to read:

6 Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for  
7 active registration as a physical therapist under this chapter, a  
8 person must maintain insurance against liability to patients for mal-  
9 practice in limits of not less than \$100,000 per occurrence and \$300,000  
10 aggregate liability per year. This requirement is satisfied if a per-  
11 son's employer maintains insurance for him in the required amounts.

12 (b) The director of insurance may require that all persons li-  
13 censed under this chapter obtain the insurance required in (a) of this  
14 section from the Health Care Providers Indemnity Corporation if, after  
15 public hearing, he finds that unavailability of malpractice insurance on  
16 the voluntary market for physical therapists is impairing delivery of  
17 physical therapist services to the public.

18 Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
19 to action under sec. 180 of this chapter, upon a finding that by reason  
20 of demonstrated lack of competence, experience, or education the author-  
21 ity to practice physical therapy should be limited or conditioned or the  
22 practitioner disciplined, the board may reprimand, censure, place on  
23 probation, restrict practice by specialty, procedure, or facility, or  
24 require continuing education or retraining.

25 (b) The Administrative Procedure Act (AS 44.62) applies to any  
26 action taken by the board under this section.

27 \* Sec. 11. AS 08.86.120 is amended to read:

28 Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes the  
29 examination given by the board and possesses the insurance required by

1 sec. 125 of this chapter is entitled to be licensed as a psychologist.

2 \* Sec. 12. AS 08.86.160 is amended to read:

3 Sec. 08.86.160. ASSOCIATES: ENTITLEMENT TO LICENSURE. A person  
4 who passes the examination given by the board and who possesses insur-  
5 ance in accordance with sec. 125 of this chapter is entitled to be  
6 licensed as a psychological associate.

7 \* Sec. 13. AS 08.86 is amended by adding new sections to read:

8 Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for  
9 active licensure as a psychologist under this chapter, a person must  
10 maintain insurance against liability to patients for malpractice in  
11 limits of not less than \$100,000 per occurrence and \$300,000 aggregate  
12 liability per year. This requirement is satisfied if a person's em-  
13 ployer maintains insurance for him in the required amounts.

14 (b) The director of insurance may require all persons licensed  
15 under this chapter to obtain insurance required under (a) of this  
16 section from the Health Care Providers Indemnity Corporation if, after  
17 public hearing, he finds that unavailability of malpractice insurance on  
18 the voluntary market for psychologists is impairing the delivery of  
19 psychologist services to the public.

20 Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
21 Upon a finding that by reason of demonstrated lack of competence,  
22 experience, or education the authority to practice psychology or as a  
23 psychological associate under this chapter should be limited or condi-  
24 tioned or the practitioner disciplined, the board may reprimand, censure,  
25 place on probation, restrict practice by time, specialty, procedure, or  
26 facility, or require continuing education or retraining.

27 (b) The Administrative Procedure Act (AS 44.62) applies to any  
28 action taken by the board under this section.

29 \* Sec. 14. AS 09.55.530 is repealed and re-enacted to read:

1 ARTICLE 6. MALPRACTICE ACTIONS.

2 Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds  
3 that the health of the people is threatened by curtailment of health  
4 care services due to the difficulty in obtaining adequate malpractice  
5 insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of  
6 this chapter to protect the health and safety of the people of this  
7 state by establishing procedural aids for handling malpractice claims  
8 which will help ensure the ready availability of adequate insurance at a  
9 reasonable cost and which will be fair to all parties concerned.

10 \* Sec. 15. AS 09.55 is amended by adding a new section to read:

11 Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for  
12 damages due to personal injury or death based upon the provision of  
13 professional services by a health care provider, the court shall estab-  
14 lish a three-person expert advisory panel in accordance with this  
15 section. When the action is filed the court shall, by order, determine  
16 the professions or specialties to be represented on the expert advisory  
17 panel and shall advise each party of the professions or specialties to  
18 be represented, giving the parties the opportunity to object or make  
19 suggestions. The court may in its discretion conduct other preliminary  
20 proceedings relative to the composition of the panel as it considers  
21 appropriate.

22 (b) The expert advisory panel may compel the attendance of wit-  
23 nesses, interview the parties and physically examine the injured person  
24 if alive, consult with the specialists or learned works they consider  
25 appropriate, and compel the production of and examine all relevant  
26 hospital, medical, or other records or materials relating to the health  
27 care treatment. The panel may meet in camera, but shall maintain a  
28 record of any testimony or oral statements of witnesses, and shall keep  
29 copies of all written statements and opinions it receives. Not less

? Not More than ?  
?

1 than 30 days after selection of the panel, it shall make a written  
2 report to the parties and to the court, substantially answering the  
3 following questions in addition to any other question which the court  
4 puts to the panel:

5 (1) Was the claimant adversely affected by any act or omis-  
6 sion in the rendering of the medical services?

7 (2) What was the adverse effect?

8 (3) How did the medical services alter the natural course of  
9 the preexisting disorder for which the services were originally ren-  
10 dered?

11 (4) How did the medical condition existing after performance  
12 of the medical services differ from the medical condition which might  
13 otherwise have been expected?

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

1 (d) No discovery may be undertaken in a case until the report of  
2 the expert advisory panel is received. However, the court may relax  
3 this prohibition upon a showing of good cause by any party. If the  
4 panel has not completed its report within the 30-day period prescribed  
5 in (b) of this section, the court may, upon application, grant it an  
6 additional 30 days.

7 (e) The report of the panel and any dissenting or concurring  
8 opinion are admissible in evidence to the same extent as though its  
9 contents were orally testified to by the person or persons preparing it.  
10 The court shall delete any portion that would not be admissible because  
11 of lack of foundation for opinion testimony, or otherwise. Either party  
12 may submit expert testimony to support or refute the report. The jury  
13 shall be instructed in general terms that the report shall be considered  
14 and evaluated in the same manner as any other expert testimony. Any  
15 member of the panel may be called by any party and may be cross-examined  
16 as to the contents of the report or of his dissenting or concurring  
17 opinion.

18 (f) Members of a panel are entitled to travel expenses and per  
19 diem in accordance with state law pertaining to members of boards and  
20 commissions for all time spent in preparing its report and matters  
21 incidental to it. If a panel member is called upon as a witness at  
22 trial or upon deposition, he is entitled to payment of an expert witness  
23 fee. All expenses incurred by the panel shall be paid by the state.

24 However, in any case in which the court determines that a party has made  
25 a patently frivolous claim or a patently frivolous denial of liability,  
26 it shall order that all costs of the expert advisory panel be borne by  
27 the party making that claim or denial.

28 (g) Parties to the case and their counsel may not initiate com-  
29 munication out of court with members of the panel on the subject matter

*Amending Rule 8Z  
do we need  
this*

1 of its inquiry and report or cause or solicit others to do so, except  
2 through ordinary discovery proceedings.

3 \* Sec. 16. AS 09.55.540 is amended to read:

4 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action  
5 based on the negligence or wilful misconduct of a health care provider  
6 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-  
7 36], the plaintiff has [SHALL HAVE] the burden of proving by a prepon-  
8 derance of the evidence

9 (1) the degree of knowledge or skill possessed or the degree  
10 of care ordinarily exercised under the circumstances, at the time of the  
11 act complained of, by health care providers in the field or specialty in  
12 which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING  
13 THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT  
14 PRACTICES];

15 (2) that the defendant either lacked this degree of knowledge  
16 or skill or failed to exercise this degree of care; and

17 (3) that as a proximate result of this lack of knowledge or  
18 skill or the failure to exercise this degree of care the plaintiff  
19 suffered injuries that would not otherwise have been incurred.

20 (b) In malpractice actions there is [SHALL BE] no presumption of  
21 negligence on the part of the defendant.

22 \* Sec. 17. AS 09.55 is amended by adding a new section to read:

23 Sec. 09.55.546. AWARDS, COLLATERAL SOURCES. (a) In a malpractice  
24 action damages shall be awarded according to the principles of the com-  
25 mon law. The fact finder in rendering its award for damages shall  
26 specify the amount awarded for each category of loss, computing loss of  
27 future earnings on a monthly basis. The court may enter a judgment that  
28 future damages be paid in whole or in part by periodic payments rather  
29 than by a lump sum payment; however, any part of the award which is paid

1 on periodic basis shall be increased annually in the same proportion as  
2 annual increases in the consumer price index for the community in which  
3 the claimant resides.

4 (c) Except when the collateral source is a federal program which  
5 by law must seek subrogation, an award to which a claimant is entitled  
6 may only cover damages which exceed any amounts received by the claimant  
7 as compensation for his injuries from collateral sources, whether pri-  
8 vate, group, or governmental, and whether contributory or noncontribu-  
9 tory, except the death benefit paid under life insurance. Evidence of  
10 damages compensation by a collateral source, other than a federal pro-  
11 gram which must seek subrogation and the death benefit paid under life  
12 insurance, shall be credited against the award after the fact finder has  
13 rendered its award. Notwithstanding other provisions of state law and  
14 except as provided in this subsection, a collateral source does not have  
15 a right of subrogation.

16 \* Sec. 18. AS 09.55.550 is amended to read:

17 Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]  
18 malpractice actions the jury shall be instructed that the plaintiff has  
19 the burden of proving, by a preponderance of the evidence, the health  
20 care provider's negligence or wilful misconduct in accordance with  
21 sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall  
22 be further instructed that injury alone does not raise a presumption of  
23 the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or  
24 misconduct.

25 \* Sec. 19. AS 09.55 is amended by adding new sections to read:

26 Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a  
27 health care provider arises for breach of an oral contract to provide a  
28 cure or achieve a specific medical result.

29 Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is

1 liable for failure to obtain the informed consent of a patient if the  
2 claimant establishes by a preponderance of the evidence that the pro-  
3 vider has failed to inform the patient of common risks and reasonable  
4 alternatives to the proposed treatment or procedure, and that, but for  
5 that failure, the claimant would not have consented to the proposed  
6 treatment or procedure.

7 (b) It is a defense to any action for health care malpractice  
8 based upon an alleged failure to obtain such an informed consent that

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

11 (2) the patient stated to the health care provider that he  
12 would undergo the treatment or procedure regardless of the risk in-  
13 volved, or that he did not want to be informed of the matters to which  
14 he would be entitled to be informed;

15 (3) under the circumstances consent by or on behalf of the  
16 patient was not possible; or

17 (4) the health care provider, after considering all of the  
18 attendant facts and circumstances, used reasonable discretion as to the  
19 manner and extent to which the alternatives or risks were disclosed to  
20 the patient because he reasonably believed that the manner and extent of  
21 such a disclosure would reasonably be expected to adversely and sub-  
22 stantially affect the patient's condition.

23 Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

24 (1) "health care provider" means a chiropractor licensed  
25 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist  
26 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing  
27 optician licensed under AS 08.71; an optometrist licensed under AS 08.-  
28 72; a pharmacist licensed under AS 08.80; a physical therapist licensed  
29 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a

1 psychologist and a psychological associate licensed under AS 08.86; and  
2 a hospital as defined in AS 18.20.130, including a governmentally owned  
3 or operated hospital;

4 (2) "panel" means an expert advisory panel established under  
5 sec. 536 of this chapter.

6 \* Sec. 20. AS 09.65.090 is repealed and re-enacted to read:

7 Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person,  
8 at a hospital or at any other location, who renders emergency care or  
9 emergency counseling to an injured, ill, or emotionally distraught  
10 person who reasonably appears to the person rendering the aid to be in  
11 immediate need of emergency aid in order to avoid serious harm or death  
12 is not liable for civil damages as a result of an act or omission in  
13 rendering emergency aid.

14 (b) This section does not preclude liability for civil damages as  
15 a result of gross negligence or reckless or intentional misconduct.

16 \* Sec. 21 AS 18.20 is amended by adding new sections to read:

17 Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a con-  
18 dition of licensure, shall submit to the department and maintain evi-  
19 dence of insurance against liability to inpatients and outpatients for  
20 malpractice issued by the Health Care Providers Indemnity Corporation,  
21 in amounts of not less than \$200,000 per occurrence, and an aggregate  
22 liability per year of \$1,000,000 minimum, and an additional \$20,000 for  
23 each bed over 50 for which the hospital is licensed.

24 Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a li-  
25 cense each hospital shall have in operation an internal risk management  
26 program which shall

27 (1) investigate the frequency and causes of adverse incidents  
28 in hospitals which cause injury to patients;

29 (2) develop and implement measures to minimize the risk of

1 injury to patients from adverse incidents; in developing these measures  
2 each hospital shall take into account recommendations of the Health  
3 Care Providers Indemnity Corporation, its medical staff, private under-  
4 writers, industry standards, experience of other hospitals, and recom-  
5 mendations of licensing boards of other health care providers; and

6 (3) analyze patient grievances which relate to patient care.

7 (b) The department shall adopt by regulation and submit to the  
8 legislative administrative regulation review committee prior to imple-  
9 mentation standards for risk management programs in hospitals in the  
10 state which may vary according to the size of the hospital, the type of  
11 care offered by the hospital, and other factors found relevant by the  
12 department.

13 \* Sec. 22. AS 18 is amended by adding a new chapter to read:

14 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

15 Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING  
16 INFORMATION TO REVIEW ORGANIZATION. (a) No person providing informa-  
17 tion to a review organization is subject to action for damages or other  
18 relief by reason of having furnished that information, unless the  
19 information is false and the person providing the information knew or  
20 had reason to know the information was false.

21 (b) No privilege of confidentiality arising from a physician-  
22 patient relationship may be invoked to withhold pertinent information  
23 from review by a review organization.

24 Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW  
25 ORGANIZATIONS. No person who is a member or employee of, or who acts in  
26 an advisory capacity to, or who furnishes counsel or services to, a  
27 review organization is liable for damages or other relief in an action  
28 brought by a person whose activities have been or are being scrutinized  
29 or reviewed by a review organization, by reason of his performance of a

1 duty, function or activity of the review organization, unless the per-  
2 formance of the duty, function or activity was motivated by malice  
3 toward the affected person. No person is liable for damages or other  
4 relief in an action by reason of his performance of a duty, function, or  
5 activity as a member of a review organization or by reason of a recom-  
6 mendation or action of the review organization when the person acts in  
7 the reasonable belief that his action or recommendation is warranted by  
8 facts known to him or to the review organization after reasonable  
9 efforts to ascertain the facts upon which the review organization's  
10 action or recommendation is made.

11 Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.

12 (a) Except as provided in (b) of this section, all data and information  
13 acquired by a review organization, in the exercise of its duties and  
14 functions, shall be held in confidence, may not be disclosed to anyone  
15 except to the extent necessary to carry out one or more of the purposes  
16 of the review organization, and is not subject to subpoena or discovery.  
17 Except as provided in (b) of this section, no person described in sec.  
18 20 of this chapter may disclose what transpired at a meeting of a review  
19 organization except to the extent necessary to carry out one or more of  
20 the purposes of a review organization, and the proceedings and records  
21 of a review organization are not subject to discovery or introduction  
22 into evidence in a civil action against a health care provider arising  
23 out of the matter which is the subject of consideration by the review  
24 organization. Information, documents, or records otherwise available  
25 from original sources are not immune from discovery or use in a civil  
26 action merely because they were presented during proceedings of a review  
27 organization, nor may a person who testified before a review organiza-  
28 tion or who is a member of it be prevented from testifying as to matters  
29 within his knowledge, but a witness may not be asked about his testimony

1 before a review organization or opinions formed by him as a result of  
2 its hearings, except as provided in (b) of this section.

3 (b) Testimony, documents, proceedings, records, and other evidence  
4 adduced before a review organization that are otherwise inaccessible  
5 under this section may be obtained by a health care provider who claims  
6 that denial is unreasonable or may be obtained under subpoena or dis-  
7 covery proceedings brought by a plaintiff who claims that information  
8 provided to a review organization was false and claims that the person  
9 providing the information knew or had reason to know the information was  
10 false.

11 (c) Nothing in this chapter prevents a person whose conduct or  
12 competence has been reviewed under this chapter from obtaining, for the  
13 purpose of appellate review of the action of the review organization,  
14 any testimony, documents, proceedings, records and other evidence  
15 adduced before the review organization.

16 Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized  
17 by sec. 30 of this chapter, a disclosure of data and information ac-  
18 quired by a review committee or of what transpired at a review meeting  
19 is a misdemeanor and punishable under AS 11.05.010.

20 Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter  
21 relieves a person of liability which he has incurred or may incur to a  
22 person as a result of furnishing health care to the patient.

23 Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organi-  
24 zation reviews matters under sec. 70(5)(H) of this chapter no party is  
25 bound by a ruling of the organization in a controversy, dispute or  
26 question unless he agrees in advance, either specifically or generally,  
27 to be bound by the ruling.

28 Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context  
29 otherwise requires,

1 (1) "administrative staff" means the staff of a hospital or  
2 clinic;

3 (2) "health care" means professional services rendered by a  
4 health care provider or an employee of a health care provider, and  
5 services furnished by a sanatorium, rest home, nursing home, boarding  
6 home or other institution for the hospitalization or care of human  
7 beings;

8 (3) "health care provider" means a chiropractor licensed  
9 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist  
10 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing  
11 optician licensed under AS 08.71; an optometrist licensed under AS 08.-  
12 77; a pharmacist licensed under AS 08.80; a physical therapist licensed  
13 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a  
14 psychologist and a psychological associate licensed under AS 08.86; and  
15 a hospital as defined in AS 18.20.130, including a governmentally owned  
16 or operated hospital;

17 (4) "professional service" means service rendered by a  
18 health care provider of the type he is licensed to render;

19 (5) "review organization" means a hospital governing body or  
20 a committee whose membership is limited to health care providers and  
21 administrative staff, except where otherwise provided for by state or  
22 federal law, and which is established by a hospital, by a clinic, by one  
23 or more state or local associations of health care providers, by an  
24 organization of health care providers from a particular area or medical  
25 institution, or by a professional standards review organization estab-  
26 lished under 42 U.S.C., sec. 1320(c)(1) et seq., to gather and review  
27 information relating to the care and treatment of patients for the  
28 purposes of

29 (A) evaluating and improving the quality of health care

1 rendered in the area or medical institution;

2 (B) reducing morbidity or mortality;

3 (C) obtaining and disseminating statistics and infor-  
4 mation relative to the treatment and prevention of diseases,  
5 illness and injuries;

6 (D) developing and publishing guidelines showing the  
7 norms of health care in the area or medical institution;

8 (E) developing and publishing guidelines designed to  
9 keep the cost of health care within reasonable bounds;

10 (F) reviewing the quality or cost of health care ser-  
11 vices provided to enrollees of health maintenance organizations;

12 (G) acting as a professional standards review organi-  
13 zation under 42 U.S.C., sec. 1320(c)(1) et seq.;

14 (H) reviewing, ruling on, or advising on controversies,  
15 disputes or questions between

16 (i) a health insurance carrier or health mainte-  
17 nance organization and one or more of its insured or enrol-  
18 lees;

19 (ii) a professional licensing board, acting under  
20 its powers of discipline or license revocation or suspension,  
21 and a health care provider licensed by it when the matter is  
22 referred to a review organization by the professional li-  
23 censing board;

24 (iii) a health care provider and his patients con-  
25 cerning diagnosis, treatment or care, or a charge or fee;

26 (iv) a health care provider and a health insurance  
27 carrier or health maintenance organization concerning a charge  
28 or fee for health care services provided to an insured or  
29 enrollee; or

1 (v) a health care provider or his patients and the  
2 federal or a state or local government, or an agency of the  
3 federal or a state or local government;

4 (I) acting on the recommendation of a credential review  
5 committee or a grievance committee.

6 \* Sec. 23. AS 21 is amended by adding a new chapter to read:

7 CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

8 ARTICLE 1. PURPOSE.

9 Sec. 21.98.010. PURPOSE OF CHAPTER. It is the purpose of this  
10 chapter to provide a means of assuring all health care providers  
11 continuous, affordable and adequate insurance against liability for  
12 medical negligence by concentrating all such insurance in one entity  
13 and to distribute equitably the cost of the insurance among the health  
14 care providers insured.

15 ARTICLE 2. INDEMNITY CORPORATION.

16 Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska  
17 Health Care Providers Indemnity Corporation which is a public corpora-  
18 tion having a legal existence independent of and separate from the  
19 state. Obligations issued by the corporation do not constitute a debt  
20 liability or obligation of the state or a pledge of full faith and  
21 credit of the state.

22 Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The cor-  
23 poration shall exercise its powers through a board of governors which  
24 shall be appointed by the director as provided in (b) of this section.

25 (b) The appointments to the board of governors shall be Alaska  
26 residents as follows:

27 (1) two members of the Alaska State Medical Association  
28 appointed from a list of no less than five persons recommended by the  
29 governing board of that association; one of the members appointed shall

1 be engaged in group practice in a clinic of six or more physicians  
2 licensed in the state;

3 (2) one member of the Alaska State Hospital Association  
4 appointed from a list of no less than three persons recommended by the  
5 governing board of that association;

6 (3) two professionals in the insurance field;

7 (4) two persons who are neither health care providers nor  
8 affiliated with the insurance industry.

9 (c) The term of office of each governor is three years, except  
10 that the director shall designate three initially appointed governors to  
11 serve for one year and two initially appointed governors to serve for  
12 two years.

13 (d) Upon the expiration of the term of a governor, the director  
14 shall appoint a successor who shall be from the same class described in  
15 (b) of this section as the governor whose term has expired.

16 (e) Upon a governor's early resignation, death or inability to  
17 serve, the director shall appoint a successor from the same class  
18 defined in (b) of this section as the terminating governor, who shall  
19 serve for the unexpired term.

20 (f) The director or his designee is not a voting member of the  
21 board of governors but shall be notified by the board of and have the  
22 right to attend and participate in all meetings and proceedings of the  
23 board.

24 (g) Members of the board of governors receive \$100 per day when  
25 the board meets, and travel expenses as allowed by law.

26 Sec. 21.38.040. CORPORATION PLAN OF OPERATION. (a) Within 30  
27 days after the effective date of this chapter, the board of governors  
28 shall prepare and submit to the director for approval a plan of opera-  
29 tion which provides for the fair, reasonable and equitable administra-

1 tion of the affairs of the corporation and the discharge of the purposes  
2 for which it is created. The plan and any amendments of it become  
3 effective upon the director's approval. If the board of governors has  
4 failed to submit a plan of operation, or if at any subsequent time the  
5 board of governors fails to submit suitable amendments to the plan, the  
6 director shall, after notice and hearing, adopt and promulgate a plan of  
7 operation or amendments which are necessary or advisable to effectuate  
8 the provisions of this chapter. Adoption of the plan is not subject to  
9 the Administrative Procedure Act (AS 44.62).

10 (b) The plan of operation shall

11 (1) establish the procedures by which all the powers and  
12 duties of the corporation specified in sec. 50 of this chapter shall be  
13 performed;

14 (2) establish procedures for handling assets and discharging  
15 liabilities of the corporation;

16 (3) establish regular places and times for meetings of the  
17 board of governors;

18 (4) establish procedures for records to be kept of all  
19 financial transactions of the corporation, its agents, and the board of  
20 governors;

21 (5) establish procedures for awarding contracts to carry out  
22 the provisions of this chapter;

23 (6) establish the procedures for issuing contracts of insur-  
24 ance as provided in sec. 50 of this chapter and for the determination of  
25 rates;

26 (7) contain additional provisions necessary or proper for the  
27 execution of the powers and duties of the corporation.

28 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The  
29 corporation shall

1 (1) issue to all health care providers who pay the premiums  
2 for it a contract on an occurrence basis indemnifying the health care  
3 provider and his employees who are health care providers against loss by  
4 reason of liability and agreeing to tender on behalf of the health care  
5 provider and his employees who are health care providers a defense of  
6 the health care provider in a proceeding brought under AS 09.55.530 -  
7 09.55.560; the limit of liability shall be no less than the minimum  
8 liability coverage required to be maintained as stated in AS 08.64.21,  
9 and AS 18.20.045; the contract shall cover the defense against but need  
10 not indemnify a claim for punitive damages; the contract shall cover  
11 claims against health care providers

12 (A) that arise out of professional services performed  
13 by the health care provider during the period for which the pre-  
14 mium is paid; and

15 (B) at the option of the health care provider, that  
16 arise out of services performed by the health care provider after  
17 December 31, 1974 for any period in which the health care provider  
18 had no malpractice insurance, except that coverage will not be  
19 provided for a claim already filed or of which the health care pro-  
20 vider has or reasonably should have had notice at the time retro-  
21 active insurance was purchased;

22 (2) charge a premium for the protection provided by the  
23 contracts issued under (1) of this subsection which shall be determined  
24 by the board of governors in accordance with sec. 70 of this chapter and  
25 subject to the approval of th. director;

26 (3) comply with or be subject to AS 21.06.090, 21.06.120,  
27 21.06.140, 21.06.160, 21.06.250; AS 21.09.180, 21.09.190, 21.09.200,  
28 21.09.250, 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18,  
29 21, 24, and 36 of this title;

*and for an additional premium*

1 (4) carry out the obligations of the contracts issued under  
2 (1) of this subsection by defending all covered claims made against  
3 insured health care providers and by paying all liabilities which are  
4 finally adjudicated against the insured health care provider or which  
5 may in the opinion of the corporation reasonably be expected to be  
6 finally adjudicated against the health care provider to the extent of  
7 the contract obligation;

8 (5) provide coverage to health care providers for liability  
9 under AS 09.55.530 - 09.55.560 in excess of the minimum limits required  
10 for licensure as a health care provider, but limited to \$1,000,000 for  
11 individual health care providers and \$5,000,000 for hospitals, if there  
12 is a finding by the director that this coverage is unavailable at a  
13 reasonable cost and that this coverage can be made available at a rea-  
14 sonable cost through the corporation; if this paragraph is implemented,  
15 each health care provider obtaining excess coverage up to these amounts  
16 shall obtain it from the corporation, and the corporation may procure  
17 reinsurance for all the risks incurred by contracts issued under this  
18 paragraph from the private market.

19 (b) The corporation may

20 (1) employ or retain persons, individual or corporate, to  
21 discharge its obligations and shall pay, by way of salary, wage, fee, or  
22 commission, reasonable compensation for those services; employees of the  
23 corporation are not considered state employees;

24 (2) provide coverage to health care providers for other  
25 hazards including malpractice liability insurance for other licensed  
26 health care providers employed by the physician or hospital [if there is  
27 a finding by the director that this coverage is otherwise unavailable by  
28 reason of the operation of the corporation;]

29 (3) borrow funds from the revolving loan fund established

1 under sec. 110 of this chapter when necessary for the corporation to  
2 maintain adequate reserves; loans from the fund shall be repaid<sup>^</sup> within  
3 four years after the loan is made at an annual interest rate of seven  
4 percent; <sup>from</sup> and (through prospective <sup>premium</sup> rate increases);

5 (4) negotiate and become a party to those contracts as are  
6 necessary to carry out the purposes of the corporation;

7 (5) sue or be sued in the name of the corporation;

8 (6) negotiate and become a party to contracts for management  
9 services for the corporation;

10 (7) provide risk management advice and services to hospitals;

11 (8) perform all other acts necessary and proper to effectuate  
12 the corporation.

13 Sec. 21.88.060. STATISTICS. The corporation shall collect,  
14 maintain and report information concerning claims against health care  
15 providers. All such information shall be on forms prescribed by the  
16 director and shall be sufficient to enable a proper determination of  
17 losses for rate making and to identify causes and sources of loss for  
18 loss control. No less often than annually the corporation shall report  
19 to the director, which report shall be kept available to the public, the  
20 number and amount of claims filed, reserved, paid, settled and adjudi-  
21 cated during the year, the premiums paid to, and the expenses incurred  
22 by the corporation during the year. The director may require that  
23 supplemental reports include the names of insured health care providers  
24 and the claimants; however, no reports which become publicly available  
25 may include the names of health care providers or claimants or informa-  
26 tion that will permit by inference the identity of specific health care  
27 providers or claimants. All information shall be made available to the  
28 appropriate licensing boards or agencies.

29 Sec. 21.88.070. RATES. Rates and rating plans used by the corpora-

1 tion for the policies issued shall be determined for each category of  
2 health care provider in accordance with all of the following:

3 (1) rates for physicians shall be set as a function of the  
4 physician's medical revenue; [in this paragraph medical revenue means the  
5 physician's revenue from the practice of medicine as reported when  
6 paying the tax levied under AS 43.70;]

7 (2) rates for hospitals shall be set as a function of the  
8 number of permanent beds in the hospital; *Average rate of occupancy*

9 (3) a minimum rate may be set for each category of health  
10 care provider or discipline or classification within the license cate-  
11 gory;

12 (4) rates may not be excessive; rates are excessive if, after  
13 a period of time and with respect to an amount of gross premium which  
14 are actuarially credible, the premiums exceed losses incurred by the  
15 corporation, including losses paid, reserves for claims reported and  
16 unpaid, reserves for claims incurred during the policy period and not  
17 reported but reasonably expected to be reported within three years after  
18 the date of the incident, and reasonable expenses for the operation of  
19 the corporation;

20 (5) rates may not be inadequate; rates are inadequate if,  
21 based on available actuarial data, the premiums to be paid by the health  
22 care providers are or may reasonably be expected to be insufficient to  
23 pay for losses incurred by the corporation, including claims paid,  
24 reserves for claims reported and unpaid, reserves for claims incurred  
25 during the policy year and not reported but reasonably expected to be  
26 reported within three years after the date of the incident, and reason-  
27 able expenses for the operation of the corporation;

28 (6) rates shall be adjusted at least as often as annually;

29 (7) rates for any policy year shall be calculated to include

1 the adjustment for actual experience of the corporation as developed for  
2 the preceding four policy years;

3 (8) in considering losses to be incurred, changes in the law  
4 and national, regional and local trends in medical negligence awards may  
5 be considered;

6 (9) income from investment of reserves shall be considered;

7 (10) disciplines and classifications within the license cate-  
8 gories of health care providers shall be considered;

9 (11) individual risk underwriting factors shall be considered;

10 (12) ~~an amount~~ <sup>necessary</sup> sufficient to repay any loan obligations shall  
11 ~~be~~ <sup>considered.</sup>

12 Sec. 21.89.080. REQUIRED INSURANCE; CANCELLATION. The corporation  
13 shall provide insurance to all health care providers otherwise eligible  
14 for licensure under AS 08.64 and AS 18.20. The corporation may provide  
15 for installment payment of premiums in which event each installment is  
16 due by the date specified. The corporation may cancel any of its  
17 policies in the event of nonpayment of any premium or installment on a  
18 premium or other charge by mailing or delivering to the insured at the  
19 address shown on the policy and to the agency of the state issuing the  
20 insured's license written notice stating when, not less than 10 days  
21 after notice is received by the insured, the cancellation is effective.

### 22 ARTICLE 3. LOAN FUND.

23 Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department  
24 of Commerce and Economic Development a medical malpractice liability  
25 revolving loan fund to be administered by the director of insurance.

26 (b) Loans shall be made from the fund to the corporation upon  
27 certification by the director that a loan is necessary for the corpora-  
28 tion to maintain adequate reserves or for initial costs of operation.  
29 If a loan is made to the corporation from the fund, the corporation  
shall issue a note to the fund pledging the premiums collected in the

1 future as security for the loan.

2 (c) Loans from the fund shall be repaid by the corporation within  
3 four years at an annual interest rate of seven per cent.

4 (d) The director may sell [or transfer] at par value to the Depart-  
5 ment of Revenue the notes held by the Department of Commerce and Economic  
6 Development as security for loans made under this section. The Depart-  
7 ment of Revenue shall purchase all the notes offered until the current  
8 principal amount of the notes purchased and held by the Department of  
9 Revenue equals \$5,000,000.

10 ARTICLE 4. GENERAL PROVISIONS.

11 Sec. 21.88.300. DEFINITIONS. As used in this chapter,

12 (1) "corporation" means the Health Care Providers Indemnity  
13 Corporation;

14 (2) "director" means the director of the division of insur-  
15 ance for the State of Alaska;

16 (3) "fund" means the medical malpractice liability revolving  
17 loan fund;

18 (4) "health care provider" means a physician licensed under  
19 AS 08.64 and a hospital as defined in AS 18.20.130, including a hospital  
20 or health care facility owned or operated by the state or one or more of  
21 its political subdivisions;

22 (5) "occurrence basis insurance" is insurance against claims  
23 arising during the period of the policy coverage.

24 \* Sec. 24. AS 08.64.365 is repealed.

25 \* Sec. 25. This Act takes effect 30 days after enactment.  
26  
27  
28  
29

①. Ad Damnum Clause - Calif. has it  
②. Advance Payment  
MI  
~~XXXXXX~~

Original sponsor: Rules Committee by request of the Governor

Offered: 2/24/76

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 574

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability for the provision of  
7 health care services; changing the Alaska Supreme  
8 Court's Rules of Civil Procedure; and providing for an  
9 effective date."

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

11 \* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

12 (19) provide investigative services to the boards established  
13 under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for  
14 the purpose of assisting those boards in matters of professional dis-  
15 cipline.

16 \* Sec. 2. AS 08.20 is amended by adding new sections to read: Board

17 Sec. 08.20.115. INSURANCE REQUIRED. (a) To be eligible for an  
18 active license under this chapter, a person must maintain insurance  
19 against liability to patients for chiropractic malpractice in limits of  
20 not less than \$200,000 per occurrence and \$600,000 aggregate liability  
21 per year. This requirement is satisfied if a person's employer main-  
22 tains insurance for him in the required amounts.

23 (b) The director of insurance may require all persons licensed  
24 under this chapter to obtain the insurance required under (a) of this  
25 section from the Health Care Providers Indemnity Corporation if, after  
26 public hearing, he finds that unavailability of malpractice insurance on  
27 the voluntary market for chiropractors is impairing the delivery of  
28 chiropractic services to the public.

29 Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a)

"Give  
immunity  
to  
Boards"

Add public members to each  
Board

apply this concept  
to

add health

1 In addition to action under sec. 170 of this chapter, upon a finding  
2 that by reason of demonstrated lack of competence, experience, or educa-  
3 tion the authority to practice chiropractic should be limited or condi-  
4 tioned or the practitioner disciplined, the board may reprimand, censure,  
5 place on probation, restrict practice by specialty, procedure, or  
6 facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

\* Sec. 3. AS 08.32 is amended by adding new sections to read:

10 Sec. 08.32.015. INCURANCE REQUIRED. (a) To be eligible for an  
11 active license under this chapter, a person must maintain insurance  
12 against liability to patients for malpractice in limits of not less than  
13 \$100,000 per occurrence and \$300,000 aggregate liability per year. This  
14 requirement is satisfied if the person's employer maintains insurance  
15 for him in the required amounts.

16 (b) The director of insurance may require all persons licensed  
17 under this chapter to obtain the insurance required under (a) of this  
18 section from the Health Care Providers Indemnity Corporation if, after  
19 public hearing, he finds that unavailability of malpractice insurance on  
20 the voluntary market for dental hygienists is impairing the delivery of  
21 dental hygienists' services to the public.

22 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
23 to action under sec. 160 of this chapter, upon a finding that by reason  
24 of demonstrated lack of competence, experience, or education the author-  
25 ity to practice dental hygiene should be limited or conditioned or the  
26 practitioner disciplined, the board may reprimand, censure, place on  
27 probation, restrict practice by specialty, procedure, or facility, or  
28 require continuing education or retraining.

29 (b) The Administrative Procedure Act (AS 44.62) applies to any

1 action taken by the board under this section.

2 \* Sec. 4. AS 08.36 is amended by adding new sections to read:

3 Sec. 08.36.115. INSURANCE REQUIRED. (a) To be eligible for an  
4 active license under this chapter, a person must maintain insurance  
5 against liability to patients for dental malpractice in limits of not  
6 less than \$200,000 per occurrence and \$600,000 aggregate liability per  
7 year. This requirement is satisfied if a person's employer maintains  
8 insurance for him in the required amounts.

9 (b) The director of insurance may require all persons licensed  
10 under this chapter to obtain the insurance required under (a) of this  
11 section from the Health Care Providers Indemnity Corporation if, after  
12 public hearing, he finds that unavailability of malpractice insurance on  
13 the voluntary market for dentists is impairing the delivery of dentist  
14 services to the public.

15 Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
16 to action under sec. 320 of this chapter, upon a finding that by reason  
17 of demonstrated lack of competence, experience, or education the author-  
18 ity to practice dentistry should be limited or conditioned or the  
19 practitioner disciplined, the board may censure, on probation,  
20 restrict practice by specialty, procedure, or facility, or require  
21 continuing education or retraining.

22 (b) The Administrative Procedure Act (AS 44.62) applies to any  
23 action taken by the board under this section.

24 \* Sec. 5. AS 08.64 is amended by adding new sections to read:

25 Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an  
26 active license under this chapter, a person must maintain insurance  
27 issued by the Health Care Providers Indemnity Corporation against  
28 liability to patients for medical malpractice in limits of not less than  
29 \$200,000 per occurrence and \$600,000 aggregate liability per year. This

*Add to  
all provisions*



1 requirement is satisfied if a person's employer maintains insurance for  
2 him from the Health Care Providers Indemnity Corporation in the required  
3 amounts.

4 (b) The director of insurance or his designee may waive the  
5 requirement in (a) of this section for a person if that person furnishes  
6 satisfactory evidence of his having other insurance providing coverage  
7 in amounts not less than those specified in (a) of this section. No  
8 waiver granted under this subsection may extend beyond the normal expira-  
9 tion date of the person's insurance policy or January 1, 1977, whichever  
10 occurs first.

11 Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board  
12 shall promote a high degree of competence in the practice of medicine by  
13 requiring every physician licensed in the state to fulfill continuing  
14 education requirements.

15 (b) Before a license may be renewed the licensee shall submit  
16 evidence to the board that continuing education requirements prescribed  
17 by regulations adopted by the board have been met.

18 (c) The board may exempt a physician from the requirements of (b)  
19 of this section upon an application by him giving evidence satisfactory  
20 to the board that he is unable to comply with the requirements because  
21 of extenuating circumstances. However, no person may be exempted from  
22 more than 15 hours of continuing education in a five-year period.

23 Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
24 In addition to action under sec. 330 of this chapter, upon a finding  
25 that by reason of demonstrated lack of competence, experience, or  
26 education the authority to practice under this chapter should be limited  
27 or conditioned or the practitioner disciplined, the board may reprimand,  
28 censure, place on probation, restrict practice by specialty, procedure,  
29 or facility, or require continuing education or retraining.

1 (b) The Administrative Procedure Act (AS 44.62) applies to any  
2 action taken by the board under this section.

3 \* Sec. 6. AS 08.68 is amended by adding new sections to read:

4 Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an  
5 active license as a nurse under this chapter, a person must maintain  
6 insurance against liability to patients for malpractice in limits of not  
7 less than \$100,000 per occurrence and \$300,000 aggregate liability per  
8 year. This requirement is satisfied if a person's employer maintains  
9 insurance for him in the required amounts.

10 (b) The director of insurance may require all persons licensed  
11 under this chapter to obtain the insurance required under (a) of this  
12 section from the Health Care Providers Indemnity Corporation if, after  
13 public hearing, he finds that unavailability of malpractice insurance on  
14 the voluntary market for nurses is impairing the delivery of nurse  
15 services to the public.

16 Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
17 to action under sec. 270 of this chapter, upon a finding that by reason  
18 of demonstrated lack of competence, experience, or education the author-  
19 ity to practice nursing should be limited or conditioned or the practi-  
20 tioner disciplined, the board may reprimand, censure, place on probation,  
21 restrict practice by specialty, procedure, or facility, or require  
22 continuing education or retraining.

23 (b) The Administrative Procedure Act (AS 44.62) applies to any  
24 action taken by the board under this section.

25 \* Sec. 7. AS 08.71 is amended by adding new sections to read:

26 Sec. 08.71.085. INSURANCE REQUIRED. (a) To be eligible for an  
27 active license under this chapter, a person must maintain insurance  
28 against liability to patients for malpractice in limits of not less than  
29 \$100,000 per occurrence and \$300,000 aggregate liability per year. This

1 requirement is satisfied if a person's employer maintains insurance for  
2 him in the required amounts.

3 (b) The director of insurance may require that all persons li-  
4 censed under this chapter obtain the insurance required under (a) of  
5 this section if, after public hearing, he finds that unavailability of  
6 malpractice insurance on the voluntary market for dispensing opticians  
7 is impairing delivery of the services of dispensing opticians to the  
8 public.

9 Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
10 In addition to action under sec. 170 of this chapter, upon a finding  
11 that by reason of demonstrated lack of competence, experience, or  
12 education the authority to practice as a dispensing optician under this  
13 chapter should be limited or conditioned or the practitioner disciplined,  
14 the board may reprimand, censure, place on probation, restrict practice  
15 by procedure or facility, or require continuing education or retraining.

16 (b) The Administrative Procedure Act (AS 44.62) applies to any  
17 action taken by the board under this section.

18 \* Sec. 8. AS 08.72 is amended by adding new sections to read:

19 Sec. 08.72.115. INSURANCE REQUIRED. (a) To be eligible for an  
20 active license under this chapter, a person must maintain insurance  
21 against liability to patients for malpractice in limits of not less than  
22 \$100,000 per occurrence and \$300,000 aggregate liability per year. This  
23 requirement is satisfied if a person's employer maintains insurance for  
24 him in the required amounts.

25 (b) The director of insurance may require all persons licensed  
26 under this chapter to obtain insurance required under (a) of this  
27 section from the Health Care Providers Indemnity Corporation if, after  
28 public hearing, he finds that unavailability of malpractice insurance on  
29 the voluntary market for optometrists is impairing delivery of optome-

1           trist services to the public.

2           Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
3           In addition to action under secs. 240 and 250 of this chapter, upon a  
4           finding that by reason of demonstrated lack of competence, experience,  
5           or education the authority to practice optometry under this chapter  
6           should be limited or conditioned or the practitioner disciplined, the  
7           board may reprimand, censure, place on probation, restrict practice by  
8           specialty, procedure, or facility, or require continuing education or  
9           retraining.

10           (b) The Administrative Procedure Act (AS 44.62) applies to any  
11           action taken by the board under this section.

12       \* Sec. 9. AS 80.80 is amended by adding new sections to read:

13           Sec. 08.80.115. INSURANCE REQUIRED. (a) To be eligible for  
14           active registration as a pharmacist, a person must maintain insurance  
15           against liability to patients for malpractice in limits of not less than  
16           \$100,000 per occurrence and \$300,000 aggregate liability per year. This  
17           requirement is satisfied if a person's employer maintains insurance for  
18           him in the required amounts.

19           (b) The director of insurance may require that all persons li-  
20           censed under this chapter obtain the insurance required under (a) of  
21           this section from the Health Care Providers Indemnity Corporation if,  
22           after public hearing, he finds that unavailability of malpractice  
23           insurance on the voluntary market for pharmacists is impairing delivery  
24           of pharmacist services to the public.

25           Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
26           In addition to action under sec. 260 of this chapter, upon a finding  
27           that by reason of demonstrated lack of competence, experience, or  
28           education the authority to practice pharmacy under this chapter should  
29           be limited or conditioned or the practitioner disciplined, the board may

1 reprimand, censure, place on probation, restrict practice by specialty,  
2 procedure, or facility, or require continuing education or retraining.

3 (b) The Administrative Procedure Act (AS 44.62) applies to any  
4 action taken by the board under this section.

5 \* Sec. 10. AS 08.84 is amended by adding new sections to read:

6 Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for  
7 active registration as a physical therapist under this chapter, a  
8 person must maintain insurance against liability to patients for mal-  
9 practice in limits of not less than \$100,000 per occurrence and \$300,000  
10 aggregate liability per year. This requirement is satisfied if a per-  
11 son's employer maintains insurance for him in the required amounts.

12 (b) The director of insurance may require that all persons li-  
13 censed under this chapter obtain the insurance required in (a) of this  
14 section from the Health Care Providers Indemnity Corporation if, after  
15 public hearing, he finds that unavailability of malpractice insurance on  
16 the voluntary market for physical therapists is impairing delivery of  
17 physical therapist services to the public.

18 Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
19 to action under sec. 180 of this chapter, upon a finding that by reason  
20 of demonstrated lack of competence, experience, or education the author-  
21 ity to practice physical therapy should be limited or conditioned or the  
22 practitioner disciplined, the board may reprimand, censure, place on  
23 probation, restrict practice by specialty, procedure, or facility, or  
24 require continuing education or retraining.

25 (b) The Administrative Procedure Act (AS 44.62) applies to any  
26 action taken by the board under this section.

27 \* Sec. 11. AS 08.86.120 is amended to read:

28 Sec. 08.86.120. ENTITLEMENT TO LICENSURE A person who passes the  
29 examination given by the board and possesses the insurance required by

1           sec. 125 of this chapter is entitled to be licensed as a psychologist.

2 \* Sec. 12. AS 08.86.160 is amended to read:

3           Sec. 08.86.160. ASSOCIATES: ENTITLEMENT TO LICENSURE. A person  
4 who passes the examination given by the board and who possesses insur-  
5 ance in accordance with sec. 125 of this chapter is entitled to be  
6 licensed as a psychological associate.

7 \* Sec. 13. AS 08.86 is amended by adding new sections to read:

8           Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for  
9 active licensure as a psychologist under this chapter, a person must  
10 maintain insurance against liability to patients for malpractice in  
11 limits of not less than \$100,000 per occurrence and \$300,000 aggregate  
12 liability per year. This requirement is satisfied if a person's em-  
13 ployer maintains insurance for him in the required amounts.

14           (b) The director of insurance may require all persons licensed  
15 under this chapter to obtain insurance required under (a) of this  
16 section from the Health Care Providers Indemnity Corporation. If, after  
17 public hearing, he finds that unavailability of malpractice insurance on  
18 the voluntary market for psychologists is impairing the delivery of  
19 psychologist services to the public.

20           Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
21 Upon a finding that by reason of demonstrated lack of competence,  
22 experience, or education the authority to practice psychology or as a  
23 psychological associate under this chapter should be limited or condi-  
24 tioned or the practitioner disciplined, the board may reprimand, censure  
25 place on probation, restrict practice by time, specialty, procedure, or  
26 facility, or require continuing education or retraining.

27           (b) The Administrative Procedure Act (AS 44.62) applies to any  
28 action taken by the board under this section.

29 \* Sec. 14. AS 09.55.530 is repealed and re-enacted to read:

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ARTICLE 6. MALPRACTICE ACTIONS.

1  
2       Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds  
3 that the health of the people is threatened by curtailment of health  
4 care services due to the difficulty in obtaining adequate malpractice  
5 insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of  
6 this chapter to protect the health and safety of the people of this  
7 state by establishing procedural aids for handling malpractice claims  
8 which will help ensure the ready availability of adequate insurance at a  
9 reasonable cost and which will be fair to all parties concerned.

10 \* Sec. 15. AS 09.55 is amended by adding a new section to read:

11       Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for  
12 damages due to personal injury or death based upon the provision of  
13 professional services by a health care provider, the court shall estab-  
14 lish a three-person expert advisory panel in accordance with this  
15 section. When the action is filed the court shall, by order, determine  
16 the professions or specialties to be represented on the expert advisory  
17 panel and shall advise each party of the professions or specialties to  
18 be represented, giving the parties the opportunity to object or make  
19 suggestions. The court may in its discretion conduct other preliminary  
20 proceedings relative to the composition of the panel as it considers  
21 appropriate.

22       (b) The expert advisory panel may compel the attendance of wit-  
23 nesses, interview the parties and physically examine the injured person  
24 if alive, consult with the specialists or learned works they consider  
25 appropriate, and compel the production of and examine all relevant  
26 hospital, medical, or other records or materials relating to the health  
27 care treatment. The panel may meet in camera, but shall maintain a  
28 record of any testimony or oral statements of witnesses, and shall keep  
29 copies of all written statements and opinions it receives. Not less

1 than 30 days after selection of the panel, it shall make a written  
2 report to the parties and to the court, substantially answering the  
3 following questions in addition to any other question which the court  
4 puts to the panel:

5 (1) Was the claimant adversely affected by any act or omis-  
6 sion in the rendering of the medical services?

7 (2) What was the adverse effect?

8 (3) How did the medical services alter the natural course of  
9 the preexisting disorder for which the services were originally ren-  
10 dered?

11 (4) How did the medical condition existing after performance  
12 of the medical services differ from the medical condition which might  
13 otherwise have been expected?

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

1 (d) No discovery may be undertaken in a case until the report of  
2 the expert advisory panel is received. However, the court may relax  
3 this prohibition upon a showing of good cause by any party. If the  
4 panel has not completed its report within the 30-day period prescribed  
5 in (b) of this section, the court may, upon application, grant it an  
6 additional 30 days.

7 (e) The report of the panel and any dissenting or concurring  
8 opinion are admissible in evidence to the same extent as though its  
9 contents were orally testified to by the person or persons preparing it.  
10 The court shall delete any portion that would not be admissible because  
11 of lack of foundation for opinion testimony, or otherwise. Either party  
12 may submit expert testimony to support or refute the report. The jury  
13 shall be instructed in general terms that the report shall be considered  
14 and evaluated in the same manner as any other expert testimony. Any  
15 member of the panel may be called by any party and may be cross-examined  
16 as to the contents of the report or of his dissenting or concurring  
17 opinion.

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

28 (g) Parties to the case and their counsel may not initiate com-  
29 munication out of court with members of the panel on the subject matter

1 of its inquiry and report or cause or solicit others to do so, except  
2 through ordinary discovery proceedings.

3 \* Sec. 16. AS 09.55.540 is amended to read:

4 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action  
5 based on the negligence or wilful misconduct of a health care provider  
6 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-  
7 36], the plaintiff has [SHALL HAVE] the burden of proving by a prepon-  
8 derance of the evidence

9 (1) the degree of knowledge or skill possessed or the degree  
10 of care ordinarily exercised under the circumstances, at the time of the  
11 act complained of, by health care providers in the field or specialty in  
12 which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING  
13 THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT  
14 PRACTICES];

15 (2) that the defendant either lacked this degree of knowledge  
16 or skill or failed to exercise this degree of care; and

17 (3) that as a proximate result of this lack of knowledge or  
18 skill or the failure to exercise this degree of care the plaintiff  
19 suffered injuries that would not otherwise have been incurred.

20 (b) In malpractice actions there is [SHALL BE] no presumption of  
21 negligence on the part of the defendant.

22 \* Sec. 17. AS 09.55 is amended by adding a new section to read:

23 Sec. 09.55.546. AWARDS, COLLATERAL SOURCES. (a) In a malpractice  
24 action damages shall be awarded according to the principles of the com-  
25 mon law. The fact finder in rendering its award for damages shall  
26 specify the amount awarded for each category of loss, computing loss of  
27 future earnings on a monthly basis. The court may enter a judgment that  
28 future damages be paid in whole or in part by periodic payments rather  
29 than by a lump sum payment; however, any part of the award which is paid

exhaustion of benefits problem

1 on periodic basis shall be increased annually in the same proportion as  
2 annual increases in the consumer price index for the community in which  
3 the claimant resides.

4 (c) Except when the collateral source is a federal program which  
5 by law must seek subrogation, an award to which a claimant is entitled  
6 may only cover damages which exceed any amounts received by the claimant  
7 as compensation for his injuries from collateral sources, whether pri-  
8 vate, group, or governmental, and whether contributory or noncontribu-  
9 tory, except the death benefit paid under life insurance. Evidence of  
10 damages compensation by a collateral source, other than a federal pro-  
11 gram which must seek subrogation and the death benefit paid under life  
12 insurance, shall be credited against the award after the fact finder has  
13 rendered its award. Notwithstanding other provisions of state law and  
14 except as provided in this subsection, a collateral source does not have  
15 a right of subrogation.

16 \* Sec. 18. AS 09.55.550 is amended to read:

17 Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]  
18 malpractice actions the jury shall be instructed that the plaintiff has  
19 the burden of proving, by a preponderance of the evidence, the health  
20 care provider's negligence or wilful misconduct in accordance with  
21 sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall  
22 be further instructed that injury alone does not raise a presumption of  
23 the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or  
24 misconduct.

25 \* Sec. 19. AS 09.55 is amended by adding new sections to read:

26 Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a  
27 health care provider arises for breach of an oral contract to provide a  
28 cure or achieve a specific medical result.

29 Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is

1 liable for failure to obtain the informed consent of a patient if the  
2 claimant establishes by a preponderance of the evidence that the pro-  
3 vider has failed to inform the patient of common risks and reasonable  
4 alternatives to the proposed treatment or procedure, and that, but for  
5 that failure, the claimant would not have consented to the proposed  
6 treatment or procedure.

7 (b) It is a defense to any action for health care malpractice  
8 based upon an alleged failure to obtain such an informed consent that

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

11 (2) the patient stated to the health care provider that he  
12 would undergo the treatment or procedure regardless of the risk in-  
13 volved, or that he did not want to be informed of the matters to which  
14 he would be entitled to be informed;

15 (3) under the circumstances consent by or on behalf of the  
16 patient was not possible; or

17 (4) the health care provider, after considering all of the  
18 attendant facts and circumstances, used reasonable discretion as to the  
19 manner and extent to which the alternatives or risks were disclosed to  
20 the patient because he reasonably believed that the manner and extent of  
21 such a disclosure would reasonably be expected to adversely and sub-  
22 stantially affect the patient's condition.

23 • Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

24 (1) "health care provider" means a chiropractor licensed  
25 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist  
26 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing  
27 optician licensed under AS 08.71; an optometrist licensed under AS 08.-  
28 72; a pharmacist licensed under AS 08.80; a physical therapist licensed  
29 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a

*Not a real problem*

1 psychologist and a psychological associate licensed under AS 08.86; and  
2 a hospital as defined in AS 18.20.130, including a governmentally owned  
3 or operated hospital;

4 (2) "panel" means an expert advisory panel established under  
5 sec. 536 of this chapter.

6 \* Sec. 20. AS 09.65.090 is repealed and re-enacted to read:

7 Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person,  
8 at a hospital or at any other location, who renders emergency care or  
9 emergency counseling to an injured, ill, or emotionally distraught  
10 person who reasonably appears to the person rendering the aid to be in  
11 immediate need of emergency aid in order to avoid serious harm or death  
12 is not liable for civil damages as a result of an act or omission in  
13 rendering emergency aid.

14 (b) This section does not preclude liability for civil damages as  
15 a result of gross negligence or reckless or intentional misconduct.

16 \* Sec. 21. AS 18.20 is amended by adding new sections to read:

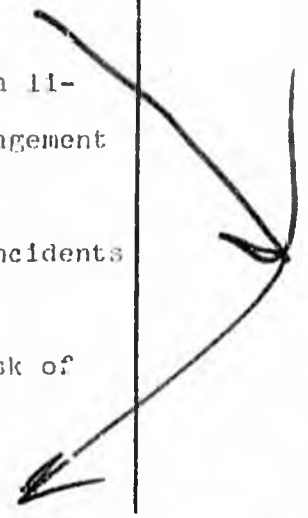
17 Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a con-  
18 dition of licensure, shall submit to the department and maintain evi-  
19 dence of insurance against liability to inpatients and outpatients for  
20 malpractice issued by the Health Care Providers Indemnity Corporation,  
21 in amounts of not less than \$200,000 per occurrence, and an aggregate  
22 liability per year of \$1,000,000 minimum, and an additional \$20,000 for  
23 each bed over 50 ~~for which the hospital is licensed.~~

24 Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a li-  
25 cense each hospital shall have in operation an internal risk management  
26 program which shall

27 (1) Investigate the frequency and causes of adverse incidents  
28 in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of

*Add waiver  
for existing policy*



1 injury to patients from adverse incidents; in developing these measures  
2 each hospital shall take into account recommendations of the Health  
3 Care Providers Indemnity Corporation, its medical staff, private under-  
4 writers, industry standards, experience of other hospitals, and recom-  
5 mendations of licensing boards of other health care providers; and

6 (3) analyze patient grievances which relate to patient care.

7 (b) The department shall adopt by regulation and submit to the  
8 legislative administrative regulation review committee prior to imple-  
9 mentation standards for risk management programs in hospitals in the  
10 state which may vary according to the size of the hospital, the type of  
11 care offered by the hospital, and other factors found relevant by the  
12 department.

13 \* Sec. 22. AS 18 is amended by adding a new chapter to read:

14 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

15 Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING  
16 INFORMATION TO REVIEW ORGANIZATION. (a) No person providing informa-  
17 tion to a review organization is subject to action for damages or other  
18 relief by reason of having furnished that information, unless the  
19 information is false and the person providing the information knew or  
20 had reason to know the information was false.

21 (b) No privilege of confidentiality arising from a physician-  
22 patient relationship may be invoked to withhold pertinent information  
23 from review by a review organization.

24 Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW  
25 ORGANIZATIONS. No person who is a member or employee of, or who acts in  
26 an advisory capacity to, or who furnishes counsel or services to, a  
27 review organization is liable for damages or other relief in an action  
28 brought by a person whose activities have been or are being scrutinized  
29 or reviewed by a review organization, by reason of his performance of a