

237 HJ FCC MALPRACTICE (INCLUDING HB 574)

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

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

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

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

(5) establish the amount and method of reimbursing members of the board of directors;

(6) establish the procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;

(7) establish the procedures for issuing contracts of insurance as provided in sec. 150 of this chapter and for the determination of rates;

(8) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

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

(1) provide reinsurance to the corporation covering contracts issued by the corporation indemnifying health care providers and their employees who are health care providers against loss by reason of liability for professional services and agreeing to tender on behalf of the health care providers and their employees who are health care providers a defense in an action brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability required to be indemnified as provided in AS 08.64.215 and AS 19.20.045, and the coverage shall be the same as that which the Health Care Providers Indemnity Corporation is required to provide under sec. 50 of this chapter;

(2) charge a premium for the protection provided by the contracts issued under sec. 50 of this chapter which shall be determined by the board of directors in accordance with sec. 80 of this chapter and subject to the approval of the director;

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

(4) carry out the obligations of the contracts issued under sec. 50 of this chapter by defending all covered claims made against insured health care providers and paying all liabilities which are

finally adjudicated against the insured health care provider or which
p35 may in the opinion of the association reasonably be expected to be
finally adjudicated against the health care provider to the extent of

the contract obligation.

(b) The association may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services;

(2) provide reinsurance to the corporation for coverage to health care providers for other hazards where there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(3) provide reinsurance to the corporation for coverage to health care providers for liability under AS 09.55.530 - 09.55.560 in excess of the minimum limits required for licensure as a health care provider where there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation;

(4) provide reinsurance to the corporation for coverage for liability under AS 09.55.530 - 09.55.560 to chiropractors licensed under AS 08.20, dental hygienists licensed under AS 08.32, dentists licensed under AS 08.36, nurses licensed under AS 08.60, dispensing opticians licensed under AS 08.71, optometrists licensed under AS 08.72, pharmacists licensed under AS 08.80, physical therapists licensed under AS 08.84, and psychologists and psychological associates licensed under AS 08.86;

(5) borrow or advance funds necessary to effectuate the purposes of this association;

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

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

(8) cede or assume reinsurance;

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(9) perform all other acts necessary and proper to effectuate the association.

Sec. 21.88.160. RATES AND RATING PLANS. The rates and rating plans shall be determined as provided in sec. 80 of this chapter, except that allowance may not be made for profit to an indemnifying carrier or for income from investment of member-contributed funds; and provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the association.

able for the sound financial operation of the association, all members shall contribute to the financial requirements of the association by paying to the association an assessment to be determined by the board of governors of the association, these assessments to be prorated among all members in proportion to their direct written premiums or revenues in this state in the insurance lines the writing of which require membership in the association, in the two years ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. Any assessment under this section is a tax obligation in addition to taxes required under AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e).

Sec. 21.88.180. RATE ADJUSTMENT. (a) If in any year an assessment is made under sec. 170 of this chapter, rates for the next period shall be increased from the rates determined under sec. 160 of this chapter by an amount sufficient to reimburse all members the amounts assessed.

(b) No assessment may be reimbursed to members without prior approval of the director and no interest accrues in favor of members on amounts assessed.

(c) If, after establishing required reserves, there is an excess amount in reserve, the excess premium shall be refunded to the insured health care providers.

Sec. 21.88.190. REPORTS. At least annually the association shall report to the director concerning its affairs. The report shall be in the form prescribed by the director.

ARTICLE 4. LOAN FUND

Sec. 21.88.210. 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 Joint Underwriting Association upon certification by the director that a loan is necessary for the corporation to spread costs out over time because of fluctuations in loss experience. If a loan is made to the corporation from the fund, the Joint Underwriting Association 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 Joint Underwriting Association within five years at an annual interest rate of six percent.

Original Sponsor: Rules Committee by
request of the Governor

Offered: 3/2/76
Referred: Rules

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 574 am 3

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

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SCS CSHB 574 am 3

filled for the unexpired term.

Original sponsor: Rules Committee by
request of the Governor

Offered: 2/24/76

Keith

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 574

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

(c) The Director may sell at par value to the Department of
the notes, security instruments and pledge agreements held by
the Department of Commerce and Economic Development as security for
loans made under this section. The Department of Revenue shall pur-
chase all the notes offered until the current principal amount of the
notes purchased and held by the Department of Revenue equals \$5,000,000.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 21.88.900. DEFINITIONS. As used in this chapter,

- (1) "association" means the Health Care Providers Joint Underwriting Association;
- (2) "corporation" means the Health Care Providers Indemnity Corporation;
- (3) "health care provider" means a physician licensed under AS 08.64 and a hospital licensed under AS 18.20.

Sec. 40. AS 21.18.090 is amended by adding a new paragraph to read:

- (5) reserves for the Joint Underwriting Association are to include claims reported and unpaid; reserves for claims incurred but not reported, but those which may reasonably be expected to be reported beyond three years after the date of occurrence may be included on a different basis due to the additional financial flexibility of the association.

Sec. 41. AS 08.02 is amended by adding a new section to read:

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

ARTICLE 4. GENERAL PROVISIONS.

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

- (1) "corporation" means the Health Care Providers Indemnity Corporation;
- (2) "director" means the director of the division of insurance for the State of Alaska;
- (3) "fund" means the medical malpractice liability revolving loan fund;
- (4) "health care provider" means a physician licensed under AS 08.64 and a hospital as defined in AS 18.20.130, including a hospital or health care facility owned or operated by the state or one or more of its political subdivisions; if at any time the director of insurance mandates chiropractors under AS 08.20.115(b), dental hygienists under AS 08.32.015(b), dentists under AS 08.36.115(b), nurses under AS 08.68.165(b), dispensing opticians under AS 08.71.085(b), optometrists under AS 08.72.115(b), pharmacists under AS 08.80.115(b), physical therapists under AS 08.84.035(b), or psychologists and psychological associates under AS 08.86.125(b) into participation in the corporation, they shall then be considered health care providers for the purposes of this chapter;
- (5) "occurrence basis insurance" is insurance against claims arising during the period of the policy coverage.

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.

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26 • Sec. 42. AS 09.55.535, and AS 09.55.537, enacted in sec. 31 of this
 27 Act, have the effect of changing the Alaska Supreme Court's Rules of Civil
 28 Procedure by requiring the submission of medical malpractice claims against
 29 hospitals and physicians to either nonbinding arbitration or to expert ad-
 30 visory panels, unless all parties to the action agree otherwise.
 31 • Sec. 43. AS 08.64.365 and AS 08.68.040 are repealed.
 32 • Sec. 44. This Act takes effect 30 days after enactment.

7 • Sec. 25. AS 09.55.536 enacted in sec. 15 of this Act, has the effect of
 8 changing the Alaska Supreme Court's Rules of Civil Procedure, by requiring
 9 the submission of each health care malpractice action to a panel of experts.
 10 • Sec. 26. AS 08.64.365 is repealed.
 11 • Sec. 27. This Act takes effect 30 days after enactment.
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Allow anytime before filing suit
whether previously agreed or not

(1)

Sec 09.55.530 is reported & is amended to read:

ARTICLE 6. MALPRACTICE ACTIONS.

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

Sec. 09.55.532. VOLUNTARY ARBITRATION. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care or treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties.

(b) An agreement to arbitrate executed before care or treatment is provided between a patient and health care provider shall clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite 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} (director of insurance) to assure it

fairly informs the patient and properly protects his interests.

(c) 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.

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(d) The arbitration board shall consist of three arbitrators: one arbitrator designated by the plaintiff or plaintiffs, one arbitrator designated by the defendant or defendants, and a third arbitrator designated by mutual agreement who shall serve as chairman of the board. If the parties cannot agree on the third person, the court will

1 provide a list of three or more persons who might serve as chairman of
2 the arbitration board, which shall be furnished by the attorney general.
3 Plaintiff or plaintiffs together and defendant and defendants together
4 may each strike one or more names from the list, so after each side has
5 done so, at least one name remains on the list, providing a basis for
6 the final selection by the court.

7 (e) The attorney general shall prepare a list of panelists con-
8 sisting of lawyers or other persons qualified to serve as chairmen of
9 arbitration boards. They shall be selected on basis of their technical
10 expertise, judicial temperament, and capability of impartially acting
11 on malpractice claims. The attorney general shall submit a list of at
12 least three names of panelists whenever requested to do so by the court
13 along with detailed biographical information on each panelist.

14 (f) Each member of the board shall receive reasonable compensation
15 to be paid by the court based on the extent and duration of services
16 rendered. The court shall also pay the costs of experts required by
17 the board, *to a maximum of \$50/day for each of 3 experts for each party,*

21 (g) The court shall specify the shortest practical deadline for
22 completion of the work of the arbitration panel, taking into account
23 all the circumstance and the nature of the case.

24 (h) The provisions of the Uniform Arbitration Act, AS 09.43.010 -
25 09.43.180, apply to arbitrations under this section insofar as they
26 are applicable and do not conflict with the provisions of this section;
27 arbitrations under this section shall be conducted in accordance with
28 any rules of court which may be adopted.

(i) *It shall be a condition of the arbitration agreement that the results are binding on both parties*

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

11 Sec. 09.55.535. EXPERT ADVISORY PANEL. (a) In any action for
12 damages due to personal injury or death based upon the provision of
13 professional services by a health care provider, the court shall estab-
14 lish a three-person expert advisory panel in accordance with this
15 section. ^{unless} When the action is filed the court shall, by order, determine
16 the professions or specialties to be represented on the expert advisory
17 panel and shall advise each party of the professions or specialties to
18 be represented, giving the parties the opportunity to object or make
19 suggestions. The court may in its discretion conduct other preliminary
20 proceedings relative to the composition of the panel as it considers
21 appropriate.

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

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

- (1) What was the medical complaint or condition for which the person sought or was brought to medical care?
- (2) What would have been the likely course of the complaint or condition without the medical care?
- (3) Was the care appropriate?
- (4) Did an injury arise from the medical care?
- (5) What was the injury?
- (6) Is the injury stable; or will it improve or become worse?
- (7) What specifically caused the injury?
- (8) Was the injury caused by negligence?
- (9) *Is the outcome different than would otherwise have been expected?*

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

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

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

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

(g) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter

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

AMENDMENTS TO WORK DRAFT

FCCS SCS CSHB 574

5/11/76

page 32, line 15-16

...a board of governors the first members of which are appointed...

page 33, line 3-4

Upon the expiration of the term of governor, those insured by the corporation shall elect a successor...

Page 33, line 8

...serve, the board of governors shall appoint...

line 11

strike all of subsection (d)

line 16

...the corporation at rates to be established by the board of governors in the plan of operation.

page 35, line 24
through page 36, line 8

Strike all of section (3) and insert in lieu:

(3) Use due diligence to procure reinsurance from private insurers or reinsurers or public medical malpractice reinsurance facilities for any or all of the liability insured by contracts issued by the corporation. If after the exercise of due diligence, reinsurance for claims reported within three years after date of occurrence cannot be procured at reasonable rates from private insurers or reinsurers the corporation, through the board of governors may so certify to the director and subject to the approval of the director, that portion of the risk for claims reported within three years after date of occurrence not reinsured in private insurers or public medical malpractice reinsurance facilities, shall be provided by the health care providers Joint Underwriting Association established under secs. 110-180 of this chapter.

Page 36, line 9

(4) charge a premium and special assessments for the protection...

Page 37, line 12-19

strike all of subsection (2) and insert in lieu:

(2) cede or assume reinsurance for any or all risk which the corporation is authorized to insure directly.

Page 40, line 18

strike subsection (14) and insert in lieu:

(14) rates may include special assessments of insureds to cover newly reported claims for which insufficient reserves have been established.

Page 41, line 18-20

certifies to the director that after due diligence the Board of Directors could not procure reinsurance from private reinsurers or from public medical malpractice reinsurance facilities for claims reported within three years after date of occurrence and if the director finds, after public hearing that a market for reinsurance is needed and providing it through the association is in the public interest.

Page 46, line 8, "upon" to line 22 "used"

Strike

line 23

...respect of policyholders and initial operating costs, and many not...

Page 47, line 6

...notes [security instruments and pledge agreements] held by...

line 10

...equals [\$6,000,000] \$3,000,000

Licensing & Discipline provisions

Example

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

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

In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, ~~or~~ and revoke or suspend a licens..

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

Collitta & Roddy

Suggested Amendment for Senate Bill SCSCSIB 574 am S

Page 19 Section 18.20.045 - to replace Subsection (b)

Suggested Amendment for Section 18.20.045 - House Bill CSHB 574 am page 16

Addition to House Bill: Amendment would be added as subsection (a)

The Director of Insurance or his designee shall waive the requirement in (a) of this section for a hospital if the hospital furnishes satisfactory evidence of having other liability insurance providing coverage in amounts equal to or which exceed those specified in (a) of this section, and at a premium rate which does not exceed the premium rate offered by the Health Care Providers Indemnity Corporation for an equal amount of liability coverage. A waiver granted under this subsection may extend beyond the normal expiration date of the hospital's insurance policy or until such time as the policy's premium rate exceeds that which would be offered by the Health Care Providers Indemnity Corporation for an equal amount of coverage.

This should be added to PS. 18, 20.005

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400*

- (c) The Director of Insurance ~~may~~ waive the requirement in (a) of this section or permit a deductible provision in the policy for a hospital, if the hospital:
- i) can demonstrate to the satisfaction of the Director of Insurance that without indemnity from any other source, the hospital has the financial resources to discharge the maximum potential exposure to the hospital by reason of the deductible provision.
 - ii) agree to permit the Health Care Providers Indemnity Corporation to provide defense of any claim brought against the hospital if any health care provider insured by the corporation is also involved in the claim and to reimburse the corporation for a prorata portion of the costs of defense.
 - iii) provides the Health Care Providers Indemnity Corporation with notice of any claim brought against it.

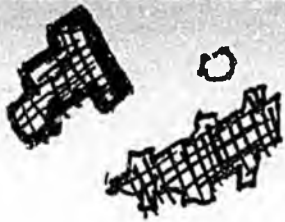
Mr. RICHARD BLOEK

Terry Gardner

go this
7

time
Nels

25%



1.
2.



HB 742



HJR 47

Medical Malpractice

1. Part of Committee Work & Commission
 Time to Move out even though not perfect
 14 Testimony Meeting 27 com hearings
 3 drafts

Commission legislation was base of Comm. Work

HB 575 & HJR 48 - opposition in
 Com. Agreed tentatively to work on
 concept of Rindley Arb - out next week.

Key Changes.

1. A. Mandatory Physicians & Hosp.
- B. Insurance coverage Mandatory other professions
- C. Mechanisms to cover others in crisis
- D. Continuing Education for Physicians
 to improve quality of Med Care & reduce Med Mal.
- E. Risk Management Program for Hospitals

Expert testimony - Expert & Unbiased opinion to
 parties of a suit; then court & jury on Medical
 questions only

An effort cut insurance costs - ^{discretion.} Periodic payments / lump sum
 Deduction of collateral payments in injury

1. A. Informed consent to protect both patient & physician
- B. Good Samaritan statute cleanup
2. C. Immunity for review organizations in Hospitals
 encourage improvement of Medical services in Hosp.

Health Care Providers Indemnity Support Plan

Attempted to include 200,000,000 + Number of Medical Clinics to Rep their interests

Retained Retrospective coverage to Dec 31, 1974 $\frac{1}{3}$ Physicians have no insurance

Provide for Management services by Insurance Co for example to run the MIC
"Not adding another state ~~to~~ agency"

Rate will be based on Medical Revenue adding in other factors of Risk & Practice such as: ① Number of a Clinic ② History of Mal Practice Claims ③ Amount of time practicing

State loan at 7 $\frac{1}{2}$ % to remove fund if needed. Estimate initial loan of 250,000 for start up - Claims will drop some in for several years actually \$5 Million loan limit - could raise in future if necessary

1. 2 Consumers on Boards
2. Continuing Ed for All prof.
3. Advance Payment
4. Ad Damnum
5. fix collateral exhaustion
6. Change Gov appointment no panels

JVA Authority for All Insurance problems

Wisconsin did in 1967 - utilized when malpractice crisis came up

Dept of Commerce Report to Legis Jan 1

1. Activities + any changes of Prof Licensing Board in 579
2. Any problems of Ins coverage + rates of hospitals and other health care providers outside physicians
3. implementation of continuing education 8.64.312
4. Use of Voluntary arbitration 9.55.535
5. " of Expert advisory panel 9.55.536
6. Hospital exemption 18.20.045
7. implementation of risk management for hospitals 18.20.075
8. MIC

- A. rates of insurance by classification of physician
- B. extent of physician coverage
- C. Financial condition of MIC ^{losses reserves etc.}
 - A. Breakdown of premium dollar
 - B. excess coverage or other ins provided
- D. Comparison of Alaska to other state ins rates
- E. Disposition of any claims against MIC
- F. Any loan received from state + payback

- profit on the overall - not specific -

1. controllable portion

2. Reserves in bill.

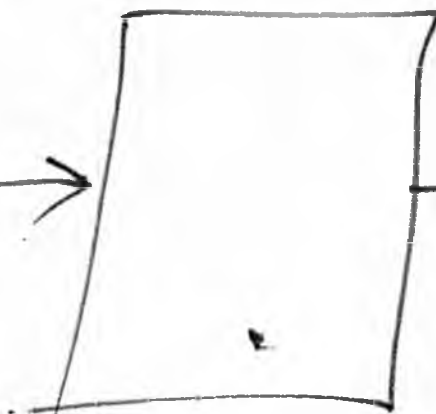
| | |
|---------------------|-------------|
| 3 | 3 |
| Primary coverage - | Reinsurance |
| A & T 3 | A & T 3 |
| AM Primary coverage | Reinsurance |

(500) Insured



\$,000

Primary



1,000,000

Lloyds

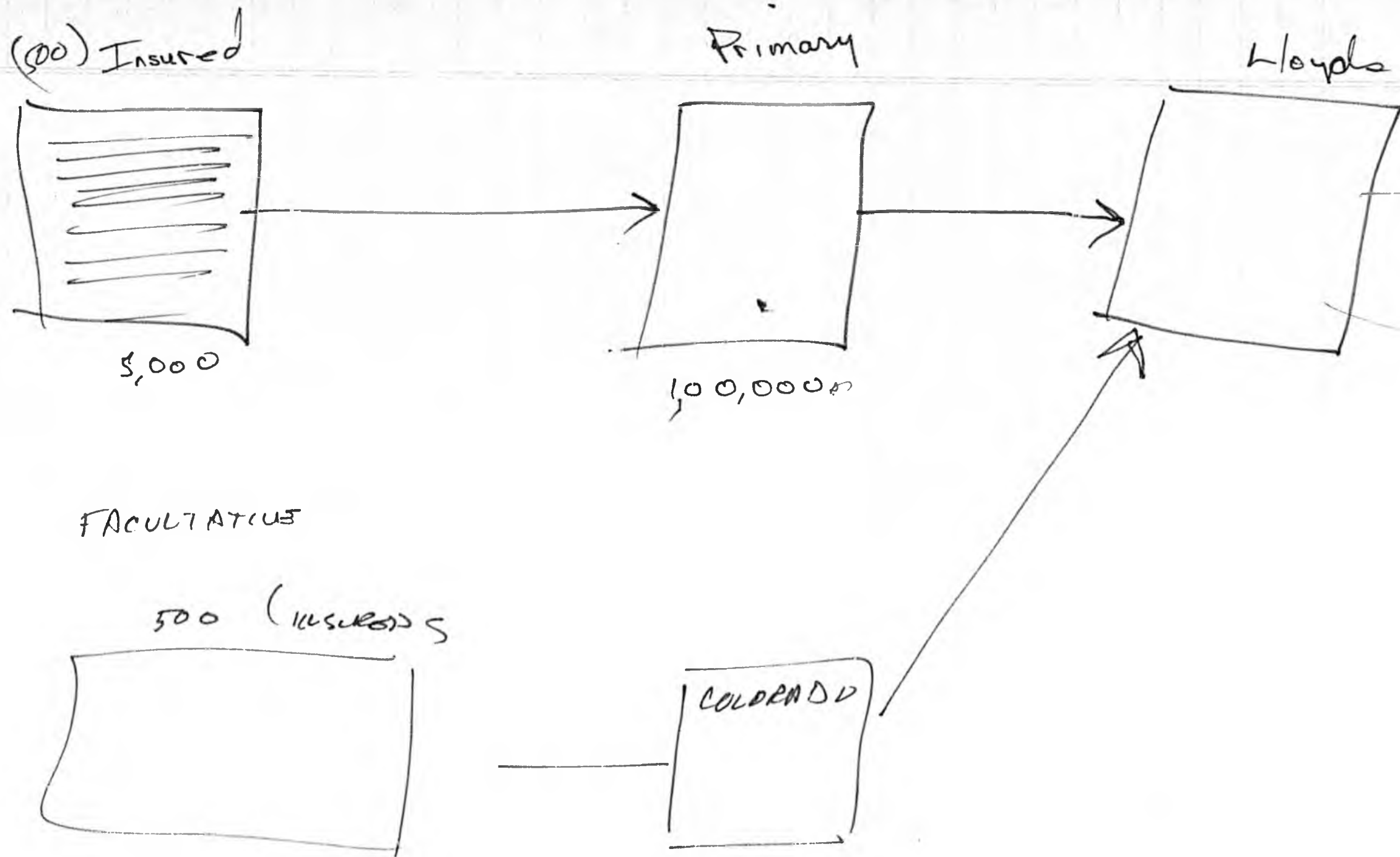


FACULTATIVE

500 (INSURED)



CORPORATION



FACULTATIVE (individual)

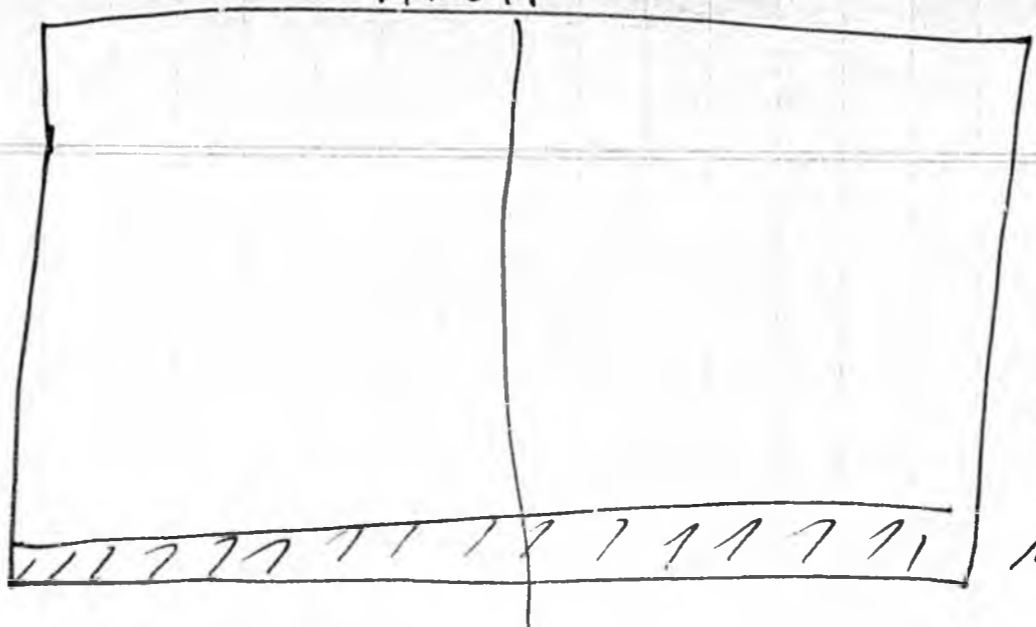
TREATY (whole book or class of business)

QUOTA SHARE 50%

EXCESS. per occurrence

STOP LOSS AGGREGATE — total loss on entire book
in addition to treaty excess

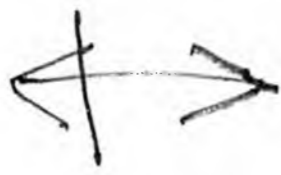
MICA



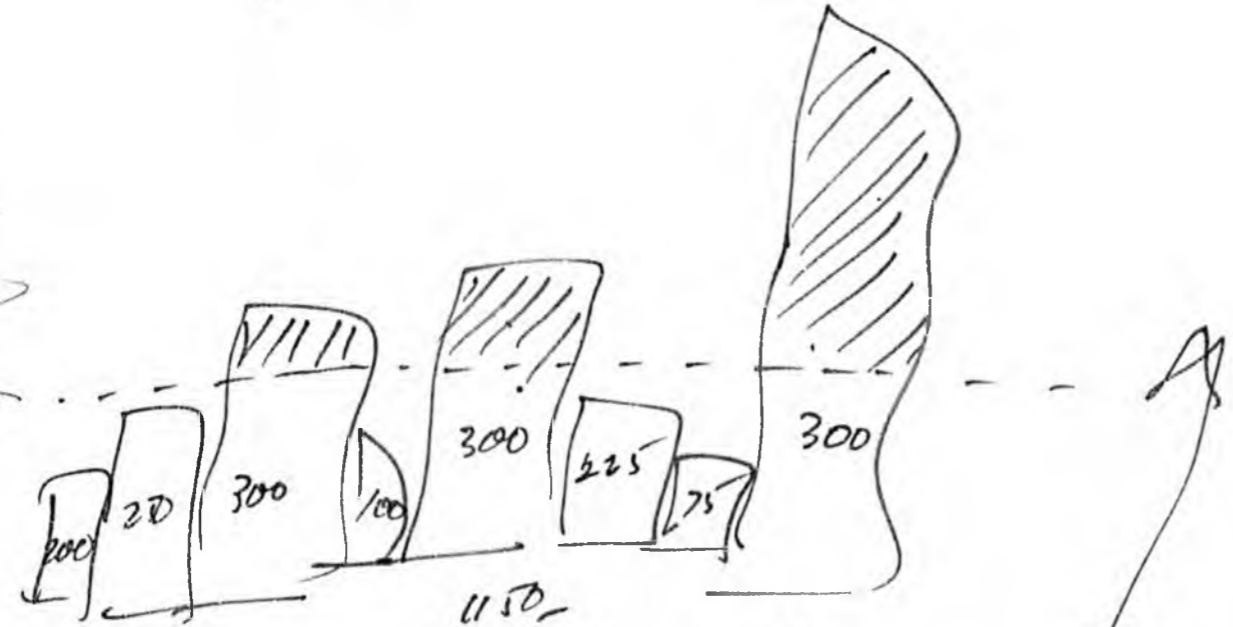
100% Q.S. 1,000,000

100% Q.S. 100/300

1,000,000



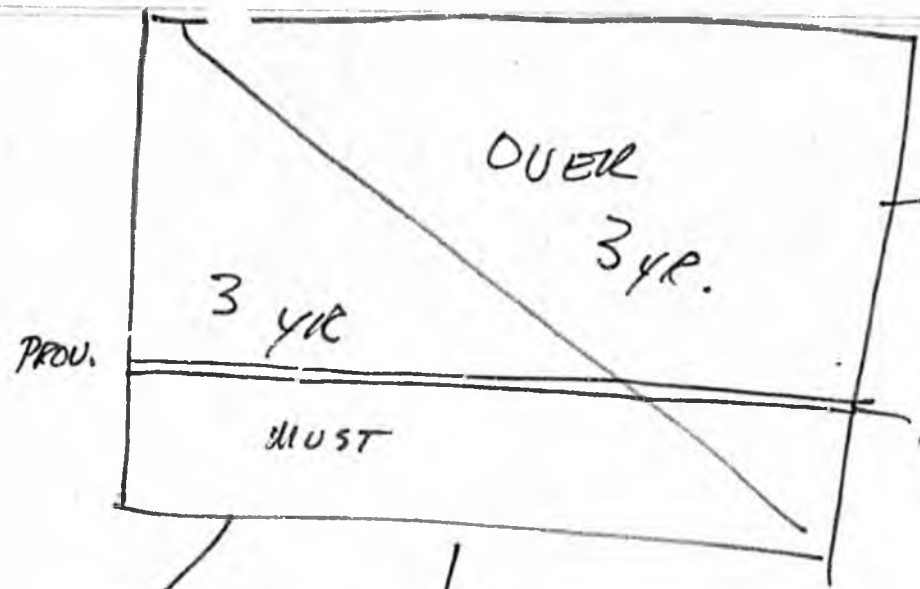
- 1
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1150
 225
 1375
 225
 1750

\$ 1,750,000

\$ 1,100,000

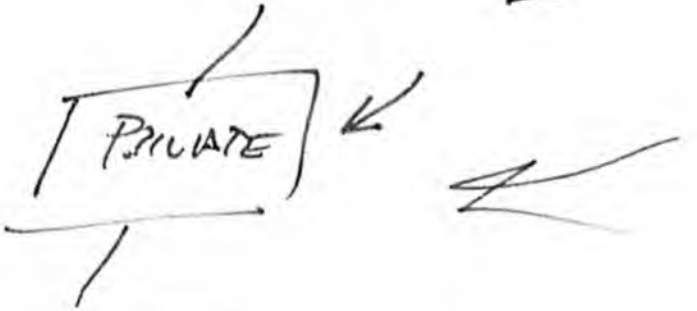


EXCESS
(\$X/LOSS
AGGREGATE?)

100% to share

Sacrificable - Partner.

100% O.S. ↓



J.U.A.

574
CONCEPTS INCLUDED

| | <u>HB</u> | <u>SB</u> |
|--|-----------|-----------|
| 1. Investigative powers to licensing boards p.i; p.1 | X | X |
| <i>Adopt Senate</i> 2. Adding two lay persons to boards p.1-9 | | X |
| 3. Broader powers for boards p.1-9; p.2-10 | X | X |
| 4. Immunity for boards p.39 | | X |
| 5. Continuing education for physicians p.4 | X | |
| 6. Mandatory insurance for all providers p.1-9,16 | X | |
| 7. Mandatory insurance only for physicians & hospitals p.4,19 | | X |
| 8. Waiver for insured physicians until 1-1-77 p.4; p.4 | X | X |
| 9. Waiver for insured hospitals until 1-1-77 p.19 | | X |
| 10. Expert Advisory panel | X | X |
| a. Three person p.10 | X | |
| b. Always used; <i>discovery stayed</i> p.10, 12. | X | |
| c. At option of arbitration board or court p.11,13 | | X |
| d. Specific questions to answer p.11 | X | |
| e. Opinion admissible on appeal p.12; p.14 | X | X |
| 11. Mandatory nonbinding arbitration p.10 | | X |
| 12. Voluntary binding arbitration p.12 | | X |
| 13. Burden of proof p.13; p.15 | X | X |
| 14. Advance payment not prejudicial p.16 | | X |

574 Concepts Included

Page 2

| | | |
|---|---|----|
| 15. Ad damnum prohibited p.16 | | X |
| 16. Awards itemized by category of loss p.13; p.16 | X | X |
| 17. Periodic payment allowed p.13; p.16 | X | X- |
| 18. Periodic payments increased by consumer price index p.14 | X | |
| 19. Collateral source subtracted from award p.14; p.16 | X | X |
| 20. Collateral coverage protected from exhaustion p.17 | | X |
| 21. Jury instructions as to proof p.14; p.17 | X | X |
| 22. Oral contracts invalid p.14 | X | |
| 23. Informed consent p.14; p.17 | X | X |
| 24. Emergency aid p.16; p.18 | X | X |
| 25. Risk management in hospitals p.16 | X | |
| 26. Immunity for review organizations p.17; p.19 | X | X |
| 27. Indemnity Corporation created by state p.22; p.24 | X | X |
| 28. Occurrence malpractice insurance p.25; p.27 | X | X |
| 29. Retroactive insurance for 1975 gaps p.25; p.27 | X | X |
| 30. Provision for excess coverage p.26; p.29 | X | X |
| 31. Rates for physicians tied to medical revenues p.28 | X | |
| 32. Rates for hospitals tied to number of beds p. 28 | X | |

HB

SB

574 Concepts Included

Page 3

- | | | | |
|-----|---|---|---|
| 33. | Rates related to 3 year reserving for losses p. 28; p.31 | X | X |
| 34. | Premium tax p.30 | | X |
| 35. | Installment payment of premiums p.29; p.32 | X | X |
| 36. | Reinsurance of basic insurance in private market p.38 | | X |
| 37. | Reinsurance of excess insurance in private market p.26; p.28 | X | X |
| 38. | Statistic gathering and reporting p.27; p.30 | X | X |
| 39. | Revolving loan fund for Indemnity Corporation (7%) p.29 for JUA (6%) p.38 | X | X |
| 40. | JUA p.32 | | X |

THE ALASKA CLINIC

A PROFESSIONAL CORPORATION

825 L STREET

ANCHORAGE, ALASKA 99501

907-279-0622

DEPARTMENT OF INTERNAL MEDICINE

GARY ARCHER, M.D.
DALE I. WESS, M.D.
W.S. SEACHAM, M.D.
ANNE H. MORRIS, M.D.
RONALD O. MORRIS, M.D.
RICHARD A. ANSCHUTZ, M.D.

SECTION OF NEUROLOGY

JANICE KASTELLA, M.D.

SECTION OF PSYCHIATRY

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ALEXANDER DUBELMAN, M.D.

DEPARTMENT OF ADMINISTRATION

MAX KERSBERGEN, ADMINISTRATOR
JAMES NOONCE, BUSINESS MANAGER

We, at The Alaska Clinic in Anchorage, believe that the clinics in Alaska should be considered separately from the other physicians in the matter of the malpractice insurance problem. There are a lot of different reasons why we believe this and the first of these reasons is that these groups currently do have their malpractice insurance in effect and will probably continue to be able to do so.

Other reasons probably require considerable discussion and will be as follows: We next believe that the better medical care can be and is provided by the groups in practice and the insurance companies recognize this and are better able to monitor the performances of these groups to ensure that they are better risks for malpractice coverage.

Other reasons will probably be much more related to the particular differences presented by The Alaska Clinic in Anchorage as you will see. The biggest problem of all will be the particular hardships of this mandatory exclusive and/or premium based on gross income. To begin with, The Alaska Clinic has been in practice and has had a good record since 1947. Over the years, this Clinic has attempted to meet the requirements of the community to the best of its ability and it has, particularly during the past 15 years, made considerable progress in providing extensive services to the public in this area. The Clinic, together with the rapidly growing and expanding offspring, Anchorage Community Hospital, represents a major segment of health care in the Anchorage area. Together these two organizations provide employment for over 500 individuals currently, and with the expansion program already well under development in a year or so, should anticipate almost doubling this number of employees. Certainly by this time, it should represent one of the larger private businesses and industries in the Alaska area, certainly one of the very largest that is locally directed and administered and controlled.

We believe that it is an over-simplification to try to equate the situation of the solo-practitioner, with no employees and little overhead with a member of The Alaska Clinic who shares in the economic and professional responsibilities of a multi-million dollar medical center with hundreds of employees.

It works out that the overhead per month for The Alaska Clinic member is approximately \$20,000 before his own salary begins. This annually amounts to the neighborhood of \$240,000 excluding his own salary. If one were using a percentage of gross income to determine the amount of insurance costs in this instance for a member of The Alaska Clinic paying 5% of gross revenue, his bill would be over \$12,000 before any money is paid for his premiums for his own personal insurance. The Clinic already has its own problems to deal with that are of great concern to us. One of the biggest problems is keeping its staff of physicians and continuing to develop to meet the responsibilities it has coming. We cannot pay high enough salaries to our members to compete with the solo practitioners across town. We already have lost numbers of our members that are now practicing competitively with us in town because they are able to earn considerably more money in that capacity than they were able to earn as Clinic members. As a matter of fact, in order to obtain some types of special services in the Clinic, we are currently having to pay as much as 50% more salary per member in some categories than for the regular full-time older members of the Clinic themselves. The good record of the Clinic with its relatively lower costs of insurance in the past and presently is one of the few inducements to maintain our staff membership.

We believe that the insurance companies have provided great service in the past to the public by preventing malpractice to a great extent. Companies have recognized differences in the risk of various services as well as risks between various physicians. They have regulated and prevented a great amount of malpractice by insisting on premiums high enough to prevent work that is not up to par or procedures done in some areas where there are unnecessary risks. It really sounds like the plan now is to deny this very important regulating mechanism and perhaps even to require that many physicians support procedures that they are very much opposed to. We believe that the insurance companies have been able to do a better job in this important service to the public than the physicians have been able to do for themselves. The members of The Alaska Clinic view the proposed legislation as highly detrimental to the Clinic and a serious obstacle for its entire future development. We can even see it leading to the ultimate failure of the entire project. It is absolutely necessary for the Clinic to expand to meet the demands of its increasing responsibilities. We believe that the Clinic has assumed a major responsibility in development of medical facilities that will be important to the entire State. A change of the present malpractice coverage makes it impossible for us to proceed.

We can speak only for our own group and we do not have any data on what the impact will be for the other clinics involved. We can say with assurance, however, that it will be a disaster to the future development of the new medical center under construction, if The Alaska Clinic is drawn into any mandatory or exclusive insurance program on a Statewide basis. We also object to a program of this type based on gross revenues as being unreasonable and unfair.

We advise that the Clinic be permitted to maintain their own malpractice insurance program with its built-in standards review and risk control. It is a nationwide program with over a hundred clinics participating. We believe it is in the the best interest of the people of the State to encourage group practice wherever possible.

_____, M.D.
Vernon A. Cates, M.D.

VAC/ds

Malpractice file

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY
ATTORNEYS AT LAW

200 NATIONAL BANK OF ALASKA BUILDING

PHONE (907) 586-3340

CABLE: ROMEA

TELEX: 099-45-376

P. O. BOX 1211

JUNEAU, ALASKA 99802

ANCHORAGE OFFICE

SUITE 310, ALASKA MUTUAL SAVINGS

BANK BUILDING

P. O. BOX 679

ANCHORAGE, ALASKA 99510

PHONE (907) 277-6693

TELEX: 090-26-486

PLEASE REPLY TO

JUNEAU OFFICE

ANCHORAGE OFFICE

R. E. ROBERTSON (1885-1961)
F. O. EASTAUGH
J. B. BRADLEY
W. G. RUDDY
L. B. JACOBSON
R. B. BAKER (ANCHORAGE)
M. T. THOMAS
L. J. BARKER (ANCHORAGE)
J. F. CLARK
P. M. HOFFMAN
J. P. TANGEN
A. G. DODGE (ANCHORAGE)

OF COUNSEL
M. E. MONAGLE

A PROFESSIONAL CORPORATION

March 8, 1976

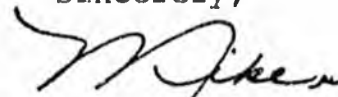
The Honorable Terry L. Gardiner
Alaska State House
of Representatives
Pouch V
State Capitol Building
Juneau, Alaska 99811

Dear Terry:

On behalf of the American Life Insurance Association, I have tried, to no avail, to convince the members of the Senate Commerce Committee of the seriousness of the problems which will result if life insurance companies which write disability insurance are included in a JUA. I have enclosed two letters that I wrote to Senator Kerttula and the members of the Commerce Committee. I am also enclosing the policy statement of one of the associations of life underwriters and agents within the State. They are concerned, as they have every right to be, that their companies will simply be unable to write disability insurance within the State. I hope that the JUA is not found to be necessary by the Free Conference Committee on the Malpractice Bills, but if it is, I certainly hope that it will not include life insurance companies who write disability insurance.

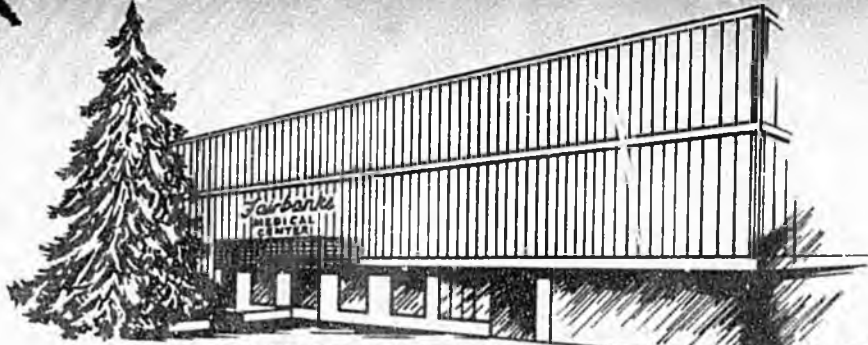
I will be out of town until Tuesday evening, but I have asked the life agents to contact you concerning this problem.

Sincerely,



M. T. THOMAS

MTT:kh
Enclosures



FAIRBANKS MEDICAL & SURGICAL CLINIC, INC.

FOUNDED IN 1932
522 FIFTH AVENUE P.O. BOX 1330 FAIRBANKS ALASKA 99707 907-452-1761

Representative Terry Gardiner
Punch V
Juneau, Alaska 99801

March 10, 1976

Re: Medical Malpractice

Dear Mr. Gardiner;

Just a note to express my recommendations about medical malpractice insurance.

I object to mandatory membership if it means losing the group insurance I now possess.

I object to an arbitration board - I prefer an adjudication board.

I hope the premiums will be based on a scale relative to type of practice and on a reasonable rate of premium. I am a psychiatrist; my present premium is \$1,500 that would be 1% of \$150,000 gross - if at all possible. Please do not exceed that level of cost. I cannot work harder than I am (65-70 hours per week) fifty weeks per year.

Thank you - Sincerely, J. C. Morris, MD

General Surgery

J. K. Johnson, M.D.
G. B. Murphy, Jr., M.D.
D. O. Montgomery, M.D.

Psychiatry

John C. Morris, M.D.

Obstetrics - Gynecology

J. M. Ribar, M.D.
J. A. Worrall, M.D.
J. N. Bertelson, M.D.

Ophthalmology

Dorris K. Heilman, M.D.
G. W. Sullenger, M.D.

Internal Medicine

G. W. Straatsma, M.D.
G. L. Walkup, M.D.

Radiology

Abram Cannon, M.D.

General Practice

J. M. Ribar, M.D.
R. D. Hande, M.D.
C. W. Townsend, M.D.
H. E. Merz, M.D.

Pediatrics

N. F. Deely, M.D.
H. J. Jordan, M.D.

Urology

R. W. Taylor, M.D.

Orthopedics

E. Lindig, M.D.
P. B. Haggland, M.D.
F. Kelly, M.D.

Administration

J. P. Colwell
J. R. Hlinka

J

A PROFESSIONAL CORPORATION

February 24, 1976

Honorable Jalmar M. Kerttula
Chairman
Senate Commerce Committee
Pouch "V"
State Capitol Building
Juneau, Alaska 99811

Re: CSSB 651

Dear Senator Kerttula:

Director Block was kind enough to provide me with an advance copy of the draft language that he had suggested to your committee for inclusion in Sec. 21.88.170 of the subject malpractice bill, which was found on page 22 of the bill as originally introduced. I have sent that to the American Life Insurance Association and urged them to seriously consider whether this amendment to the bill would allow life insurance companies to be members of the proposed Joint Underwriting Association, without violating the laws of their states of incorporation. The staff of the Association has carefully reviewed the proposal in the hope that we would be able to cooperate in framing language that would avoid the problems that I brought to your committee's attention in earlier letters and testimony. They have concluded that there is no apparent way in which life insurance companies can be members of a JUA such as the one proposed, consistent with the laws under which they must operate from the states in which they are incorporated. I will set out the reasons that this is so.

Honorable Jalmar M. Kerttula
February 24, 1976
Page 2

It is clear from the bill that the Joint Underwriting Association is intended to write malpractice insurance. The purpose of the association is stated as being "to provide a market for malpractice insurance to the corporation . . ." Of course, it is a writing of insurance slightly different than that which goes on on the open market, in that the statute would provide that no profit could be made on such insurance, and would further provide some attempted guarantees that the insurance companies would not suffer permanent loss by participating in the JUA. Nevertheless, the entire reason for being of the Joint Underwriting Association, is to provide a substitute for voluntary, open market, reinsurance contracts. The life insurance companies, which are expressly prohibited in most states of incorporation from writing any casualty insurance in any jurisdiction, cannot do indirectly what they are prohibited from doing directly.

One of the strongest underlying policy bases for statutes prohibiting life insurance companies from writing casualty insurance, is to insulate the life insurance companies and their policyholders from the less predictable fluctuations inherent in liability insurance. All states, including Alaska, set up separate, detailed, and very conservative, reserve and underwriting laws for life companies, and the integrity of that system could be seriously affected if life insurance companies were in any way involved in casualty insurance. I point this out, not to suggest that writing casualty insurance would be any less a violation of the law for those companies if they did not incur losses, because a violation of the law would still be a violation of the law, but simply to indicate where the law had its origin. Nevertheless, it is also true that the bill now before you would have the potential of affecting the reserves and surplus of life insurance companies in the way anticipated by such statutes.

Honorable Jalmar M. Kerttula
February 24, 1976
Page 3

We realize that every attempt has been made in Senate Bill 651 to minimize the chance that a member company will incur a permanent loss by reason of membership in the JUA. But if it were true that the bill provided absolute guarantees that there would be no long-term loss, then no one should really mind if the life insurance companies are exempted, since (a) their participation would not increase or decrease the cost burden on any company, at least not for any length of time, and (b) the life insurance companies have no experience or management expertise in casualty insurance, and would, therefore, add nothing in the way of management ability to the board of directors. In fact, the JUA would have no reason for existence, as compared with a simple mechanism to assess premiums against health care providers, except for the fact that the member companies are obligated to loan money from their surplus accounts to underwrite malpractice insurance losses. Every attempt is made to allow eventual recoupment of those losses, by authorizing increased premiums in following years and authorizing pass through of the assessments made against the companies as taxes, to the holders of the companies' contracts of insurance. But the increased premiums, being one year or more behind, may never cancel out all borrowings. And whether the assessments can be passed on to holders of contracts depends upon market conditions and is not wholly within the control of the companies. What is sought, then, is a guarantee that JUA member companies, including life companies, will ultimately subsidize malpractice insurance if that becomes necessary. That may be a sound policy for those who are legally allowed to subsidize or to write casualty insurance. Life insurance reserves and surplus have been and are insulated from swings in casualty insurance experience, for good reason, by the law of a majority of our sister states. Such companies cannot participate in this Joint Underwriting Association.

It would be erroneous to compare inclusion of life companies in this proposed JUA with insolvency assessments under the Alaska Insurance Guaranty Association Statute, AS 21.80.010 et seq. That statute, and specifically AS 21.80-.020 and 21.80.180(6), exempts life insurance companies from

Honorable Jalmar M. Kerttula
February 24, 1976
Page 4

participating in that association. The National Association of Insurance Commissioners has drafted two separate solvency guarantee bills, one of which will include life companies and one of which will include casualty companies. I am told by the staff of the American Life Insurance Association that no state assesses life companies for casualty company failures, or vice versa. In the case of insolvency pools, or insurance guarantee associations, then, we have another example of the insulation of the life insurance business from the quite different and more volatile casualty insurance business. This deep-seated policy of the law is the undoubted basis of Dr. Denenberg's testimony that life insurance companies should be excluded from any malpractice underwriting association.

The life companies, the American Life Insurance Association, and this firm, have always attempted to work cooperatively with Director Block, his predecessors, and the Legislature in resolving problems arising within the insurance industry. If the present problem could be resolved by charter amendments, even by companies not incorporated in Alaska, I am sure that many of those companies would be willing to consider such charter amendments in order to be able to write insurance in this state. What this proposed JUA provision would require, however, is the repeal or amendment of long-standing state insurance code provisions in New York and approximately thirty-five other states. Even if that were possible or reasonable, until it was accomplished, the life insurance companies now writing insurance in Alaska would be faced with repeated and continuing violations of the respective insurance codes under which they are incorporated. We ask that you remove them from that untenable position.

Very truly yours,

N. T. THOMAS

MTT:kh

cc: Committee Members

RECEIVED
M.

POLICY STATEMENT

SOUTHERN ALASKA LIFE UNDERWRITERS ASSOCIATION
ALASKA GENERAL AGENTS AND MANAGERS ASSOCIATION
ALASKA SOCIETY OF CHARTERED LIFE UNDERWRITERS

Subject: HB 594, SB 651 and other similar bills on
Malpractice Insurance

Legislation forming joint underwriting associations for medical malpractice insurance and including life insurance companies writing disability coverage is pending before the state legislature. Although we recognize there are many serious problems with providing adequate malpractice insurance coverage, we are opposed to life insurance companies who write disability insurance being included in the joint underwriting association. Life insurance companies do not write property and casualty insurance. In most, if not all cases, life insurance company charters prohibit the writing of property and casualty insurance. Including life insurance companies in malpractice joint underwriting associations will create a conflict of law situation between the State of Alaska and the states where various life insurance companies are domiciled.

Further we oppose the inclusion of life companies as we do not believe that it is fair to force life companies into a joint underwriting situation for property and casualty is a clear and distinct different field of insurance. It is the same as forcing an auto insurance company to enter a joint underwriting association for life insurance.

We believe that life companies are willing to take their share of the burden of an emergency nature relating to life insurance or to disability insurance.

To the best of our knowledge no state has enacted a law bringing life insurance companies into the medical malpractice joint underwriting associations. Several have introduced legislation along that line but all have exempted life companies. We do not fully know what the reaction of the life companies will be to such an inclusion. It may be they will withdraw entirely from operating in Alaska or they may withdraw from writing disability coverages. In either case the market for Alaska citizens to purchase life insurance or disability coverages will be substantially limited if the companies follow either position. We know the companies are in opposition to this type of legislation but are not certain as to the action which they will take.

file Malpractice

VALLEY HOSPITAL
BOX H
PALMER, ALASKA 99645

March 9, 1976

Al Ose
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Al:

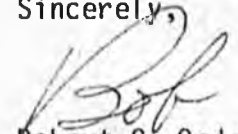
Thank you for the opportunity to express our thoughts on CSHB574. By the time this letter reaches you a bill will probably have passed the Senate and the House and Senate versions will be before the free conference committee. We have not seen a copy of the Senate version yet but plan to acquire a copy and compare the two bills when a Senate version is available.

CSHB574 looks like a very good bill to us - it seems to have compromised most of the resistance but yet still maintained a legal structure that will assist greatly in reducing the malpractice problem. You asked specifically about the expert advisory panel portion of the bill. In talking with the physicians and the hospital's Board of Directors we feel the expert advisory panel is one of the major sections of the bill and as it is written in CSHB574 seems to be very reasonable to us. The expert advisory panel is very important as a screening mechanism. As you know, because of the contingency fee incentive attorneys and unhappy patients often file a nuisance suit against a doctor or a hospital just to see if the insurance company will make a cash settlement out of court. The advisory panel provided for in CSHB574 would inform the indemnity corporation, the court, the plaintiff, and the defense whether or not there was merit to the case. The expert advisory panel would also provide the expert testimony always needed but often hard to get in malpractice cases. The expert advisory panel is a very important cost containment mechanism that we feel is necessary in controlling premium costs.

There are a number of other topics we would like to see covered in CSHB574 but we understand that we can't have everything so we would like to heartily endorse and support the bill as it is in its present form.

There are two physicians in Juneau presently representing the Alaska State Medical Association (Richard Witt, M.D. and Rodman Wilson, M.D.) that the physicians and hospital here respect and trust greatly as a voice for Alaskan hospitals and medicine. Both have studied the malpractice problem extensively and we feel have concern for the public as well as the health professions in their work to acquire a solution to our malpractice insurance dilemma. We hope that you will get to know these two individuals so that they may express to you our concerns in the malpractice insurance issue.

Thank you again.

Sincerely,

Robert G. Ogden
Administrator

J

A PROFESSIONAL CORPORATION

February 4, 1976

Honorable Jalmar M. Kerttula
Chairman
Senate Commerce Committee
Pouch "V"
State Capitol Building
Juneau, Alaska 99811

Re: Membership of Life Insurance
Companies in Joint Underwriting
Associations

Dear Senator Kerttula:

When I appeared briefly before your committee last Saturday morning, I said that I would provide you more solid information concerning the nature of the legal impediments to JUA membership faced by life insurance companies, and the impact of that problem on the State of Alaska. This letter is to provide that additional information.

Commerce Department figures indicate that the five largest writers of disability insurance in the State of Alaska, among life insurance companies, were Aetna, Occidental, Travelers, New York Life, and United Benefit. Among them, they wrote premiums approximating 10 million dollars in 1972. In 1974, the five largest were Aetna, Continental, Pacific Mutual, Travelers, and New York Life, and those companies wrote approximately 11 million

Honorable Jalmar M. Kerttula
February 4, 1976
Page 2

dollars in disability premiums. In 1972, the last year for which the American Life Insurance Association has fairly complete figures, life insurance companies wrote a total of approximately 19 to 20 million dollars in disability premiums, compared to disability premiums by casualty companies of approximately 1.6 million dollars.

Approximately thirty-six states do not permit domestically incorporated life and health insurance companies to write casualty insurance, including malpractice insurance. Some of those statutes are very explicit in prohibiting the writing of casualty insurance by a company incorporated in their state, whether that insurance is written inside or outside the state of incorporation. Some other state statutes are not completely clear on the point, or are silent, but it is the opinion of the Association that in thirty-six states, the domestic companies are not free to write casualty insurance. To give specific examples relating to companies writing substantial insurance in Alaska, the New York Life Insurance Company is a domiciliary of New York. The New York Insurance Code, Sections 46 and 193, prohibit a life insurance company domiciled there from writing casualty insurance. The Continental Life Insurance Company is incorporated in Illinois, and Sections 616, 621, 651 and 720 of Chapter 73 of the Illinois Code, read together, likewise prohibit the transacting of casualty insurance business by life insurance companies domiciled there.

In response to your question as to what concessions have been made by life insurance companies in other states when responding to proposed legislation of this kind, I am told by the counsel for the American Life Insurance Association that Alaska is the first state to seriously consider inclusion of life insurance companies in Joint Underwriting Associations as a condition of doing business, and so the member companies and the Association have never been put in this position before.

I have spoken to Director Block concerning this problem since your hearing of last Saturday morning, and I understand that he did not believe that there was a

Honorable Jalmar M. Kerttula
February 4, 1976
Page 3

difference between the position that the life insurance companies find themselves in and that of Blue Cross. In the case of Blue Cross, it is apparently true that the company writing insurance in Alaska is domiciled in Washington, and apparently the company has made the determination that under Washington statutes they would be able to amend their charter or take other corrective action in order to be able to participate in a Joint Underwriting Association. That is not true of the life insurance companies, which are almost always incorporated in one state only, and simply admitted to write insurance in the remaining states. They are, of course, subject to the statutes and regulations of their domiciliary states, and as you have seen by the examples given above, that legal control of the domiciliary state extends to business written in Alaska or anywhere else.

I also understand that Director Block believed that the act of belonging to this proposed Joint Underwriting Association might not be the same as writing malpractice insurance, since he viewed membership in the Association as simply a method of exacting assessments, and not the writing of insurance as such. I cannot say whether calling the business transacted by the Joint Underwriting Association by a different name would in fact change the legal result, and I will seek further clarification from the Association on that point. It certainly is true, however, that as the bill is now drafted, the Joint Underwriting Association is set up explicitly to write re-insurance for the malpractice indemnity corporation, and I believe that Director Block agrees that as written the bill presents substantial problems, of the kind that I have been describing, to the company.

Although I was not present when Dr. Denenberg gave his recent testimony on malpractice matters, I understand that he recommended that life insurers not be included in any pooling or Joint Underwriting Association. The problems inherent in attempting to do so might, to a very large extent, offset the benefit of the proposed legislation, if it endangers the legal right and ability of life insurance companies to do business in this state. We are very sensitive to the fact that this is the same problem that was brought

Honorable Jalmar M. Kerttula
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Page 4

to your attention last year, and that one of the entities complaining the loudest, namely Blue Cross, has now reconsidered and come to a different conclusion. We can only say that, with regard to the life insurance companies, the problem is very real, cannot be resolved by amendment of company charters, and deserves very careful consideration. I am sure that you and your Committee will give it that consideration, and I would, of course, be pleased to provide any further information that may be helpful.

Very truly yours,

M. T. THOMAS

MTT:kh

POLICY STATEMENT

SOUTHERN ALASKA LIFE UNDERWRITERS ASSOCIATION

ALASKA GENERAL AGENTS AND MANAGERS ASSOCIATION

ALASKA SOCIETY OF CHARTERED LIFE UNDERWRITERS

Subject: HB 594, SB 651 and other similar bills on
Malpractice Insurance

Legislation forming joint underwriting associations for medical malpractice insurance and including life insurance companies writing disability coverage is pending before the state legislature. Although we recognize there are many serious problems with providing adequate malpractice insurance coverage, we are opposed to life insurance companies who write disability insurance being included in the joint underwriting association. Life insurance companies do not write property and casualty insurance. In most, if not all cases, life insurance company charters prohibit the writing of property and casualty insurance. Including life insurance companies in malpractice joint underwriting associations will create a conflict of law situation between the State of Alaska and the states where various life insurance companies are domiciled.

Further we oppose the inclusion of life companies as we do not believe that it is fair to force life companies into a joint underwriting situation for property and casualty is a clear and distinct different field of insurance. It is the same as forcing an auto insurance company to enter a joint underwriting association for life insurance.

We believe that life companies are willing to take their share of the burden of an emergency nature relating to life insurance or to disability insurance.

To the best of our knowledge no state has enacted a law bringing life insurance companies into the medical malpractice joint underwriting associations. Several have introduced legislation along that line but all have exempted life companies. We do not fully know what the reaction of the life companies will be to such an inclusion. It may be they will withdraw entirely from operating in Alaska or they may withdraw from writing disability coverages. In either case the market for Alaska citizens to purchase life insurance or disability coverages will be substantially limited if the companies follow either position. We know the companies are in opposition to this type of legislation but are not certain as to the action which they will take.

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JOHN E. KOLSTOE, CLU

MEMBER, MILLION DOLLAR ROUND TABLE
NATIONAL QUALITY AWARD



BOX AJ . . . PALMER, ALASKA 99645
Bus: 745-3230 - Res: 745-3840

NEW YORK LIFE INSURANCE COMPANY

LIFE, HEALTH, GROUP INSURANCE,
ANNUITIES, PENSION PLANS

March 1, 1976

Rep. Nels Anderson Jr.
D-Dillingham, Room 118 Capitol
Juneau, Alaska 99801

Dear Rep. Anderson:

On the various proposals having to do with solving the medical mal-practice problem in Alaska there has been some suggestion of an insurance pool having all insurance companies licensed to do business with the state of Alaska sharing in the mal-practice risk specifically HB 594, SB 651.

I vigorously protest any such action and ask you to do what ever you can to impede such a move. While there may be a certain superficial appeal to such action it would not serve to the best interest of Alaska or Alaskans.

The many different fields of insurance are highly specilized. Most life insurance companies do no business what so ever in casualty or liability insurance which would include mal-practice. They do not have the facilities for this, they do not have the expertise nor the experience for such considerations.

Many large insurance companies such, as the New York Life which I represent, would be faced with a very serious diliemna should such an enactment come to be. My company and many others like it would be faced with a choice of entering into a business about which it has no interest and has no experience or knowledge, or discontining health and disability coverage, or removing itself from the state altogether. The likelihood is that several insurance companies would simply cease to do business in Alaska if the price for doing business here was also to be involved in medical mal-practice insurance. The results would be essentially as follows:

1. Thousands of Alaskans would be denied the opportunity to obtain life insurance coverage because of the sudden removal of several large insurance companies from the state.
2. The premium tax generated by these companies (which amounts to a considerable amount of revenue every year) would no longer be available to the state of Alaska.
3. The millions of dollars of investment capital which these companies invest in Alaska each year would undoubtedly be curtailed.
4. Management and office personnel currently living in Alaska would find their offices closed.

March 1, 1976

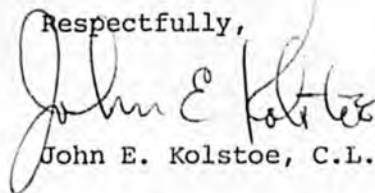
Rep. Nels Anderson Jr.

Page two

5. Personally I would be faced with an unpleasant choice of either leaving my company or leaving Alaska. Neither of which appeals to me.

It is for these above captioned reasons that I would respectfully submit that you would take vigorous steps to be sure that the burden of the medical malpractice problems is not placed on the backs of life insurance companies where it does not belong.

Respectfully,

A handwritten signature in cursive script that reads "John E. Kolstoe".

John E. Kolstoe, C.L.U.

JEK/lc
enclosure

P.S. I have enclosed a copy of a policy statement endorsed by three groups actively involved in the life insurance industry.



JOHN E. KOLSTOE, CIU
MEMBER MILLION DOLLAR ROUND TABLE
NATIONAL QUALITY AWARD



BOX AJ PALMER ALASKA 99645
Bus: 745-3230 - Res: 745-3840

NEW YORK LIFE INSURANCE COMPANY

LIFE, HEALTH, GROUP INSURANCE,
ANNUITIES, PENSION PLANS

March 3, 1976

Rep. Al Ose
D-Palmer
Room 202A Assembly Bldg.
Juneau, Alaska 99801

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JEK/lc
enclosure

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MEMBER MILLION DOLLAR ROUND TABLE
NATIONAL QUALITY AWARD



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