

234 HJ FCC MALPRACTICE (INCLUDING HB 574)

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 72; 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. 21.88.010. 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

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

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

(3) two professionals in the insurance field;

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

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

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

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

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

(g) Members of the board of governors receive compensation from the corporation of \$100 per day when the board meets and necessary travel expenses.

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of opera-

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

11 (b) The plan of operation shall

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

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

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

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

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

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

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

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

1 corporation shall

2 (1) issue to all health care providers who pay the premiums
3 for it a contract on an occurrence basis indemnifying the health care
4 provider and his employees who are health care providers against loss by
5 reason of liability and agreeing to tender on behalf of the health care
6 provider and his employees who are health care providers a defense of
7 the health care provider in a proceeding brought under AS 09.55.530 -
8 09.55.560; the limit of liability shall be no less than the minimum
9 liability coverage required to be maintained as stated in AS 08.64.215
10 and AS 18.20.045; the contract shall cover the defense against but need
11 not indemnify a claim for punitive damages; the contract shall cover
12 claims against health care providers

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

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

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

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

1 21, 24, and 36 of this title;

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

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

20 (b) The corporation may

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

25 (2) provide coverage to health care providers for other
26 hazards including malpractice liability insurance for other licensed
27 health care providers employed by the physician or hospital;

28 (3) borrow funds from the revolving loan fund established
29 under sec. 110 of this chapter when necessary for the corporation to

1 maintain adequate reserves; loans from the fund shall be repaid from
2 prospective premium increases within four years after the loan is made
3 at an annual interest rate of seven per cent;

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

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

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

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

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

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

28 Sec. 21.88.070. RATES. Rates and rating plans used by the corpora-
29 tion for the policies issued shall be determined for each category of

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Slant rates for rural areas

1 health care provider in accordance with all of the following:

2 (1) rates for physicians shall be set as a function of the
3 physician's medical revenue;

4 (2) rates for hospitals shall be set as a function of the
5 number of permanent beds in the hospital;

6 (3) a minimum rate may be set for each category of health
7 care provider or discipline or classification within the license cate-
8 gory; (A)

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

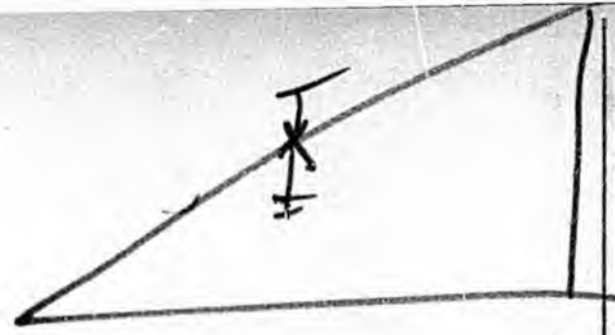
17 (5) rates may not be inadequate; rates are inadequate if,
18 based on available actuarial data, the premiums to be paid by the health
19 care providers are or may reasonably be expected to be insufficient to
20 pay for losses incurred by the corporation, including claims paid,
21 reserves for claims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

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

26 (7) rates for any policy year shall be calculated to include
27 the adjustment for actual experience of the corporation as developed for
28 the preceding four policy years;

29 (8) in considering losses to be incurred, changes in the law

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and national, regional and local trends in medical negligence awards may be considered;

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

(10) disciplines and classifications within the license categories of health care providers shall be considered;

(11) individual risk underwriting factors shall be considered;

(12) amounts sufficient to repay loan obligations shall be considered.

Sec. 21.88.080. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium or other charge by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days after notice is received by the insured, the cancellation is effective.

ARTICLE 3. LOAN FUND.

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

(b) Loans shall be made from the fund to the corporation upon certification by the director that a loan is necessary for the corporation to maintain adequate reserves or for initial costs of operation. 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 future as security for the loan.

(c) Loans from the fund shall be repaid by the corporation within

1 four years at an annual interest rate of seven per cent.

2 (d) The director may sell at par value to the Department of Revenue
3 the notes, security instruments and pledge agreements held by the
4 Department of Commerce and Economic Development as security for loans
5 made under this section. The Department of Revenue shall purchase all
6 the notes offered until the current principal amount of the notes
7 purchased and held by the Department of Revenue equals \$5,000,000.

8 ARTICLE 4. GENERAL PROVISIONS.

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

10 (1) "corporation" means the Health Care Providers Indemnity
11 Corporation;

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

14 (3) "fund" means the medical malpractice liability revolving
15 loan fund;

16 (4) "health care provider" means a physician licensed under
17 AS 08.64 and a hospital as defined in AS 18.20.130, including a hospital
18 or health care facility owned or operated by the state or one or more of
19 its political subdivisions; if at any time the director of insurance
20 mandates chiropractors under AS 08.20.115(b), dental hygienists under
21 AS 08.32.015(b), dentists under AS 08.36.115(b), nurses under AS 08.68.-
22 165(b), dispensing opticians under AS 08.71.085(b), optometrists under
23 AS 08.72.115(b), pharmacists under AS 08.80.115(b), physical therapists
24 under AS 08.84.035(b), or psychologists and psychological associates
25 under AS 08.86.125(b) into participation in the corporation, they shall
26 then be considered health care providers for the purposes of this
27 chapter;?

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

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* Sec. 24. AS 21.18.090 is amended by adding a new paragraph to read:

(5) reserves for the Health Care Providers Indemnity Corporation are to include only reserves for claims reported and unpaid and reserves for claims incurred but not reported but which may reasonably be expected to be reported within three years after the date of occurrence.

* Sec. 25. AS 09.55.536 enacted in sec. 15 of this Act, has the effect of changing the Alaska Supreme Court's Rules of Civil Procedure, by requiring the submission of each health care malpractice action to a panel of experts.

* Sec. 26. AS 08.64.365 is repealed.

* Sec. 27. This Act takes effect 30 days after enactment.

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5/1/76

Original Sponsor: Rules Committee by
request of the Governor

1 IN THE HOUSE BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR SENATE CS FOR 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 health care; changing the Alaska
7 Supreme Court's Rules of Civil Procedure; and providing
8 for an effective date."

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

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

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

15 * Sec. 2. AS 08.20.010 is amended to read:

16 Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC
17 EXAMINERS. There is created the Board of Chiropractic Examiners con-
18 sisting of five [THREE] members appointed by the governor.

19 * Sec. 3. AS 08.20.020 is amended to read:

20 Sec. 08.20.020. MEMBERS OF BOARD. Three members [EACH MEMBER] of
21 the board shall be [A] licensed chiropractic physicians who [PHYSICIAN
22 AND SHALL] have practiced chiropractic in this state not less than two
23 years. Two members of the board shall be persons with no direct finan-
24 cial interest in the health care industry. Each member serves without
25 pay but is entitled to per diem and travel expenses allowed by law.

26 * Sec. 4. AS 08.20.030 is repealed and re-enacted to read:

27 Sec. 08.20.030. MEMBERS TERMS, VACANCIES. Members serve for
28 staggered terms of three years. The terms of the public members of the
29 board may not expire at the same time. Vacancies on the board shall be

1 filled for the unexpired term.

2 * Sec. 5. AS 08.20 is amended by adding a new section to read:

3 Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice
 4 insurance for chiropractors becomes unavailable on the voluntary
 5 market and the director of insurance finds, after public hearing, that
 6 the unavailability is impairing the delivery of chiropractic services
 7 to the public, the director of insurance may require all persons
 8 licensed under this chapter to carry malpractice insurance and to pur-
 9 chase their insurance from the Medical Indemnity Corporation of Alaska
 10 established under AS 21.88. If a finding of unavailability of insurance
 11 on the voluntary market and impairment of services has been made under
 12 this section, purchase of medical malpractice insurance from the Medical
 13 Indemnity Corporation of Alaska is a condition of licensure under this
 14 chapter. The provisions of this section are satisfied if the licensee's
 15 employer maintains insurance for him from the Medical Indemnity Corpora-
 16 tion of Alaska.

17 * Sec. 6. AS 08.20 is amended by adding a new section to read:

18 Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
 19 In addition to action under sec. 170 of this chapter, upon a finding
 20 that by reason of demonstrated problems of competence, experience, edu-
 21 cation or health the authority to practice chiropractic should be
 22 limited or conditioned or the practitioner disciplined, the board may
 23 reprimand, censure, place on probation, restrict practice by specialty,
 24 procedure or facility, or require ^{additional} ~~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. 7. AS 08.32 is amended by adding new sections to read:

28 Sec. 08.32.015. MALPRACTICE INSURANCE. If medical malpractice
 29 insurance for dental hygienists becomes unavailable on the voluntary
 market and the director of insurance finds, after public hearing, that
 the unavailability is impairing the delivery of dental hygiene services

1 to the public, the director of insurance may require all persons licensed
2 under this chapter to carry malpractice insurance and to purchase their
3 insurance from the Medical Indemnity Corporation of Alaska established
4 under AS 21.88. If a finding of unavailability of insurance on the volun-
5 tary market and impairment of services has been made under this section,
6 purchase of medical malpractice insurance from the Medical Indemnity
7 Corporation of Alaska is a condition of licensure under this chapter. The
8 provisions of this section are satisfied if the licensee's employer main-
9 tains insurance for him from the Medical Indemnity Corporation of Alaska.

10 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
11 In addition to action under sec. 160 of this chapter, upon a finding
12 that by reason of demonstrated problems of competence, experience,
13 education or health the authority to practice dental hygiene should be
14 limited or conditioned or the practitioner disciplined, the board may
15 reprimand, censure, place on probation, restrict practice by specialty,
16 procedure, or facility, or require ^{additional} continuing education or retraining.

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

19 * Sec. 8. AS 08.36.010 is amended to read:

20 Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is created
21 the Board of Dental Examiners, referred to in this chapter as the board,
22 consisting of seven [FIVE] members. Five members [EACH MEMBER] shall be
23 [A CITIZEN OF THE UNITED STATES AND A] qualified resident dentists who
24 have [HAS] been engaged in the practice of dentistry in the state for
25 five years immediately preceding [HIS] appointment, one member shall be a
26 dental hygienist licensed under AS 08.32, and one member with no direct
27 financial interest in the health care industry.

28 * Sec. 9. AS 08.36.020 is amended to read:

29 Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS.

Members of the board are appointed by the governor, subject to confirma-
LA-L 20 tion by the legislature in joint session [ASSEMBLED]. Each

1 board member serves for a term of five years, and until his successor is
2 appointed and qualified. The term begins on February 1. An appointment
3 to a vacancy is for the unexpired term. [APPOINTMENTS SHALL BE MADE
4 FROM A LIST OF NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST
5 SHALL BE SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND
6 NOT MORE THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL
7 CONTAIN AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE
8 GOVERNOR SHALL MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE
9 LIST.]

10 * Sec. 10. AS 08.36 is amended by adding new sections to read:

11 Sec. 08.36.115. MALPRACTICE INSURANCE. If medical malpractice
12 insurance for dentists becomes unavailable on the voluntary market and
13 the director of insurance finds, after public hearing, that the unavaila-
14 bility is impairing the delivery of dental services to the public, the
15 director of insurance may require all persons licensed under this chapter
16 to carry malpractice insurance and to purchase their insurance from the
17 Medical Indemnity Corporation of Alaska established under AS 21.88. If
18 a finding of unavailability of insurance on the voluntary market and
19 impairment of services has been made under this section, purchase of
20 medical malpractice insurance from the Medical Indemnity Corporation of
21 Alaska is a condition of licensure under this chapter. The provisions
22 of this section are satisfied if the licensee's employer maintains
23 insurance for him from the Medical Indemnity Corporation of Alaska.

24 Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
25 In addition to action under sec. 320 of this chapter, upon a finding
26 that by reason of demonstrated problems of competence, experience,
27 education, or health, the authority to practice dentistry should be
28 limited or conditioned or the practitioner disciplined, the board may
29 censure, place on probation, restrict practice by specialty, procedure,
or facility, or require ~~continuing~~ ^{Additional Education} 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. 11. AS 08.64.010 is amended to read:

4 Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD.
5 The governor shall appoint a board of medical examiners, to be known as
6 the State Medical Board, consisting of five licensed physicians, re-
7 siding in as many separate Alaska judicial districts as possible, and
8 two persons with no direct financial interest in the health care in-
9 dustry. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH
10 VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIA-
11 TION.]

12 * Sec. 12. AS 08.64.020 is amended to read:

13 Sec. 08.64.020. STATE MEDICAL BOARD TERM OF OFFICE. Members shall
14 be appointed for a term of four years, subject to confirmation by a
15 majority of the members of the legislature in joint session, and shall
16 hold office until their successors are appointed and qualified. The
17 terms of the public members of the board shall be staggered so that they
18 do not expire at the same time.

19 * Sec. 13. AS 08.64.090 is amended to read:

20 Sec. 08.64.090. QUORUM. Four [THREE] members of the board consti-
21 tute a quorum for the transaction of all business properly before the
22 board.

23 * Sec. 14. AS 08.64 is amended by adding new sections to read:

24 Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an
25 active license under this chapter, a person shall maintain insurance
26 issued by the Medical Indemnity Corporation of Alaska against liability
27 to patients for medical malpractice in limits of not less than \$200,000
28 per occurrence and \$600,000 aggregate liability per year. This require-
29 ment is satisfied if a person's employer maintains insurance for him

1 from the Medical Indemnity Corporation of Alaska in the required amounts.

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

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

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

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

1 Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
2 In addition to action under sec. 330 of this chapter, upon a finding
3 that by reason of demonstrated problems of competence, experience, edu-
4 cation, or health the authority to practice under this chapter should be
5 limited or conditioned or the practitioner disciplined, the board may
6 reprimand, censure, place on probation, restrict practice by specialty,
7 procedure, or facility, or require ^{additional} ~~continuing~~ education or retraining.

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

1 * Sec. 15. AS 08.68.010 is amended to read:

2 Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING.

3 There is created a Board of Nursing, consisting of seven [FIVE] members
4 appointed by the governor. One member shall be currently involved in
5 institutional nursing service, one member in community or public health
6 nursing and two members in basic or continuing nursing education, [AND]
7 one nurse at large, and two persons who have no direct financial in-
8 terest in the health care industry.

9 * Sec. 16. AS 08.68.020 is repealed and re-enacted to read:

0 Sec. 08.68.020. TERM OF OFFICE. Members serve staggered terms of
1 five years and until their successors are appointed. The terms of the
2 public members on the board shall be set so that they do not expire at
3 the same time. Vacancies on the board shall be filled for the unexpired
4 term.

5 * Sec. 17. AS 08.68.060 is amended to read:

6 Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members
7 [EACH MEMBER] of the board who are nurses shall be [A CITIZEN OF THE
8 UNITED STATES, A RESIDENT OF THE STATE, AND A] licensed professional
9 nurses [NURSE] in the state, and [MEMBERS] shall have been actively
0 engaged in nursing for not less than four years before appointment, two
1 years of which were within the five years preceding appointment.

2 * Sec. 18. AS 08.68 is amended by adding new sections to read:

3 Sec. 08.68.165. MALPRACTICE INSURANCE. If medical malpractice
4 insurance for nurses becomes unavailable on the voluntary market and
5 the director of insurance finds, after public hearing, that the unavaila-
6 bility is impairing the delivery of nursing services to the public, the
7 director of insurance may require all persons licensed under this chapter
8 to carry malpractice insurance and to purchase their insurance from the
9 Medical Indemnity Corporation of Alaska established under AS 21.88.

1 If a finding of unavailability of insurance on the voluntary market and
2 impairment of services has been made under this section, purchase of
3 medical malpractice insurance from the Medical Indemnity Corporation of
4 Alaska is a condition of licensure under this chapter. The provisions
5 of this section are satisfied if the licensee's employer maintains
6 insurance for him from the Medical Indemnity Corporation of Alaska.

7 Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
8 In addition to action under sec. 270 of this chapter, upon a finding
9 that by reason of demonstrated problems of competence, experience,
10 education, or health the authority to practice nursing should be limited
11 or conditioned or the practitioner disciplined, the board may reprimand,
12 censure, place on probation, restrict practice by specialty, procedure,
13 or facility, or require ^{additional} ~~continuing~~ education or retraining.

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

16 * Sec. 19. AS 08.71.020 is amended to read:

17 Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM
18 OF OFFICE. The board consists of seven [FIVE] persons appointed by the
19 governor. Members-serve-staggered-terms of three years. The terms of
20 the public members of the board shall be set so that they do not expire
21 at the same time. [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A LIST
22 OF QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN THE
23 STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST 30
24 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER A
25 VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS
26 THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR
27 SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST. THE
28 TERM OF OFFICE OF EACH MEMBER IS THREE YEARS. HOWEVER, OF THE FIRST
29 MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO
FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the
board shall be filled for the unexpired term [IN THE SAME MANNER AS

ORIGINAL APPOINTMENT].

* Sec. 20. AS 08.71.030 is amended to read:

1 Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five [A] board
2 members [MEMBER] shall be [A] licensed, practicing dispensing opticians
3 [OPTICIAN] residing in the state. Two shall be persons with no direct
4 financial interest in the health care industry.

* Sec. 21. AS 08.71 is amended by adding new sections to read:

6 Sec. 08.71.085. MALPRACTICE INSURANCE. If medical malpractice
7 insurance for opticians becomes unavailable on the voluntary market and
8 the director of insurance finds, after public hearing, that the unavaila-
9 bility is impairing the delivery of optician services to the public, the
10 director of insurance may require all persons licensed under this chap-
11 ter to carry malpractice insurance and to purchase their insurance from
12 the Medical Indemnity Corporation of Alaska established under AS 21.88.
13 If a finding of unavailability of insurance on the voluntary market and
14 impairment of services has been made under this section, purchase
15 of medical malpractice insurance from the Medical Indemnity Corporation
16 of Alaska is a condition of licensure under this chapter. The provisions
17 of this section are satisfied if the licensee's employer maintains in-
18 surance for him from the Medical Indemnity Corporation of Alaska.

19 Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
20 In addition to action under sec. 170 of this chapter, upon a finding
21 that by reason of demonstrated problems of competence, experience,
22 education, or health the authority to practice as a dispensing optician
23 under this chapter should be limited or conditioned or the practitioner
24 disciplined, the board may reprimand, censure, place on probation,
25 restrict practice by procedure, or facility, or require ~~continuing~~ ^{additional}
26 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. 22. AS 08.72.020 is amended to read:

1 Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The
2 board consists of five [THREE] persons, appointed by the governor.
3 Members serve staggered terms of three years. The terms of the public
4 members of the board shall be set so that they do not expire at the same
5 time. [THE TERM OF EACH MEMBER IS THREE YEARS. ONE MEMBER ONLY IS
6 APPOINTED EACH YEAR, EXCEPT WHEN VACANCIES FOR UNEXPIRED TERMS ARE
7 FILLED.]

8 * Sec. 23. AS 08.72.040 is repealed and re-enacted to read:

9 Sec. 08.72.040. QUALIFICATIONS. Three board members shall be
10 licensed, practicing optometrists who have been residents for at least
11 three years. Two shall be persons who have no direct financial interest
12 in the health care industry.

13 * Sec. 24. AS 08.72 is amended by adding new sections to read:

14 Sec. 08.72.115. MALPRACTICE INSURANCE. If medical malpractice
15 insurance for optometrists becomes unavailable on the voluntary market
16 and the director of insurance finds, after public hearing, that the
17 unavailability is impairing the delivery of optometrist services to the
18 public, the director of insurance may require all persons licensed under
19 this chapter to carry malpractice insurance and to purchase their insur-
20 ance from the Medical Indemnity Corporation of Alaska established under
21 AS 21.88. If a finding of ^{UNAVAILABILITY OF} insurance on the voluntary market and impair-
22 ment of services has been made under this section, purchase of medical
23 malpractice insurance from the Medical Indemnity Corporation of Alaska
24 is a condition of licensure under this chapter. The provisions of this
25 section are satisfied if the licensee's employer maintains insurance for
26 him from the Medical Indemnity Corporation of Alaska.

27 Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
28 In addition to action under secs. 240 and 250 of this chapter, upon a
29 finding that by reason of demonstrated problems of competence, experi-
ence, education, or health the authority to practice optometry under
this chapter should be limited or conditioned or the practitioner

1 disciplined, the board may reprimand, censure, place on probation,
2 restrict practice by specialty, procedure, or facility, or require
3 ^{additional} ~~continuing~~ education or retraining.

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

6 * Sec. 25. AS 08.80.010 is amended to read:

7 Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY.

8 There is created the Board of Pharmacy, composed of seven [FIVE] members
9 five [EACH] of whom shall be pharmacists [A PHARMACIST] licensed in the
10 state who have [HAS] been actively engaged in the practice of pharmacy
11 in the state for a period of three years immediately preceding their
12 [HIS] appointment. Two shall be persons with no direct financial
13 interest in the health care industry. Whenever possible, the board
14 shall include at least one member from each judicial district.

15 * Sec. 26. AS 08.80.020 is amended to read:

16 Sec. 08.80.020. TERM OF OFFICE. Members of the board are ap-
17 pointed by the governor, and confirmed by the legislature in joint
18 session, for overlapping terms of five years, or until their successors
19 are appointed and qualified. The terms of the public members shall be
20 staggered so that they do not expire at the same time. An appointment
21 to fill a vacancy is for the unexpired term. The term of office begins
22 on April 1 of each year.

23 * Sec. 27. AS 08.80.070 is amended to read:

24 Sec. 08.80.070. QUORUM. Four [THREE] members constitute a quorum
25 for the transaction of business. However, when the board meets for the
26 purpose of examining applications for registration, three [TWO] members
27 of the board constitute a quorum.

28 * Sec. 28. AS 08.80 is amended by adding new sections to read:

29 Sec. 08.80.115. MALPRACTICE INSURANCE. If medical malpractice

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1 insurance for pharmacists becomes unavailable on the voluntary market
2 and the director of insurance finds, after public hearing, that the
3 unavailability is impairing the delivery of pharmacist services to the
4 public, the director of insurance may require all persons licensed under
5 this chapter to carry malpractice insurance and to purchase their
6 insurance from the Medical Indemnity Corporation of Alaska established
7 under AS 21.88. If a finding of unavailability of insurance on the
8 voluntary market and impairment of services has been made under this
9 section, purchase of medical malpractice insurance from the Medical Indem-
10 nity Corporation of Alaska is a condition of licensure under this chapter.
11 The provisions of this section are satisfied if the licensee's employer
12 maintains insurance for him from the Medical Indemnity Corporation of
13 Alaska.

14 Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
15 In addition to action under sec. 260 of this chapter, upon a finding
16 that by reason of demonstrated problems of competence, experience,
17 education, or health the authority to practice pharmacy under this
18 chapter should be limited or conditioned or the practitioner disci-
19 plined, the board may reprimand, censure, place on probation, restrict
20 practice by specialty, procedure, or facility, or require ~~continuing~~ ^{additional}
21 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. 29. AS 08.84 is amended by adding new sections to read:

25 Sec. 08.84.035. MALPRACTICE INSURANCE. If medical malpractice
26 insurance for physical therapists becomes unavailable on the voluntary
27 market and the director of insurance finds, after public hearing, that
28 the unavailability is impairing the delivery of physical therapist
29 services to the public, the director of insurance may require all persons
licensed under this chapter to carry malpractice insurance and to pur-
chase their insurance from the Medical Indemnity Corporation of Alaska
established under AS 21.88.

1 If a finding of unavailability of insurance on the voluntary market and
2 impairment of services has been made under this section, purchase of
3 medical malpractice insurance from the Medical Indemnity Corporation of
4 Alaska is a condition of licensure under this chapter. The provisions
5 of this section are satisfied if the licensee's employer maintains in-
6 surance for him from the Medical Indemnity Corporation of Alaska.

7 Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
8 In addition to action under sec. 180 of this chapter, upon a finding
9 that by reason of demonstrated problems of competence, experience,
10 education or health the authority to practice physical therapy should be
11 limited or conditioned or the practitioner disciplined, the board may
12 reprimand, censure, place on probation, restrict practice by specialty,
13 procedure, or facility, or require ^{additional} ~~continuing~~ education or retraining.

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

16 * Sec. 30. AS 08.86.010 is amended to read:

17 Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is
18 created a Board of Psychologist and Psychological Associate Examiners.
19 It consists of three licensed psychologists, and two persons who have no
20 direct financial interest in the health care industry.

21 * Sec. 31. AS 08.86.020 is amended to read:

22 Sec. 08.86.020. APPOINTMENT AND TERM OF OFFICE. Members of the
23 board are appointed by the governor and confirmed by the legislature for
24 staggered terms of three years. The terms of the public members shall
25 be set so that they do not expire at the same time. A member serves at
26 the pleasure of the governor.

27 * Sec. 32. AS 08.86 is amended by adding new sections to read:

28 Sec. 08.86.125. MALPRACTICE INSURANCE. If medical malpractice
29 insurance for psychologists or psychological associates becomes unavail-
able on the voluntary market and the director of insurance finds, after
public hearing, that the unavailability is impairing the delivery of

1 psychologist or psychological associate services to the public, the
2 director of insurance may require all persons licensed under this chapter
3 to carry malpractice insurance and to purchase their insurance from the
4 Medical Indemnity Corporation of Alaska established under AS 21.88.
5 If a finding of unavailability of insurance on the voluntary market
6 and impairment of services has been made under this section, purchase
7 of medical malpractice insurance from the Medical Indemnity Corporation
8 of Alaska is a condition of licensure under this chapter. The provisions
9 of this section are satisfied if the licensee's employer maintains in-
10 surance for him from the Medical Indemnity Corporation of Alaska.

11 Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
12 Upon a finding that by reason of demonstrated problems of competence,
13 experience, education, or health the authority to practice psychology or
14 as a psychological associate under this chapter should be limited or
15 conditioned or the practitioner disciplined, the board may reprimand,
16 censure, place on probation, restrict practice by time, specialty, pro-
17 cedure, or facility, or require ^{additional} ~~continuing~~ education or retraining.

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

20 * Sec. 33. AS 09.55 is amended by adding new sections to read:

21 Sec. 09.55.535. VOLUNTARY ARBITRATION. (a) A patient and any
22 health care provider may execute an agreement to submit to arbitration
23 any dispute, controversy, or issue arising out of care or treatment by
24 the health care provider during the period that the agreement is in
25 force or that has already arisen between the parties.

26 (b) An agreement to arbitrate executed before care or treatment is
27 provided shall clearly provide in bold print on the face of the agree-
28 ment that execution of the agreement by the patient is not a prerequi-
29 site to receiving care or treatment. If this subsection is not complied
with by the health care provider, the agreement to arbitrate is void.
The form to be used shall be approved in advance by the attorney general
of the state to assure it fairly informs both parties to the agreement

and properly protects their interests.

(c) The agreement shall provide that the person receiving health care may revoke the agreement within 30 ~~calendar~~ days after execution by notifying the health care provider in writing. A health care provider may not revoke the agreement after its execution. The period for revocation shall be tolled during any period that the person receiving health care is physically unable to execute a revocation. ^(d) An arbitration agreement entered into by the parents or legal guardian of a minor person receiving health care is binding upon the minor person.

^(d) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate, but a person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

^(e) Upon the filing of a malpractice claim which is subject to an agreement to arbitrate, the claim shall be submitted to an arbitration board. The arbitration board shall consist of three arbitrators: one arbitrator designated by the claimant or claimants, one arbitrator designated by the health care provider or providers against whom the claim is made, and a third arbitrator designated by mutual agreement who shall serve as chairperson of the board. If the parties cannot agree on the third person, the court will provide a choice of three or more persons who might serve as chairperson of the arbitration board, which shall be from a list of qualified arbitrators furnished by the attorney general. Claimant or claimants together and health care provider or providers together may each strike one or more names, so after each side has done so at least one name remains, providing a basis for the final selection by the court.

^(f) The attorney general shall prepare a list of persons consisting of lawyers or other persons qualified to serve as chairperson of an arbitration board. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at

1 least three names whenever requested to do so by the court along with
2 detailed biographical information on each person listed.

3 (g) Each member of the arbitration board shall receive reasonable
4 compensation to be paid by the court based on the extent and duration of
5 services rendered. The court shall pay the costs of expert witnesses
6 called by the board and the costs of expert witnesses called by the
7 parties to the arbitration up to a maximum of three witnesses for each
8 side and \$150 per day for each expert witness.

9 (h) The arbitration board may appoint an expert advisory panel,
10 with the powers of the expert advisory panel under sec. 536 of this
11 chapter, to advise the board on the medical facts of the case.

12 (i) The court shall specify the shortest practical deadline for
13 completion of the work of the arbitration board, taking into account all
14 the circumstances and the nature of the case.

15 (j) The provisions of the Uniform Arbitration Act, AS 09.43.010 -
16 09.43.180, apply to arbitrations under this section if they do not
17 conflict with the provisions of this section; arbitrations under this
18 section shall be conducted in accordance with procedures established by
19 any rules of court which may be adopted and according to provisions of
20 secs. 540 - 548 and 554 - 560 of this chapter, and AS 09.65.090 - 09.65.
21 100.

22 Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for
23 damages due to personal injury or death based upon the provision of
24 professional services by a health care provider when the parties have
25 not agreed to arbitration of the claim under sec. 535 of this chap-
26 ter, the court shall appoint a three-person expert advisory panel
27 unless the court decides that an expert advisory opinion is not neces-
28 sary for a decision in the case. When the action is filed the court
29 shall, by order, determine the professions or specialties to be repre-
sented on the expert advisory panel, giving the parties the opportunity
LA-L 20 to object or make suggestions.

1 (b) The expert advisory panel may compel the attendance of wit-
2 nesses, interview the parties, physically examine the injured person if
3 alive, consult with the specialists or learned works they consider
4 appropriate, and compel the production of and examine all relevant
5 hospital, medical, or other records or materials relating to the health
6 care in issue. The panel may meet in camera, but shall maintain a
7 record of any testimony or oral statements of witnesses, and shall keep
8 copies of all written statements it receives.

9 (c) Not more than 30 days after selection of the panel, it shall
10 make a written report to the parties and to the court, answering the
11 *following* questions ~~submitted to the panel by the court~~ ^{And any other additional questions} and, in the court's dis-
12 cretion, any of the following questions:

13 (1) Was the care which is the subject of the litigation
14 appropriate to the complaint or condition for which the plaintiff sought
15 or was brought to medical care?

16 (2) Was the care administered in accordance with appropriate
17 medical standards?

18 (3) Did an injury arise from the medical care?

19 (4) What is the nature and the extent of the medical injury?

20 (5) If a medical injury had not occurred, how would the
21 plaintiff's condition differ from the plaintiff's present condition?

22 (d) In any case in which the answer to one or more of the ques-
23 tions submitted to the panel depends upon the resolution of factual
24 questions which are not the proper subject of expert opinion, the report
25 shall so state and may answer questions based upon hypothetical facts
26 that are fully set out in the opinion. The report shall include copies
27 of all written statements, opinions, or records relied upon by the panel
28 and either a transcription or other record of any oral statements or
29 opinions; shall specify any medical or scientific authority relied upon
by the panel; and shall include the results of any physical or mental

1 examination performed on the plaintiff. Each member shall sign the
2 report and his signature constitutes his adoption of all statements and
3 opinions contained in it; however, a member may, instead of signing the
4 report, submit a concurring or dissenting report which complies with the
5 requirements of this subsection. A member may not attest to any portion
6 of the report as to which he is not qualified to give expert testimony.

7 (e) The report of the panel with any dissenting or concurring
8 opinion is admissible in evidence to the same extent as though its con-
9 tents 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
19 (f) No discovery may be undertaken in a case until the report of
20 the expert advisory panel is received. However, the court may relax
21 this prohibition upon a showing of good cause by any party. If the
22 panel has not completed its report within the 30-day period prescribed
23 in (b) of this section, the court may, upon application, grant it an
24 additional 30 days.

25 (g) Members of a panel are entitled to travel expenses and per
26 diem in accordance with state law pertaining to members of boards and
27 commissions for all time spent in preparing its report. If a panel
28 member is called upon as a witness at trial or upon deposition, he is
29 entitled to payment of an expert witness fee, which may not exceed \$150
per day. All expenses incurred by the panel shall be paid by the

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

5 (h) Parties to the case and their counsel may not initiate com-
6 munication out of court with members of the panel on the subject matter
7 of its inquiry and report or cause or solicit others to do so, except
8 through ordinary discovery proceedings.

9 * Sec. 34. AS 09.55.540 is amended to read:

10 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action
11 based on the negligence or wilful misconduct of a health care provider
12 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-
13 36], the plaintiff has [SHALL HAVE] the burden of proving by a prepon-
14 derance of the evidence

15 (1) the degree of knowledge or skill possessed or the degree
16 of care ordinarily exercised under the circumstances, at the time of
17 the act complained of, by health care providers in the field or spe-
18 cialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS
19 PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH
20 THE DEFENDANT PRACTICES];

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

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

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

28 * Sec. 35 AS 09.55 is amended by adding new sections to read:

29 Sec. 09.55.546. ADVANCE PAYMENTS. In an action to recover damages

1 under secs. 530 - 560 of this chapter, no advance payment made by the
2 defendant health care provider or his professional liability insurer to
3 or on behalf of the plaintiff is admissible as evidence or may be
4 construed as an admission of liability for injuries or damages suffered
5 by the plaintiff; however, a final award in favor of the plaintiff shall
6 be reduced to the extent of any advance payment. The advance payment
7 shall inure to the exclusive benefit of the defendant or the insurer
8 making the payment.

9 Sec. 09.55.547. AD DAMNUM. In a cause of action against a health
10 care provider for malpractice, the complaint or any other pleadings may
11 not contain an ad damnum clause or monetary amount claimed against the
12 defendant health care provider, except as necessary for jurisdictional
13 purposes.

14 Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be
15 awarded in accordance with principles of the common law. The fact
16 finder in a malpractice action shall render any award for damages by
17 category of loss. The court may enter a judgment that future damages be
18 paid in whole or in part by periodic payments rather than by a lump-sum
19 payment; the judgment shall include, if necessary, other provisions to
20 assure that funds will be available as periodic payments become due.
21 Insurance from an authorized insurer as defined in AS 21.90.080 or from
22 the Medical Indemnity Corporation of Alaska is sufficient assurance that
23 funds will be available. Any part of the award which is paid on a
24 periodic basis shall be adjusted annually according to changes in the
25 consumer price index in the community where the claimant resides. In
26 this subsection, future damages includes damages for future medical
27 treatment, care or custody, loss of future earnings, or loss of bodily
28 function of the claimant.

29 (b) Except when the collateral source is a federal program which
by law must seek subrogation and except death benefits paid under life
insurance, a claimant may only recover damages from the defendant which

1 exceed amounts received by the claimant as compensation for his injuries
2 from collateral sources, whether private, group or governmental, and
3 whether contributory or noncontributory. Evidence of collateral sources,
4 other than a federal program which must by law seek subrogation and the
5 death benefit paid under life insurance, is admissible after the fact
6 finder has rendered an award. The court may take into account the
7 value of claimant's rights to coverage exhausted or depleted by payment
8 of these collateral benefits by adding back a reasonable estimate of
9 their probable value, or by earmarking and holding for possible periodic
10 payment under (a) of this section that amount of the award that would
11 otherwise have been deducted, to see if the impairment of claimant's
12 rights actually takes place in the future.

* Sec. 36. AS 09.55.550 is amended to read:

13 Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]
14 malpractice actions the jury shall be instructed that the plaintiff has
15 the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the
16 health care provider's negligence or wilful misconduct in accordance
17 with the standard of proof specified in sec. 540 of this chapter [OF
18 THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that
19 injury alone does not raise a presumption of the health care provider's
20 [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

* Sec. 37. AS 09.55 is amended by adding new sections to read:

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

25 Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is
26 liable for failure to obtain the informed consent of a patient if the
27 claimant establishes by a preponderance of the evidence that the pro-
28 vider has failed to inform the patient of the common risks and reason-
29 able alternatives to the proposed treatment or procedure, and that but

1 for that failure the claimant would not have consented to the proposed
2 treatment or procedure.

3 (b) It is a defense to any action for medical malpractice
4 based upon an alleged failure to obtain informed consent that

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

7 (2) the patient stated to the health care provider that he
8 would undergo the treatment or procedure regardless of the risk involved
9 or that he did not want to be informed of the matters to which he would
10 be entitled to be informed;

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

13 (4) the health care provider after considering all of the
14 attendant facts and circumstances used reasonable discretion as to the
15 manner and extent that the alternatives or risks were disclosed to the
16 patient because he reasonably believed that a full disclosure would have
17 a substantially adverse effect on the patient's condition.

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

19 (1) "health care provider" means a chiropractor licensed
20 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
21 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
22 optician licensed under AS 08.71; an optometrist licensed under AS 08.-
23 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
24 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
25 psychologist and a psychological associate licensed under AS 08.86; and
26 a hospital as defined in AS 18.20.130, including a governmentally owned
27 or operated hospital;

28 (2) "board" means an arbitration board established under
29 sec. 535 of this chapter;

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

3 * Sec. 38. AS 09.65.090 is repealed and re-enacted to read:

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

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

13 * Sec. 39. AS 18.20 is amended by adding new sections to read:

14 Sec. 18.20.045. INSURANCE REQUIRED. (a). Every hospital, as a
15 condition of licensure, shall maintain and submit to the department
16 evidence of insurance against liability to inpatients and outpatients
17 for malpractice issued by the Medical Indemnity Corporation of Alaska,
18 in amounts of not less than \$200,000 per occurrence, and an aggregate
19 liability per year of \$1,000,000 minimum, and an additional \$20,000 for
20 each bed over 50.

21 (b) The director of insurance or his designee shall waive the
22 requirement in (a) of this section for a hospital if the hospital fur-
23 nishes satisfactory evidence of having other insurance providing cover-
24 age in amounts not less than those specified in (a) of this section. A
25 waiver granted under this subsection may not extend beyond the normal
26 expiration date of the hospital's insurance policy or January 1, 1977,
27 whichever occurs first.

28 (c) The director of insurance may permit a deductible provision in
29 the policy for a hospital if the hospital

1 (1) demonstrates to the satisfaction of the director of
2 insurance that without indemnity from any other source the hospital has
3 the financial resources to discharge the maximum potential exposure to
4 the hospital by reason of the deductible provision;

5 (2) agrees to permit the Medical Indemnity Corporation of
6 Alaska to provide the defense to any claim brought against the hospital
7 if any health care provider insured by the corporation is also involved
8 in the claim and to reimburse the corporation for a pro rata portion of
9 the costs of defense; and

10 (3) provides the Medical Indemnity Corporation of Alaska with
11 notice of any claim brought against it.

12 Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a
13 license each hospital shall have in operation an internal risk manage-
14 ment program which shall

15 (1) investigate the frequency and causes of incidents in
16 hospitals which cause injury to patients;

17 (2) develop and implement measures to minimize the risk of
18 injury to patients; in developing these measures each hospital shall
19 take into account recommendations of the medical staff, the Medical
20 Indemnity Corporation of Alaska, private underwriters, industry stan-
21 dards, experience of other hospitals, and recommendations of licensing
22 boards of other health care providers; and

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

24 (b) The department shall adopt by regulation standards for the
25 risk management programs in hospitals in the state which may vary
26 according to the size of the hospital, the type of care offered by the
27 hospital, and other factors found relevant by the department. Regula-
28 tions adopted under this subsection are subject to the Administrative
29 Procedure Act (AS 44.62).

1 * Sec. 40. AS 18 is amended by adding a new chapter to read:

2 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

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

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

12 Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW
13 ORGANIZATIONS. No person who is a member or employee of, or who acts in
14 an advisory capacity to, or who furnishes counsel or services to a
15 review organization is liable for damages or other relief in an action
16 brought by another whose activities have been or are being scrutinized
17 or reviewed by a review organization, by reason of the performance of a
18 duty, function or activity of the review organization, unless the
19 performance of the duty, function or activity was motivated by malice
20 toward the affected person. No person is liable for damages or other
21 relief in an action by reason of his performance of a duty, function, or
22 activity as a member of a review organization or by reason of a recom-
23 mendation or action of the review organization when the person acts in
24 the reasonable belief that the action or recommendation is warranted by
25 facts known to the person or to the review organization after reasonable
26 efforts to ascertain the facts upon which the review organization's
27 action or recommendation is made.

28 Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.
29

1 (a) Except as provided in (b) of this section, all data and information
2 acquired by a review organization, in the exercise of its duties and
3 functions, shall be held in confidence and may not be disclosed to
4 anyone except to the extent necessary to carry out the purposes of the
5 review organization, and is not subject to subpoena or discovery.
6 Except as provided in (b) of this section, no person described in sec.
7 20 of this chapter may disclose what transpired at a meeting of a
8 review organization except to the extent necessary to carry out the
9 purposes of a review organization, and the proceedings and records of a
0 review organization are not subject to discovery or introduction into
1 evidence in a civil action against a health care provider arising out
2 of the matter which is the subject of consideration by the review
3 organization. Information, documents, or records otherwise available
4 from original sources are not immune from discovery or use in a civil
5 action merely because they were presented during proceedings of a
6 review organization, nor may a person who testified before a review
7 organization or who is a member of it be prevented from testifying as
8 to matters within his knowledge, but a witness may not be asked about
9 his testimony before a review organization or opinions formed by him as
0 a result of its hearings, except as provided in (b) of this section.

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

9 (c) Nothing in this chapter prevents a person whose conduct or

1 competence has been reviewed under this chapter from obtaining, for the
2 purpose of appellate review of the action of the review organization,
3 any testimony, documents, proceedings, records and other evidence
4 adduced before the review organization.

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

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

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

17 Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context
18 otherwise requires,

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

21 (2) "health care" means professional services rendered by
22 a health care provider or an employee of a health care provider, and
23 services furnished by a sanatorium, rest home, nursing home, boarding
24 home or other institution for the hospitalization or care of human
25 beings;

26 (3) "health care provider" means a chiropractor licensed
27 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
28 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
29 optician licensed under AS 08.71; an optometrist licensed under AS 08.-

1 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
2 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
3 psychologist and a psychological associate licensed under AS 08.26; and
4 a hospital as defined in AS 18.20.130, including a governmentally owned
5 or operated hospital;

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

8 (5) "review organization" means a hospital governing body or
9 a committee whose membership is limited to health care providers and
10 administrative staff, except where otherwise provided for by state or
11 federal law, and which is established by a hospital, by a clinic; by
12 one or more state or local associations of health care providers, by an
13 organization of health care providers from a particular area or medical
14 institution, or by a professional standards review organization estab-
15 lished under 42 U.S.C., sec. 1320c-1 et seq., to gather and review
16 information relating to the care and treatment of patients for the
17 purposes of

18 (A) evaluating and improving the quality of health care
19 rendered in the area or medical institution;

20 (B) reducing morbidity or mortality;

21 (C) obtaining and disseminating statistics and infor-
22 mation relative to the treatment and prevention of diseases,
23 illness and injuries;

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

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

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

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

3 (H) reviewing, ruling on, or advising on controversies,
4 disputes or questions between

5 (i) a health insurance carrier or health mainte-
6 nance organization and one or more of its insured or enrol-
7 lees;

8 (ii) a professional licensing board, acting under
9 its powers of discipline or license revocation or suspension,
10 and a health care provider licensed by it, when the matter is
11 referred to a review organization by the professional licen-
12 sing board;

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

15 (iv) a health care provider and a health insurance
16 carrier or health maintenance organization concerning a charge
17 or fee for health care services provided to an insured or
18 enrollee; or

19 (v) a health care provider or his patients and the
20 federal or a state or local government, or an agency of the
21 federal or a state or local government;

22 (I) acting on the recommendation of a credential review
23 committee or a grievance committee.

24 * Sec. 41. AS 21 is amended by adding a new chapter to read:

25 CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

26 ARTICLE 1. PURPOSE.

27 Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this
28 chapter to provide a means of furnishing health care providers with
29 adequate insurance against liability for medical negligence.

1 ARTICLE 2. MEDICAL INDEMNITY CORPORATION OF ALASKA.

2 Sec. 21.88.020. CORPORATION CREATED. There is created the Medical
3 Indemnity Corporation of Alaska which is a public corporation having a
4 legal existence independent of and separate from the state. Obligations
5 issued by the corporation do not constitute a debt, liability or obliga-
6 tion of the state or a pledge of full faith and credit of the state.

7 Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The cor-
8 poration shall exercise its powers through a board of governors which
9 is appointed by the governor of the state and confirmed by the
10 legislature. Members of the board of governors shall be Alaska resi-
11 dents as follows:

12 (1) two physicians licensed in the state; one of the physi-
13 cians shall be engaged in group practice in a clinic of six or more
14 physicians;

15 (2) an administrator or senior executive officer employed by
16 a hospital licensed in the state;

17 (3) two professionals from insurance companies authorized
18 in the state;

19 (4) two persons who are not health care providers or finan-
20 cially interested in the field of health care or representatives of the
21 insurance industry.

22 (b) The term of office of each governor is three years, except
23 that the governor of the state shall designate two initially appointed
24 governors to serve for one year and two initially appointed governors to
25 serve for two years. Upon the expiration of the term of a governor, the
26 governor of the state shall appoint a successor who shall be from the
27 same class described in (a) of this section as the governor whose term
28 has expired.

29 (c) Upon a governor's early resignation, death or inability to

1 serve, the governor of the state shall appoint a successor from the same
2 class defined in (a) of this section as the terminating governor, who
3 shall serve for the unexpired term.

4 (d) The director or his designee is not a voting member of the
5 board of governors but shall be notified by the board of and have the
6 right to attend and participate in all meetings and proceedings of the
7 board.

8 (e) Members of the board of governors receive compensation from
9 the corporation of \$100 per day when the board meets and necessary
10 travel expenses.

11 Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30
12 days after the effective date of this chapter, the board of governors
13 shall prepare and submit to the director for approval a plan of opera-
14 tion which provides for the fair, reasonable and equitable administra-
15 tion of the affairs of the corporation and the discharge of the purposes
16 for which it is created. The plan and any amendments to it become
17 effective upon the director's approval. If the board of governors fails
18 to submit a plan of operation, or if at a subsequent time the board of
19 governors fails to submit suitable amendments to the plan, the director
20 shall, after notice and hearing, adopt and promulgate a plan of opera-
21 tion or amendments which are necessary or advisable to carry out the
22 provisions of this chapter. Adoption of the plan is not subject to the
23 Administrative Procedure Act (AS 44.62).

24 (b) The plan of operation shall

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

28 (2) establish procedures for handling assets and discharging
29 liabilities of the corporation;

1 (3) establish regular times and places for meetings of the
2 board of governors;

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

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

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

11 (7) contain additional provisions necessary for the execution
12 of the powers and duties of the corporation.

13 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
14 corporation shall

15 (1) in the form approved by the director, issue to all
16 physicians and hospitals who pay the premiums for it a contract or
17 contracts indemnifying the physicians and hospitals and their employees
18 who are physicians against loss by reason of liability for professional
19 services on an occurrence basis and agreeing to tender on behalf of the
20 physicians and hospitals and their employees who are physicians a
21 defense in a proceeding brought under AS 09.55.530 - 09.55.560; the
22 limit of liability shall be no less than the minimum liability coverage
23 requirements to be maintained under AS 08.64.215 and AS 18.20.045; the
24 contract shall cover the defense against but need not indemnify a claim
25 for punitive damages; at the option of the physician or hospital and for
26 an additional premium the contract may cover claims against the physi-
27 cian or hospital that arise out of professional services performed by the
28 physician or hospital after December 31, 1974 except that coverage will
29 not be provided for a claim already filed or of which the physician or

1 hospital had or reasonably should have had notice at the time the
2 retroactive insurance was purchased;

3 (2) in a form approved by the director and for a premium
4 determined under sec. 80 of this chapter, issue contracts of insurance
5 on an occurrence basis indemnifying chiropractors, dental hygienists,
6 dentists, nurses, dispensing opticians, optometrists, pharmacists,
7 physical therapists, or psychologists and psychological associates, if
8 a finding of unavailability of insurance and impairment of services has
9 been made under AS 08.20.115, AS 08.32.015, AS 08.36.115, AS 08.68.165,
10 AS 08.71.085, AS 08.72.115, AS 08.80.115, AS 08.84.035, or AS 08.86.125;
11 and agreeing to tender on behalf of the person insured under this
12 paragraph a defense in a proceeding under AS 09.55.530 - 09.55.560; the
13 contract shall cover the defense against but need not indemnify a claim
14 for punitive damages;

15 (3) charge a premium for the protection provided by the
16 contracts issued by the corporation which shall be determined by the
17 board of governors in accordance with sec. 80 of this chapter and
18 subject to the approval of the director;

19 (4) comply with or be subject to AS 21.06.090; 21.06.120;
20 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200;
21 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18,
22 21, 24, and 36 of this title; and shall be exempt from participation as
23 a member insurer in the Alaska Insurance Guaranty Corporation;

24 (5) carry out the obligations of the contracts issued by the
25 corporation by defending all covered claims made against insured health
26 care providers and by paying all liabilities which are finally adjudi-
27 cated against the insured health care provider or which may in the
28 opinion of the corporation reasonably be expected to be finally adjudi-
29 cated against the health care provider to the extent of the contract

1 obligation;

2 (6) provide coverage to physicians and hospitals for liability
3 in excess of the minimum limits required for licensure as a physician or
4 hospital, but limited to \$1,000,000 for physicians and \$5,000,000 for
5 hospitals, if there is a finding by the director that this coverage is
6 unavailable at a reasonable cost and that this coverage can be made
7 available at a reasonable cost through the corporation; if this para-
8 graph is implemented, then each physician or hospital obtaining excess
9 coverage up to these amounts shall obtain it from the corporation, and
10 the corporation may procure reinsurance for all risks incurred by
11 contracts issued under this paragraph from the private market.

12 (b) The corporation may

13 (1) employ or retain persons, individual or corporate, to
14 discharge its obligations and pay reasonable compensation for those
15 services; employees of the corporation are not considered state em-
16 ployees;

17 (2) recommend that the director hold public hearings for the
18 purpose of commencing operation of the joint underwriting association
19 established under secs. 110 - 180 of this chapter; if the joint under-
20 writing association begins operation, the corporation may purchase
21 reinsurance from the association for any of the liability incurred by
22 contracts issued by the corporation;

23 (3) provide coverage to physicians and hospitals for other
24 hazards when there is a finding by the director that this coverage is
25 otherwise unavailable by reason of the operation of the corporation;

26 (4) borrow or advance funds necessary to carry out the
27 purposes of the corporation;

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

- 1 (6) sue or be sued in the name of the corporation;
2 (7) provide risk management advice and services to hospitals;
3 (8) negotiate and become a party to contracts for management
4 services for the corporation;
5 (9) perform all other acts necessary and proper to carry out
6 the duties of the corporation.

7 Sec. 21.88.060. PREMIUM TAX. The corporation shall pay a premium
8 tax in the amount of one and one-half per cent of the total direct
9 premium income received by the corporation during the year ending on the
10 preceding December 31, after deducting the applicable cancellations,
11 returned premium, the unabsorbed portion of any deposit premiums, all
12 policy dividends, unabsorbed premiums refunded to policyholders, refunds,
13 savings, savings coupons and other similar returns paid or credited to
14 policyholders with respect to their policies. The tax shall be paid to
15 the director annually before April 1 of each year.

16 Sec. 21.88.070. STATISTICS. The corporation shall collect,
17 maintain and report information concerning claims against health care
18 providers. The information shall be on forms prescribed by the direc-
19 tor, and shall be sufficient to enable a proper determination of losses
20 for rate making and to identify causes and sources of loss for loss
21 control. At least annually the corporation shall report to the director
22 the number and amount of claims filed, reserved, paid, settled and
23 adjudicated during the year, the premiums paid to and the expenses
24 incurred by the corporation during the year. This report shall be
25 available to the public. The director may require that supplemental
26 reports include the names of insured health care providers and the
27 claimants; however, no reports which become available to the public may
28 include the names of health care providers or claimants or information
29 that will permit by inference the identity of specific health care

1 providers or claimants. All statistics shall be made available to the
2 appropriate licensing board or agency.

3 Sec. 21.88.080. RATES. The rates and rating plans used by the
4 corporation for the policies issued shall be determined by license
5 category of health care providers in accordance with all of the fol-
6 lowing:

7 (1) rates for physicians shall be set as a function of the
8 physician's medical revenue;

9 (2) rates for hospitals shall be set as a function of the
10 number of permanent beds in the hospital;

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

13 (4) rates may not be excessive; rates are excessive if, after
14 a period of time and with respect to an amount of gross premium which
15 are actuarially credible, the premiums exceed losses incurred by the
16 corporation, including losses paid, reserves for claims reported and
17 unpaid, reserves for claims incurred during the policy period and not
18 reported, provided that reserves for claims incurred during the policy
19 period and reasonably expected to be reported after three years after
20 the incident may be included on a different basis due to the additional
21 financial flexibility provided by the corporation, and reasonable ex-
22 penses for the operation of the corporation;

23 (5) rates shall not be inadequate; rates are inadequate if,
24 based on available actuarial data, the premiums to be paid by the
25 health care providers are or may reasonably be expected to be insuf-
26 ficient to pay for losses incurred by the corporation, including claims
27 paid, reserves for claims reported and unpaid, reserves for claims
28 incurred during the policy period and not reported, provided that re-
29 serves for claims incurred during the policy period and reasonably

1 expected to be reported after three years after the incident may be
2 included on a different basis due to the additional financial flexibil-
3 ity provided by the corporation, and reasonable expenses for the opera-
4 tion of the corporation;

5 (6) rates may not be unfairly discriminatory;

6 (7) rates shall be adjusted annually;

7 (8) rates for any policy year shall be calculated to include
8 the adjustment for actual experience of the corporation as developed for
9 the preceding four policy years;

10 (9) in considering losses to be incurred, changes in the law,
11 national, regional or local trends in medical negligence awards, and
12 other relevant factors may be considered;

13 (10) income from the investment of reserves shall be con-
14 sidered;

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

16 (12) disciplines and classifications within the license cate-
17 gories of health care providers shall be considered;

18 (13) amounts sufficient for repayment of loan obligations
19 shall be considered.

20 Sec. 21.88.090. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE.

21 The corporation may provide for installment payment of premiums in which
22 event each installment is due by the date specified. The corporation
23 may cancel any of its policies in the event of nonpayment of any premium
24 or installment on a premium, or other charge, by mailing or delivering
25 to the insured at the address shown on the policy and to the agency of
26 the state issuing the insured's license written notice of cancellation.
27 Cancellation is not effective until 30 days after the date notice is
28 posted by the corporation.

29 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

1 Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Pro-
2 viders Joint Underwriting Association is created as an association
3 having a legal existence independent of and separate from the state and
4 consisting of all licensed (1) health care service corporations as
5 defined in AS 21.87.330; (2) disability insurers as defined in AS 21.12.-
6 050; (3) property insurers as defined in AS 21.12.060; and (4) casualty
7 insurers as defined in AS 21.12.070. Obligations issued by the associa-
8 tion do not constitute a debt, liability or obligation of the state or a
9 pledge of full faith and credit of the state.

10 (b) Every insurer described in (a) of this section is a member of
11 the association and shall remain a member as a condition of its author-
12 ity to continue to transact that kind of business in the state.

13 (c) The association shall commence operation if the director
14 finds, after public hearing, ^{for any portion of its insurance coverage} that a market for reinsurance_A is needed by
15 the corporation. After the association has commenced operation, if the
16 director determines, after public hearing, that a market for reinsurance
17 is no longer needed by the corporation, the association shall cease its
18 underwriting operations.

19 Sec. 21.88.120. PURPOSE. The purpose of the association is to
20 provide a market for medical malpractice reinsurance to the corporation
21 on a self-supporting basis without subsidy from association members.

22 Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM; COMPENSA-
23 TION. (a) The association shall be governed by a board of directors
24 appointed by the governor of the state and consisting of two representa-
25 tives of domestic casualty and property insurers, one representative of
26 admitted disability insurers, one representative of health care service
27 corporations, one representative of foreign casualty and property
28 insurers, and two persons from the public.

29 (b) Members of the board of directors serve three-year terms.

1 (c) Members of the board of directors receive compensation from
2 the association of \$100 per day when the board meets and necessary
3 travel expenses.

4 Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30
5 days after the association commences operation the board of directors
6 shall prepare and submit to the director for his approval a plan of
7 operation which provides for the fair, reasonable and equitable adminis-
8 tration of the affairs of the association and the discharge of the
9 purposes for which it is created. The plan and any amendments to it
10 become effective upon the director's approval. If the board of directors
11 has failed to submit a plan of operation, or if at any subsequent time
12 the board of directors fails to submit suitable amendments to the plan,
13 the director shall, after notice and hearing, adopt and promulgate a
14 plan of operation or amendments which are necessary or advisable to
15 carry out the provisions of this chapter. Adoption of the plan is not
16 subject to the Administrative Procedure Act (AS 44.62).

17 (b) The plan of operation shall

18 (1) establish the procedures for carrying out the powers and
19 duties of the association specified in sec. 150 of this chapter;

20 (2) establish procedures for handling assets and discharging
21 liabilities of the association;

22 (3) establish regular times and places for meetings of the
23 board of directors;

24 (4) establish procedures for records to be kept of all
25 financial transactions of the association, its agents, and the board of
26 directors;

27 (5) establish the procedures for awarding contracts to indem-
28 nify or defend or to provide other services and to compensate the indem-
29 nitors or vendors;

1 (6) establish the procedures for issuing contracts of insur-
2 ance as provided in sec. 150 of this chapter and for the determination
3 of rates;

4 (7) contain additional provisions necessary for the execution
5 of the powers and duties of the association.

6 Sec. 21.88.150. POWERS AND DUTIES OF THE ASSOCIATION. (a) The
7 association shall

8 (1) provide reinsurance to the corporation covering contracts
9 issued by the corporation for that portion of the liability incurred by
10 the corporation it chooses to reinsure through the association, indem-
11 nifying physicians and hospitals, their employees who are physicians,
12 and other persons insured by the corporation against loss by reason of
13 liability for professional services and agreeing to tender on behalf of
14 the insureds a defense in an action brought under AS 09.55.530 - 09.55.-
15 560;

16 (2) charge a premium for the protection provided by the
17 reinsurance issued under (a)(1) of this section which shall be deter-
18 mined by the board of directors in accordance with secs. 80 and 160 of this
19 chapter and are subject to the approval of the director;

20 (3) comply with or be subject to AS 21.06.090; 21.06.120;
21 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250;
22 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and
23 36 of this title; and shall be exempt from participation as a member
24 insurer in the Alaska Insurance Guaranty Association;

25 (4) carry out the obligations of the contracts issued under
26 (a)(1) of this section by defending all covered claims made against the
27 insureds and paying all liabilities which are finally adjudicated
28 against the insureds or which may in the opinion of the association
29 reasonably be expected to be finally adjudicated against the insured

1 to the extent of the contract obligation.

2 (b) The association may

3 (1) employ or retain persons, individual or corporate, to
4 discharge its obligations and pay reasonable compensation for those
5 services; employees of the association are not considered state em-
6 ployees;

7 (2) borrow or advance funds necessary to carry out the
8 purposes of the association;

9 (3) negotiate and become a party to those contracts which are
10 necessary to carry out the purposes of the association;

11 (4) sue or be sued in the name of the association;

12 (5) cede or assume reinsurance;

13 (6) perform all other acts necessary and proper to carry out
14 the duties of the association.

15 Sec. 21.88.160. RATES AND RATE ADJUSTMENT. (a) The rates and
16 rating plans shall be determined as provided in sec. 80 of this chapter,
17 except that allowance may not be made for income from investment of
18 member-contributed funds; and provided that reserves for claims incurred
19 during the policy period and reasonably expected to be reported after
20 three years after the incident may be included on a different basis due
21 to the additional financial flexibility provided by the association.

22 (b) If in any year an assessment is made under sec. 170 of this
23 chapter, rates for the next period shall be increased from the rate
24 determined under (a) of this section by an amount sufficient to reimburse
25 all members the amounts assessed. No assessment may be reimbursed to
26 members without prior approval of the director and no interest accrues
27 in favor of members on amounts assessed.

28 (c) If after establishing required reserves and repaying all assess-
29 ments to members there is an excess amount in reserve, the excess

1 premium shall be refunded to the corporation for reimbursement to the
2 insureds.

3 Sec. 21.88.170. ASSESSMENT. If sufficient funds are not available
4 for the sound financial operation of the association, all members shall
5 contribute to the financial requirements of the association by paying to
6 the association an assessment to be determined by the board of directors
7 of the association, subject to the approval of the director; assessments
8 shall be prorated among all members in proportion to their direct
9 written premiums or revenues in the state in the insurance lines the
10 writing of which require membership in the association, in the two years
11 ending on the preceding December 31, after deducting the applicable
12 cancellations, returned premium, the unabsorbed portion of any deposit
13 premium, all policy dividends, unabsorbed premiums refunded to policy-
14 holders, refunds, savings, savings coupons and other similar returns
15 paid or credited to policyholders with respect to their policies. If
16 any member is prohibited by the law of its state of domicile from paying
17 an assessment to the association, then in lieu of the assessment the
18 member shall pay a tax to the director, in the same amount as the asses-
19 sment as an obligation in addition to taxes required under AS 21.09.210
20 and notwithstanding the provisions of AS 21.09.210(e). An amount equal
21 to taxes received under this section may be appropriated to the associa-
22 tion.

23 Sec. 21.88.180. REPORTS. At least annually the association shall
24 report to the director concerning its affairs. The report shall be in
25 the form prescribed by the director.

26 ARTICLE 4. LOAN FUND.

27 Sec. 21.88.210. FUND ESTABLISHED. (a) There is in the Department
28 of Commerce and Economic Development a medical malpractice liability
29 revolving loan fund to be administered by the director of insurance.

(b) ^{initial} Loan~~s~~ may be made from the fund to the corporation

1 upon certification by the director that a loan is necessary ^{for the} ~~for the~~
2 ~~corporation or association to spread costs out over time because of~~ ^{To capitalize the corporation.}
3 ~~fluctuations in loss experience.~~ If a loan is made to the corporation
4 from the fund, the corporation shall issue a note to the fund as evi-
5 dence of the loan.

6 (c) Loans from the fund shall be repaid within five years at an
7 annual interest rate of six per cent.

8 (d) The director may sell at par value to the Department of
9 Revenue the notes, security instruments and pledge agreements held by
10 the Department of Commerce and Economic Development as security for
11 loans made under this section. The Department of Revenue shall purchase
12 all the notes offered until the current principal amount of the notes
13 purchased and held by the Department of Revenue equals \$5,000,000.

14 ARTICLE 5. GENERAL PROVISIONS.

15 Sec. 21.88.900. DEFINITIONS. In this chapter

- 16 (1) "association" means the Health Care Providers Joint
17 Underwriting Association;
- 18 (2) "corporation" means the Medical Indemnity Corporation of
19 Alaska;
- 20 (3) "governor" means a member of the board of governors of
21 the Medical Indemnity Corporation of Alaska;
- 22 (4) "health care provider" means a person or institution
23 insured under this chapter;
- 24 (5) "physician" means a person licensed under AS 08.64;
- 25 (6) "hospital" means an institution licensed under AS 18.20;
- 26 (7) "chiropractor" means a person licensed under AS 08.20;
- 27 (8) "dental hygienist" means a person licensed under AS 08.32;
- 28 (9) "dentist" means a person licensed under AS 08.36;
- 29 (10) "dispensing optician" means a person licensed under

1 AS 08.71;

2 (11) "optometrist" means a person licensed under AS 08.72;

3 (12) "physical therapist" means a person licensed under
4 AS 08.80;

5 (13) "pharmacist" means a person licensed under AS 08.84;

6 (14) "psychologist" and "psychological associate" means a
7 person licensed under AS 08.86.

8 * Sec. 42. AS 21.18.090 is amended by adding new paragraphs to read:

9 (5) reserves for the Medical Indemnity Corporation of Alaska
10 are to include only reserves for claims reported and unpaid and reserves
11 for claims incurred but not reported but which may reasonably be ex-
12 pected to be reported within three years after the date of occurrence;

13 (6) reserves for the Health Care Providers Joint Under-
14 writing Association are to include claims reported and unpaid; reserves
15 for claims incurred but not reported, but those which may reasonably be
16 expected to be reported beyond three years after the date of occurrence
17 may be included on a different basis due to the additional financial
18 flexibility of the association.

19 * Sec. 43. AS 21.80.180(5) is amended to read:

20 (5) "insolvent insurer" means an insurer

21 (A) authorized to transact insurance in this state,
22 except the Medical Indemnity Corporation of Alaska and the Health
23 Care Providers Joint Underwriting Association established under ch.
24 88 of this title, either at the time the policy was issued or when
25 the insured event occurred, and

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

28 * Sec. 44. AS 21.80.180(6) is amended to read:

29 (6) "member insurer" means a person, except the Medical

1 Indemnity Corporation of Alaska and the Health Care Providers Joint
 2 Underwriting Association established under ch. 88 of this title, who

3 (A) writes any kind of insurance to which this chapter
 4 applies under sec. 20 of this chapter including the exchange of
 5 reciprocal or inter-insurance contracts, and

6 (B) is licensed to transact insurance in this state;

7 * Sec. 45. AS 08.02 is amended by adding a new section to read:

8 Sec. 08.02.020. LIMITATION OF LIABILITY FOR MEMBERS OF LICENSING
 9 BOARDS. No person is liable for damages or other relief in an action by
 10 reason of his performance of a duty, function, or activity as a member
 11 of a licensing board or by reason of a recommendation or action of the
 12 board when the person acts in the reasonable belief that his action or
 13 recommendation is warranted by facts known to him or to the board after
 14 reasonable efforts to ascertain the facts upon which the action or
 15 recommendation is made.

16 * Sec. 46. AS 09.55.536, enacted in sec. 33 of this Act, has the effect
 17 of changing the Alaska Supreme Court's Rules of Civil Procedure by requiring
 18 the submission of medical malpractice actions against health care providers
 19 to expert advisory panels before discovery unless the court decides an expert
 20 advisory opinion is not necessary in the case.

21 * Sec. 47. AS 08.64.365 and AS 08.68.040 are repealed.

22 * Sec. 48. Secs. 33 - 38 of this Act apply to all causes of action ^{for medical malpractice} which
 23 have not been filed in a court of this state ^{before} ~~prior to~~ the effective date of
 24 this Act.

25 * Sec. 49. Secs. 1 - 32 and secs. 39 - 47 take effect 30 days after the
 26 effective date of this Act.

27 * Sec. 50. This Act takes effect immediately in accordance with AS 01.-
 28 10.070(c).

29 Note: The severability clause will be added

proposed

4/23

4/26

Original Sponsor: Rules Committee by request of the Governor

1 IN THE HOUSE BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR SENATE CS FOR 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 health care; changing the Alaska
7 Supreme Court's Rules of Civil Procedure; and providing
8 for an effective date."

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

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

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

15 * Sec. 2. AS 08.20.010 is amended to read:

16 Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC
17 EXAMINERS. There is created the Board of Chiropractic Examiners con-
18 sisting of five [THREE] members appointed by the governor.

19 * Sec. 3. AS 08.20.020 is amended to read:

20 Sec. 08.20.020. MEMBERS OF BOARD. Three members [EACH MEMBER] of
21 the board shall be [A] licensed chiropractic physicians who [PHYSICIAN
22 AND SHALL] have practiced chiropractic in this state not less than two
23 years. Two members of the board shall be persons with no direct finan-
24 cial interest in the health care industry. Each member serves without
25 pay but is entitled to per diem and travel expenses allowed by law.

26 * Sec. 4. AS 08.20.030 is repealed and re-enacted to read:

27 Sec. 08.20.030. MEMBERS TERMS, VACANCIES. Members serve for
28 staggered terms of three years. The terms of the public members of the
29 board may not expire at the same time. Vacancies on the board shall be

nuclear

1 filled for the unexpired term.

2 * Sec. 5. AS 08.20 is amended by adding a new section to read:

3 Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice
4 insurance for chiropractors becomes unavailable on the voluntary
5 market and the director of insurance finds, after public hearing, that
6 the unavailability is impairing the delivery of chiropractic services
7 to the public, the director of insurance may require all persons
8 licensed under this chapter to carry malpractice insurance and to pur-
9 chase their insurance from the Medical Indemnity Corporation of Alaska
10 established under AS 21.88. Compliance with the requirements of this
11 section is a condition of licensure under this chapter. This require-
12 ment is satisfied if the licensee's employer maintains insurance for him
13 from the Medical Indemnity Corporation of Alaska.

14 * Sec. 6. AS 08.20 is amended by adding a new section to read:

15 Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
16 In addition to action under sec. 170 of this chapter, upon a finding
17 that by reason of demonstrated problems of competence, experience, edu-
18 cation or health the authority to practice chiropractic should be
19 limited or conditioned or the practitioner disciplined, the board may
20 reprimand, censure, place on probation, restrict practice by specialty,
21 procedure or facility, or require 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. 7. AS 08.32 is amended by adding new sections to read:

25 Sec. 08.32.015. MALPRACTICE INSURANCE. If medical malpractice
26 insurance for dental hygienists becomes unavailable on the voluntary
27 market and the director of insurance finds, after public hearing, that
28 the unavailability is impairing the delivery of dental hygiene services
29

1 to the public, the director of insurance may require all persons licensed
2 under this chapter to carry malpractice insurance and to purchase their
3 insurance from the Medical Indemnity Corporation of Alaska established
4 under AS 21.88. Compliance with the requirements of this section is a
5 condition of licensure under this chapter. The provisions of this
6 section are satisfied if the licensee's employer maintains insurance for
7 him from the Medical Indemnity Corporation of Alaska.

8 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
9 In addition to action under sec. 160 of this chapter, upon a finding
10 that by reason of demonstrated problems of competence, experience,
11 education or health the authority to practice dental hygiene should be
12 limited or conditioned or the practitioner disciplined, the board may
13 reprimand, censure, place on probation, restrict practice by specialty,
14 procedure, or facility, or require continuing education or retraining.

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

17 * Sec. 8. AS 08.36.010 is amended to read:

18 Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is created
19 the Board of Dental Examiners, referred to in this chapter as the board,
20 consisting of seven [FIVE] members. Five members [EACH MEMBER] shall be
21 [A CITIZEN OF THE UNITED STATES AND A] qualified resident dentists who
22 have [HAS] been engaged in the practice of dentistry in the state for
23 five years immediately preceding [HIS] appointment, and two members
24 shall be persons with no direct financial interest in the health care
25 industry.

26 * Sec. 9. AS 08.36.020 is amended to read:

27 Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS.
28 Members of the board are appointed by the governor, subject to
29 confirmation by the legislature in joint session [ASSEMBLED]. Each

1 board member serves for a term of five years, and until his successor is
2 appointed and qualified except that the terms of the public members on
3 the board shall be staggered so that they do not expire at the same
4 time. The term begins on February 1. An appointment to a vacancy is
5 for the unexpired term. [APPOINTMENTS SHALL BE MADE FROM A LIST OF
6 NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST SHALL BE
7 SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND NOT MORE
8 THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL CONTAIN
9 AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE GOVERNOR SHALL
10 MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE LIST.]

11 * Sec. 10. AS 08.36 is amended by adding new sections to read:

12 Sec. 08.36.115. MALPRACTICE INSURANCE. If medical malpractice
13 insurance for dentists becomes unavailable on the voluntary market and
14 the director of insurance finds, after public hearing, that the unavaila-
15 bility is impairing the delivery of dental services to the public, the
16 director of insurance may require all persons licensed under this
17 chapter to carry malpractice insurance and to purchase their insurance
18 from the Medical Indemnity Corporation of Alaska established under
19 AS 21.88. Compliance with the requirements of this section is a condi-
20 tion of licensure under this chapter. The requirements of this section
21 are satisfied if the licensee's employer maintains insurance for him
22 from the Medical Indemnity Corporation of Alaska.

23 Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
24 In addition to action under sec. 320 of this chapter, upon a finding
25 that by reason of demcnstrated problems of competence, experience,
26 education, or health, the authority to practice dentistry should be
27 limited or conditioned or the practitioner disciplined, the board may
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. 11. AS 08.64.010 is amended to read:

4 Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD.
5 The governor shall appoint a board of medical examiners, to be known as
6 the State Medical Board, consisting of five licensed physicians, re-
7 siding in as many separate Alaska judicial districts as possible, and
8 two persons with no direct financial interest in the health care in-
9 dustry. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH
10 VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIA-
11 TION.]

12 * Sec. 12. AS 08.64.020 is amended to read:

13 Sec. 08.64.020. STATE MEDICAL BOARD TERM OF OFFICE. Members shall
14 be appointed for a term of four years, subject to confirmation by a
15 majority of the members of the legislature in joint session, and shall
16 hold office until their successors are appointed and qualified. The
17 terms of the public members of the board shall be staggered so that they
18 do not expire at the same time.

19 * Sec. 13. AS 08.64.090 is amended to read:

20 Sec. 08.64.090. QUORUM. Four [THREE] members of the board consti-
21 tute a quorum for the transaction of all business properly before the
22 board.

23 * Sec. 14. AS 08.64 is amended by adding new sections to read:

24 Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an
25 active license under this chapter, a person shall maintain insurance
26 issued by the Medical Indemnity Corporation of Alaska against liability
27 to patients for medical malpractice in limits of not less than \$200,000
28 per occurrence and \$600,000 aggregate liability per year. This require-
29 ment is satisfied if a person's employer maintains insurance for him

1 from the Medical Indemnity Corporation of Alaska in the required amounts.

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

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

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

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

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

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

* Sec. 15. AS 08.68.010 is amended to read:

Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING.

There is created a Board of Nursing, consisting of seven [FIVE] members appointed by the governor. One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing nursing education, [AND] one nurse at large, and two persons who have no direct financial interest in the health care industry.

* Sec. 16. AS 08.68.020 is repealed and re-enacted to read:

Sec. 08.68.020. TERM OF OFFICE. Members serve staggered terms of five years and until their successors are appointed. The terms of the public members on the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term.

* Sec. 17. AS 08.68.060 is amended to read:

Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members [EACH MEMBER] of the board who are nurses shall be [A CITIZEN OF THE UNITED STATES, A RESIDENT OF THE STATE, AND A] licensed professional nurses [NURSE] in the state, and [MEMBERS] shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment.

* Sec. 18. AS 08.68 is amended by adding new sections to read:

Sec. 08.68.165. MALPRACTICE INSURANCE. If medical malpractice insurance for nurses becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of nursing services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88.

1 Compliance with the requirements of this section is a condition of
2 licensure under this chapter. The requirements of this section are
3 satisfied if the licensee's employer maintains insurance for him from
4 the Medical Indemnity Corporation of Alaska.

5 Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)

6 In addition to action under sec. 270 of this chapter, upon a finding
7 that by reason of demonstrated problems of competence, experience,
8 education, or health the authority to practice nursing should be limited
9 or conditioned or the practitioner disciplined, the board may reprimand,
10 censure, place on probation, restrict practice by specialty, procedure,
11 or facility, or require continuing education or retraining.

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

14 * Sec. 19. AS 08.71.020 is amended to read:

15 Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM
16 OF OFFICE. The board consists of seven [FIVE] persons appointed by the
17 governor. Members serve staggered terms of three years. The terms of
18 the public members of the board shall be set so that they do not expire
19 at the same time. [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A LIST
20 OF QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN THE
21 STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST 30
22 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER A
23 VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS
24 THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR
25 SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST. THE
26 TERM OF OFFICE OF EACH MEMBER IS THREE YEARS. HOWEVER, OF THE FIRST
27 MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO
28 FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the
29 board shall be filled for the unexpired term [IN THE SAME MANNER AS

1 ORIGINAL APPOINTMENT].

2 * Sec. 20. AS 08.71.030 is amended to read:

3 Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five [A] board
4 members [MEMBER] shall be [A] licensed, practicing dispensing opticians
5 [OPTICIAN] residing in the state. Two shall be persons with no direct
6 financial interest in the health care industry.

7 * Sec. 21. AS 08.71 is amended by adding new sections to read:

8 Sec. 08.71.085. MALPRACTICE INSURANCE. If medical malpractice
9 insurance for opticians becomes unavailable on the voluntary market and
10 the director of insurance finds, after public hearing, that the unavaila-
11 bility is impairing the delivery of optician services to the public, the
12 director of insurance may require all persons licensed under this chap-
13 ter to carry malpractice insurance and to purchase their insurance from
14 the Medical Indemnity Corporation of Alaska established under AS 21.88.
15 Compliance with the requirements of this section is a condition of
16 licensure under this chapter. The requirements of this section are
17 satisfied if the licensee's employer maintains insurance for him from
18 the Medical Indemnity Corporation of Alaska.

19 Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
20 In addition to action under sec. 170 of this chapter, upon a finding
21 that by reason of demonstrated problems of competence, experience,
22 education, or health the authority to practice as a dispensing optician
23 under this chapter should be limited or conditioned or the practitioner
24 disciplined, the board may reprimand, censure, place on probation,
25 restrict practice by procedure, or facility, or require continuing
26 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. 22. AS 08.72.020 is amended to read:

1 Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The
2 board consists of five [THREE] persons, appointed by the governor.
3 Members serve staggered terms of three years. The terms of the public
4 members of the board shall be set so that they do not expire at the same
5 time. [THE TERM OF EACH MEMBER IS THREE YEARS. ONE MEMBER ONLY IS
6 APPOINTED EACH YEAR, EXCEPT WHEN VACANCIES FOR UNEXPIRED TERMS ARE
7 FILLED.]

8 * Sec. 23. AS 08.72.040 is repealed and re-enacted to read:

9 Sec. 08.72.040. QUALIFICATIONS. Three board members shall be
10 licensed, practicing optometrists who have been residents for at least
11 three years. Two shall be persons who have no direct financial interest
12 in the health care industry.

13 * Sec. 24. AS 08.72 is amended by adding new sections to read:

14 Sec. 08.72.115. MALPRACTICE INSURANCE. If medical malpractice
15 insurance for optometrists becomes unavailable on the voluntary market
16 and the director of insurance finds, after public hearing, that the
17 unavailability is impairing the delivery of optometrist services to the
18 public, the director of insurance may require all persons licensed under
19 this chapter to carry malpractice insurance and to purchase their insur-
20 ance from the Medical Indemnity Corporation of Alaska established under
21 AS 21.88. Compliance with this section is a condition of licensure
22 under this chapter. The requirements of this section are satisfied if
23 the licensee's employer maintains insurance for him from the Medical
24 Indemnity Corporation of Alaska.

25 Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
26 In addition to action under secs. 240 and 250 of this chapter, upon a
27 finding that by reason of demonstrated problems of competence, experi-
28 ence, education, or health the authority to practice optometry under
29 this chapter should be limited or conditioned or the practitioner

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

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

6 * Sec. 25. AS 08.80.010 is amended to read:

7 Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY.

8 There is created the Board of Pharmacy, composed of seven [FIVE] members
9 five [EACH] of whom shall be pharmacists [A PHARMACIST] licensed in the
10 state who have [HAS] been actively engaged in the practice of pharmacy
11 in the state for a period of three years immediately preceding their
12 [HIS] appointment. Two shall be persons with no direct financial
13 interest in the health care industry. Whenever possible, the board
14 shall include at least one member from each judicial district.

15 * Sec. 26. AS 08.80.020 is amended to read:

16 Sec. 08.80.020. TERM OF OFFICE. Members of the board are ap-
17 pointed by the governor, and confirmed by the legislature in joint
18 session, for overlapping terms of five years, or until their successors
19 are appointed and qualified. The terms of the public members shall be
20 staggered so that they do not expire at the same time. An appointment
21 to fill a vacancy is for the unexpired term. The term of office begins
22 on April 1 of each year.

23 * Sec. 27. AS 08.80.070 is amended to read:

24 Sec. 08.80.070. QUORUM. Four [THREE] members constitute a quorum
25 for the transaction of business. However, when the board meets for the
26 purpose of examining applications for registration, three [TWO] members
27 of the board constitute a quorum.

28 * Sec. 28. AS 08.80 is amended by adding new sections to read:

29 Sec. 08.80.115. MALPRACTICE INSURANCE. If medical malpractice

1 insurance for pharmacists becomes unavailable on the voluntary market
2 and the director of insurance finds, after public hearing, that the
3 unavailability is impairing the delivery of pharmacist services to the
4 public, the director of insurance may require all persons licensed under
5 this chapter to carry malpractice insurance and to purchase their
6 insurance from the Medical Indemnity Corporation of Alaska established
7 under AS 21.88. Compliance with the requirements of this section is a
8 condition of licensure under this chapter. The requirements of this
9 section are satisfied if the licensee's employer maintains insurance for
10 him from the Medical Indemnity Corporation of Alaska.

11 Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
12 In addition to action under sec. 260 of this chapter, upon a finding
13 that by reason of demonstrated problems of competence, experience,
14 education, or health the authority to practice pharmacy under this
15 chapter should be limited or conditioned or the practitioner disci-
16 plined, the board may reprimand, censure, place on probation, restrict
17 practice by specialty, procedure, or facility, or require continuing
18 education or retraining.

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

21 * Sec. 29. AS 08.84 is amended by adding new sections to read:

22 Sec. 08.84.035. MALPRACTICE INSURANCE. If medical malpractice
23 insurance for physical therapists becomes unavailable on the voluntary
24 market and the director of insurance finds, after public hearing, that
25 the unavailability is impairing the delivery of physical therapist
26 services to the public, the director of insurance may require all persons
27 licensed under this chapter to carry malpractice insurance and to pur-
28 chase their insurance from the Medical Indemnity Corporation of Alaska
29 established under AS 21.88. Compliance with this section is a condition

1 of licensure under this chapter. The requirements of this section are
2 satisfied if the licensee's employer maintains insurance for him from
3 the Medical Indemnity Corporation of Alaska.

4 Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
5 In addition to action under sec. 180 of this chapter, upon a finding
6 that by reason of demonstrated problems of competence, experience,
7 education or health the authority to practice physical therapy should be
8 limited or conditioned or the practitioner disciplined, the board may
9 reprimand, censure, place on probation, restrict practice by specialty,
10 procedure, or facility, or require continuing education or retraining.

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

13 * Sec. 30. AS 08.86.010 is amended to read:

14 Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is
15 created a Board of Psychologist and Psychological Associate Examiners.
16 It consists of three licensed psychologists, and two persons who have no
17 direct financial interest in the health care industry.

18 * Sec. 31. AS 08.86.020 is amended to read:

19 Sec. 08.86.020. APPOINTMENT AND TERM OF OFFICE. Members of the
20 board are appointed by the governor and confirmed by the legislature for
21 staggered terms of three years. The terms of the public members shall
22 be set so that they do not expire at the same time. A member serves at
23 the pleasure of the governor.

24 * Sec. 32. AS 08.86 is amended by adding new sections to read:

25 Sec. 08.86.125. MALPRACTICE INSURANCE. If medical malpractice
26 insurance for psychologists or psychological associates becomes unavail-
27 able on the voluntary market and the director of insurance finds, after
28 public hearing, that the unavailability is impairing the delivery of
29 psychologist or psychological associate services to the public, the

1 director of insurance may require all persons licensed under this chapter
2 to carry malpractice insurance and to purchase their insurance from the
3 Medical Indemnity Corporation of Alaska established under AS 21.88.
4 Compliance with this section is a condition of licensure as a psychologist
5 or psychological associate under this chapter. The requirements of this
6 section are satisfied if a licensee's employer maintains insurance for
7 him from the Medical Indemnity Corporation of Alaska.

8 Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
9 Upon a finding that by reason of demonstrated problems of competence,
10 experience, education, or health the authority to practice psychology or
11 as a psychological associate under this chapter should be limited or
12 conditioned or the practitioner disciplined, the board may reprimand,
13 censure, place on probation, restrict practice by time, specialty, pro-
14 cedure, or facility, or require continuing education or retraining.

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

17 * Sec. 33. AS 09.55 is amended by adding new sections to read:

18 Sec. 09.55.535. VOLUNTARY ARBITRATION. (a) A patient and any
19 health care provider may execute an agreement to submit to arbitration
20 any dispute, controversy, or issue arising out of care or treatment by
21 the health care provider during the period that the agreement is in
22 force or that has already arisen between the parties.

23 (b) An agreement to arbitrate executed before care or treatment is
24 provided shall clearly provide in bold print on the face of the agree-
25 ment that execution of the agreement by the patient is not a prerequi-
26 site to receiving care or treatment. If this subsection is not complied
27 with by the health care provider, the agreement to arbitrate is void.
28 The form to be used shall be approved in advance by the attorney general
29 of the state to assure it fairly informs both parties to the agreement

1 and properly protects their interests.

2 (c) The agreement shall provide that the person receiving health
3 care may revoke the agreement within 60 days after execution by notify-
4 ing the health care provider in writing. A health care provider may not
5 revoke the agreement after its execution.

6 (d) Each admission to a hospital shall be treated as separate and
7 distinct for the purposes of an agreement to arbitrate, but a person
8 receiving outpatient care from a hospital or clinic or a member of a
9 health maintenance organization may execute an agreement with the hospi-
10 tal which provides for continuation of the agreement for a continuing
11 program of treatment or during continued membership.

12 (e) Upon the filing of a malpractice claim which is subject to an
13 agreement to arbitrate, the claim shall be submitted to an arbitration
14 board. The arbitration board shall consist of three arbitrators: one
15 arbitrator designated by the claimant or claimants, one arbitrator
16 designated by the health care provider or providers against whom the
17 claim is made, and a third arbitrator designated by mutual agreement who
18 shall serve as chairperson of the board. If the parties cannot agree on
19 the third person, the court will provide a choice of three or more
20 persons who might serve as chairperson of the arbitration board, which
21 shall be from a list of qualified arbitrators furnished by the attorney
22 general. Claimant or claimants together and health care provider or
23 providers together may each strike one or more names, so after each side
24 has done so at least one name remains, providing a basis for the final
25 selection by the court.

26 (f) The attorney general shall prepare a list of persons consist-
27 ing of lawyers or other persons qualified to serve as chairperson of an
28 arbitration board. They shall be selected on basis of their technical
29 expertise, judicial temperament, and capability of impartially acting on
malpractice claims. The attorney general shall submit a list of at

Where is it binding?

1 least three names whenever requested to do so by the court along with
2 detailed biographical information on each person listed.

3 (g) Each member of the arbitration board shall receive reasonable
4 compensation to be paid by the court based on the extent and duration of
5 services rendered. The court shall pay the costs of expert witnesses
6 called by the board and the costs of expert witnesses called by the
7 parties to the arbitration up to a maximum of three witnesses for each
8 side and \$150 per day for each expert witness.

9 (h) The arbitration board may appoint an expert advisory panel,
10 with the powers of the expert advisory panel under sec. 536 of this
11 chapter, to advise the board on the medical facts of the case.

12 (i) The court shall specify the shortest practical deadline for
13 completion of the work of the arbitration board, taking into account all
14 the circumstances and the nature of the case.

15 (j) The provisions of the Uniform Arbitration Act, AS 09.43.010 -
16 09.43.180, apply to arbitrations under this section if they do not
17 conflict with the provisions of this section; arbitrations under this
18 section shall be conducted in accordance with procedures established by
19 any rules of court which may be adopted and according to provisions of
20 secs. 540 - 54⁸ and 554 - 560 of this chapter, and AS 09.65.090 - 09.65.-
21 100.

22 Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for
23 damages due to personal injury or death based upon the provision of
24 professional services by a health care provider when the parties have
25 not ~~yet~~ agreed to arbitration of the claim under sec. 535 of this chap-
26 ter, the court shall appoint a three-person expert advisory panel
27 unless the [court decides] that an expert advisory opinion is not neces-
28 sary for a decision in the case. When the action is filed the court
29 shall, by order, determine the professions or specialties to be repre-
sented on the expert advisory panel, giving the parties the opportunity

Best of questions ?

Other questions ?

Make mandatory plus allows other questions

1 (b) The expert advisory panel may compel the attendance of wit-
 2 nesses, interview the parties, physically examine the injured person if
 3 alive, consult with the specialists or learned works they consider
 4 appropriate, and compel the production of and examine all relevant
 5 hospital, medical, or other records or materials relating to the health
 6 care in issue. The panel may meet in camera, but shall maintain a
 7 record of any testimony or oral statements of witnesses, and shall keep
 8 copies of all written statements it receives.

9 (c) Not more than 30 days after selection of the panel, it shall
 10 make a written report to the parties and to the court, answering the
 11 questions submitted to the panel by the court and, in the court's dis-
 12 cretion, any of the following questions:

13 (1) Was the care which is the subject of the litigation
 14 appropriate to the complaint or condition for which the plaintiff sought
 15 or was brought to medical care?

16 (2) Was the care administered in accordance with appropriate
 17 medical standards?

18 (3) Did an injury arise from the medical care?

19 (4) What is the nature and the extent of the medical injury?

20 (5) If a medical injury had not occurred, how would the
 21 plaintiff's condition differ from the plaintiff's present condition?

22 (d) In any case in which the answer to one or more of the ques-
 23 tions submitted to the panel depends upon the resolution of factual
 24 questions which are not the proper subject of expert opinion, the report
 25 shall so state and may answer questions based upon hypothetical facts
 26 that are fully set out in the opinion. The report shall include copies
 27 of all written statements, opinions, or records relied upon by the panel
 28 and either a transcription or other record of any oral statements or
 29 opinions; shall specify any medical or scientific authority relied upon
 by the panel; and shall include the results of any physical or mental

1 examination performed on the plaintiff. Each member shall sign the
2 report and his signature constitutes his adoption of all statements and
3 opinions contained in it; however, a member may, instead of signing the
4 report, submit a concurring or dissenting report which complies with the
5 requirements of this subsection. A member may not attest to any portion
6 of the report as to which he is not qualified to give expert testimony.

7 (e) The report of the panel with any dissenting or concurring
8 opinion is admissible in evidence to the same extent as though its con-
9 tents 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. [REDACTED]

18 [REDACTED]

19 (f) No discovery may be undertaken in a case until the report of
20 the expert advisory panel is received. However, the court [may relax
21 this prohibition upon a showing of good cause by any party.] If the
22 panel has not completed its report within the 30-day period prescribed
23 in (b) of this section, the court may, upon application, grant it an
24 additional 30 days.

25 (g) Members of a panel are entitled to travel expenses and per
26 diem in accordance with state law pertaining to members of boards and
27 commissions for all time spent in preparing its report. If a panel
28 member is called upon as a witness at trial or upon deposition, he is
29 entitled to payment of an expert witness fee, which may not exceed \$150
per day. All expenses incurred by the panel shall be paid by the

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

5 (h) Parties to the case and their counsel may not initiate com-
6 munication out of court with members of the panel on the subject matter
7 of its inquiry and report or cause or solicit others to do so, except
8 through ordinary discovery proceedings.

9 * Sec. 34. AS 09.55.540 is amended to read:

10 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action
11 based on the negligence or wilful misconduct of a health care provider
12 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-
13 36], the plaintiff has [SHALL HAVE] the burden of proving by a prepon-
14 derance of the evidence

15 (1) the degree of knowledge or skill possessed or the degree
16 of care ordinarily exercised under the circumstances, at the time of
17 the act complained of, by health care providers in the field or spe-
18 cialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS
19 PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH
20 THE DEFENDANT PRACTICES];

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

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

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

28 * Sec. 35 AS 09.55 is amended by adding new sections to read:

29 Sec. 09.55.546. ADVANCE PAYMENTS. In an action to recover damages

1 under secs. 530 - 560 of this chapter, no advance payment made by the
2 defendant health care provider or his professional liability insurer to
3 or on behalf of the plaintiff is admissible as evidence or may be
4 construed as an admission of liability for injuries or damages suffered
5 by the plaintiff; however, a final award in favor of the plaintiff shall
6 be reduced to the extent of any advance payment. The advance payment
7 shall inure to the exclusive benefit of the defendant or the insurer
8 making the payment.

9 Sec. 09.55.547. AD DAMNUM. In a cause of action against a health
10 care provider for malpractice, the complaint or any other pleadings may
11 not contain an ad damnum clause or monetary amount claimed against the
12 defendant health care provider, except as necessary for jurisdictional
13 purposes.

14 Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be
15 awarded in accordance with principles of the common law. The fact
16 finder in a malpractice action shall render any award for damages by
17 category of loss. The court may enter a judgment that future damages be
18 paid in whole or in part by periodic payments rather than by a lump-sum
19 payment; the judgment shall include, if necessary, other provisions to
20 assure that funds will be available as periodic payments become due.
21 Insurance from an authorized insurer as defined in AS 21.90.080 or from
22 the Medical Indemnity Corporation of Alaska is sufficient assurance that
23 funds will be available. Any part of the award which is paid on a
24 periodic basis shall be adjusted annually according to changes in the
25 consumer price index in the community where the claimant resides. In
26 this subsection, future damages includes damages for future medical
27 treatment, care or custody, loss of future earnings, or loss of bodily
28 function of the claimant.

29 (b) Except when the collateral source is a federal program which
by law must seek subrogation and except death benefits paid under life
insurance, a claimant may only recover damages from the defendant which

1 exceed amounts received by the claimant as compensation for his injuries
2 from collateral sources, whether private, group or governmental, and
3 whether contributory or noncontributory. Evidence of collateral sources,
4 other than a federal program which must by law seek subrogation and the
5 death benefit paid under life insurance, is admissible after the fact
6 finder has rendered an award. The court ^{May} ~~shall~~ take into account the
7 value of claimant's rights to coverage exhausted or depleted by payment
8 of these collateral benefits by adding back a reasonable estimate of
9 their probable value, or by earmarking and holding for possible periodic
10 payment under (a) of this section that amount of the award that would
11 otherwise have been deducted, to see if the impairment of claimant's
12 rights actually takes place in the future.

12 * Sec. 36. AS 09.55.550 is amended to read:

13 Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]
14 malpractice actions the jury shall be instructed that the plaintiff has
15 the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the
16 health care provider's negligence or wilful misconduct in accordance
17 with the standard of proof specified in sec. 540 of this chapter [OF
18 THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that
19 injury alone does not raise a presumption of the health care provider's
20 [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

21 * Sec. 37. AS 09.55 is amended by adding new sections to read:

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

25 Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is
26 liable for failure to obtain the informed consent of a patient if the
27 claimant establishes by a preponderance of the evidence that the pro-
28 vider has failed to inform the patient of the common risks and reason-
29 able alternatives to the proposed treatment or procedure, and that but