

239 HJ MCCLELLAN (5/4)

1 active license under this chapter, a person must maintain insurance
2 against liability to patients for malpractice in limits of not less than
3 \$200,000 per occurrence and \$600,000 aggregate liability per year. This
4 requirement is satisfied if a person's employer maintains insurance for
5 him in the required amounts.

6 (b) The commissioner of commerce and economic development may
7 require that all persons licensed under this chapter obtain the insur-
8 ance required under (a) of this section if, after public hearing, he
9 finds that unavailability of malpractice insurance on the voluntary
10 market for dispensing opticians is impairing delivery of the services of
11 dispensing opticians to the public.

12 Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
13 In addition to action under sec. 170 of this chapter, upon a finding
14 that by reason of demonstrated competence, experience, or education the
15 authority to practice as a dispensing optician under this chapter should
16 be limited or conditioned or the practitioner disciplined, the board may
17 reprimand, censure, place on probation, restrict practice by procedure
18 or facility, or require continuing 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. 8 AS 08.72 is amended by adding new sections to read:

22 *Optometrists* Sec. 08.72.115. INSURANCE REQUIRED. (a) To be eligible for an
23 active license under this chapter, a person must maintain insurance
24 against liability to patients for malpractice in limits of not less than
25 \$200,000 per occurrence and \$600,000 aggregate liability per year. This
26 requirement is satisfied if a person's employer maintains insurance for
27 him in the required amounts.

(b) The commissioner of commerce and economic development may
require all persons licensed under this chapter to obtain insurance

1 required under (a) of this section from the Health Care Providers
2 Indemnity Corporation if, after public hearing, he finds that unavaila-
3 bility of malpractice insurance on the voluntary market for optometrists
4 is impairing delivery of optometrist services to the public.

5 Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
6 In addition to action under secs. 240 and 250 of this chapter, upon a
7 finding that by reason of demonstrated competence, experience, or
8 education the authority to practice optometry under this chapter should
9 be limited or conditioned or the practitioner disciplined, the board may
10 reprimand, censure, place on probation, restrict practice by specialty,
11 procedure, 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. 9 AS 80.80 is amended by adding new sections to read:

15 *Pharmacists* Sec. 08.80.115. INSURANCE REQUIRED. (a) To be eligible for
16 active registration as a pharmacist, a person must maintain insurance
17 against liability to patients for malpractice in limits of not less than
18 \$200,000 per occurrence and \$600,000 aggregate liability per year. This
19 requirement is satisfied if a person's employer maintains insurance for
20 him in the required amounts.

21 (b) The commissioner of commerce and economic development may
22 require that all persons licensed under this chapter obtain the insur-
23 ance required under (a) of this section from the Health Care Providers
24 Indemnity Corporation if, after public hearing, he finds that unavaila-
25 bility of malpractice insurance on the voluntary market for pharmacists
26 is impairing delivery of pharmacist services to the public.

27 Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
28 In addition to action under sec. 260 of this chapter, upon a finding
that by reason of demonstrated competence, experience, or education the

1 authority to practice pharmacy under this chapter should be limited or
2 conditioned or the practitioner disciplined, the board may reprimand,
3 censure, place on probation, restrict practice by specialty, procedure,
4 or facility, or require continuing education or retraining.

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

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

8 *Physical Therapists* Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for
9 active registration as a physical therapist under this chapter, a
10 person must maintain insurance against liability to patients for mal-
11 practice in limits of not less than \$200,000 per occurrence and \$600,000
12 aggregate liability per year. This requirement is satisfied if a per-
13 son's employer maintains insurance in the required amounts.

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

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

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

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

1 Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes
2 the examination given by the board and possesses the insurance required
3 by sec. 125 of this chapter is entitled to be licensed as a psychologist

4 * Sec. 12. AS 08.86.160 is amended to read:

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

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

10 Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for
11 active licensure as a psychologist under this chapter, a person must
12 maintain insurance against liability to patients for malpractice in
13 limits of not less than \$200,000 per occurrence and \$600,000 aggregate
14 liability per year. This requirement is satisfied if a person's employe
15 maintains insurance for him in the required amounts.

16 (b) The commissioner of commerce and economic development may
17 require all persons licensed under this chapter to obtain insurance
18 required under (a) of this section from the Health Care Providers Indem-
19 nity Corporation if, after public hearing, he finds that unavailability
20 of malpractice insurance on the voluntary market for psychologists is
21 impairing the delivery of psychologist services to the public.

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

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

1 action taken by the board under this section.

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

3 ARTICLE 6. MALPRACTICE ACTIONS.

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

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

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

24 (b) The expert advisory panel may compel the attendance of wit-
25 nesses, ^{interview the parties and physically examine the injured persons if alive}
26 ~~physically or orally examine the parties~~ consult with the
27 specialists or learned works they consider appropriate, and compel the
production of and examine all relevant hospital, medical, or other
records ^{or Materials} relating to the health care treatment. The panel may meet in
camera, but shall maintain a record of any testimony or oral statements

1 of witnesses, and shall keep copies of all written statements and opinions
2 it receives. Not less than 30 days after selection of the panel, it
3 shall make a written report to the parties and to the court, substan-
4 tially answering the following questions in addition to any other ques-
5 tion which the court puts to the panel:

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

8 (2) What was the adverse effect?

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

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

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

1 give expert testimony.

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

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

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

(g) Parties to the case, and their counsel, may not ^{initiate} communicate ^{with} ~~any~~

1 of court ~~with~~ members of the panel on the subject matter of its inquiry
2 and report or cause or solicit others to do so, except through ordinary
3 discovery proceedings.

4 * Sec. 16. AS 09.55.540 is amended to read:

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

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

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

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

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

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

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

of the award which is paid on periodic basis] shall be increased by an annual interest rate of seven per cent from the date the award is made.

In this subsection, future damages include damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(c) Except when the collateral source is a federal program which by law must seek subrogation, an award to which a claimant is entitled may only cover damages which exceed any amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory, except life insurance. Evidence of damages compensated by a collateral source, other than a federal program which must seek subrogation, is admissible after the fact finder has rendered its award. Notwithstanding other provisions of state law and except as provided in this subsection, a collateral source does not have a right of subrogation.

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

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL] malpractice actions the jury shall be instructed that the plaintiff has the burden of proving [^{By A Preponderance of the evidence,} BY A PREPONDERANCE OF THE EVIDENCE,] the health care provider's negligence or wilful misconduct in accordance with sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

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

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider

insert passed

for which periodic payments may be made

future pain suffering loss of future marital services & consortium

compensations for damages

on lack thereof

1 has failed to inform the patient of common risks and reasonable alter-
2 natives to the proposed treatment or procedure, and that, but for that
3 failure, the claimant would not have consented to the proposed treatment
4 or procedure.

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

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

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

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

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

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

23 (1) "health care provider" means a chiropractor licensed
24 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
25 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
26 optician licensed under AS 08.71; an optometrist licensed under AS 08.-
27 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
28 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
psychologist and a psychological associate licensed under AS 08.86; and

1 a hospital as defined in AS 18.20.130, including a governmentally owned
2 or operated hospital;

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

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

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

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

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

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

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

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

(2) develop and implement measures to minimize the risk of
injury to patients from adverse incidents; in developing these measures

*its
medical staff,*

1 each hospital shall take into account recommendations of private under-
2 writers, industry standards, experience of other hospitals, and recom-
3 mendations of licensing boards of other health care providers; and

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

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

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

12 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

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

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

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

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

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

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

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

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

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

26 Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context
27 otherwise requires,

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

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

6 (3) "health care provider" means a chiropractor licensed
7 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
8 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
9 optician licensed under AS 08.71; an optometrist licensed under AS 08.-
10 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
11 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
12 psychologist and a psychological associate licensed under AS 08.86; and
13 a hospital as defined in AS 18.20.130, including a governmentally owned
14 or operated hospital;

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

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

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

(B) reducing morbidity or mortality;

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

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

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

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

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

12 (H) reviewing, ruling on, or advising on controversies,
13 disputes or questions between

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

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

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

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

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

1 federal or a state or local government;

2 (I) acting on the recommendation of a credential review
3 committee or a grievance committee.

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

5 CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

6 ARTICLE 1. PURPOSE.

7 Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this
8 chapter to provide a means of assuring all health care providers with
9 continuous, affordable and adequate insurance against liability for
10 medical negligence by concentrating all such insurance in one entity
11 ~~which can negotiate more successfully for insurance from casualty~~
12 ~~insurers licensed by this state~~ and to distribute equitably the cost of
13 the insurance among the health care providers insured.

14 ARTICLE 2. INDEMNITY CORPORATION.

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

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

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

26 (1) one member of the Alaska State Medical Association
27 appointed from a list of no less than three persons recommended by the
28 governing board of that association;

(2) one member of the Alaska State Hospital Association

1 appointed from a list of no less than three persons recommended by the
2 governing board of that association;

3 (3) ~~three~~ ^{Two} professionals in the insurance field;

4 (4) ~~two~~ ^{Three} persons who are not [attorneys,] health care providers
5 or ^{not} ~~representatives~~ ^{affiliate} ~~with~~ of the insurance industry.

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

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

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

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

21 (g) Each member of the board of governors shall be allowed com-
22 pensation for services and reimbursement for reasonable expenses incur-
23 red in attending meetings of the board and transacting corporation
24 business, ~~as set out in the plan of operation.~~ ^{\$100 a day & travel}

25 Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30
26 days after the effective date of this chapter, the board of governors
27 shall prepare and submit to the director for approval a plan of opera-
28 tion which provides for the fair, reasonable and equitable administra-
tion of the affairs of the corporation and the discharge of the purposes

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

9 (b) The plan of operation shall

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

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

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

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

20 (5) establish the amount and method of reimbursing and
21 compensating members of the board of governors;

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

24 (7) 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 (8) contain additional provisions necessary or proper for the
28 execution of the powers and duties of the corporation.

29 Sec. 21.86.050. POWERS AND DUTIES OF THE CORPORATION. (a) The

corporation shall

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

(A) that arise out of professional services performed by the health care provider during the period for which the premium is paid; *And at the option of the health care provider,*

Amended Block language
(B) that arise out of services performed by the health care provider after January 1, 1975 and are filed within three years from the date the services were performed but were not discovered by the health care provider when he chose to take this coverage; ↗

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 70 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, 21.09.190, 21.09.200, 21.09.250, 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 26 of this title; *Except that reserves shall be made in accordance with 070 (4)(5)*

(4) carry out the obligations of the contracts issued under

(1) of this subsection by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) provide 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, but limited to \$1,000,000 for individual health care providers and \$5,000,000 for hospitals, if 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; if this paragraph is implemented, each health care provider obtaining excess coverage up to these amounts shall obtain it from the corporation, and the corporation ^{shall} ~~shall~~ procure reinsurance for all the risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may

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

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

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

contract for Management services for Ins Co.

maintain adequate reserves; loans from the fund shall be repaid within four years after the loan is made at an annual interest rate of seven percent and through prospective rate increases;

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

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

(6) perform all other acts necessary and proper to effectuate the corporation.

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

Sec. 21.88.070. RATES. Rates and rating plans used by the corporation for the policies issued shall be determined for each category of health care provider in accordance with all of the following:

(1) rates for physicians shall be set as a function of the physician's ~~XXX~~ medical revenue; ~~AS, determined~~

~~income attributable to his acts~~

Passed

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

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

7 (4) rates may not be excessive; rates are excessive if, after
8 a period of time and with respect to an amount of gross premium which
9 are actuarially credible, the premiums exceed losses incurred by the
10 corporation, including losses paid, reserves for claims reported and
11 unpaid, [reserves for claims incurred but not reported] and reasonable
12 expenses for the operation of the corporation;

13 (5) rates may not be inadequate; rates are inadequate if,
14 based on available actuarial data, the premiums to be paid by the health
15 care providers are or may reasonably be expected to be insufficient to
16 pay for losses incurred by the corporation, including claims paid,
17 reserves for claims reported and unpaid, [reserves for claims incurred
18 but not reported], and reasonable expenses for the operation of the
19 corporation;

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

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

(8) in considering losses to be incurred, changes in the
law 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 cate-
gories of health care providers shall be considered;

(11) individual risk underwriting factors shall be considered.

2nd Draft

CS FOR SENATE BILL NO. 651

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to health care; and providing for an effective date."

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

* Section 1. AS 08.11.050 is amended by adding a new paragraph to read:

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

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

Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC EXAMINERS. There is created the Board of Chiropractic Examiners consisting of five [THREE] members appointed by the governor.

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

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

* Sec. 4. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (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

1 limited or conditioned or the practitioner disciplined, the board may
2 reprimand, censure, place on probation, restrict practice by specialty,
3 procedure or facility, or require 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. 5. AS 08.32 is amended by adding a new section to read:

7 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
8 to action under sec. 160 of this chapter, upon a finding that by reason
9 of demonstrated problems of competence, experience, education or health
10 the authority to practice dental hygiene should be limited or condi-
11 tioned or the practitioner disciplined, the board may reprimand,
12 censure, place on probation, restrict practice by specialty, procedure,
13 or facility, or require 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. 6. AS 08.36.010 is amended to read:

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

25 * Sec. 7. AS 08.36.020 is amended to read:

26 Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS.
27 Members of the board are appointed by the governor, subject to con-
28 firmation by the legislature in joint session [ASSEMBLED]. Each board
29 member serves for a term of five years, and until his successor is

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

9 * Sec. 8. AS 08.36 is amended by adding a new section to read:

10 Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
11 to action under sec. 320 of this chapter, upon a finding that by
12 reason of demonstrated problems of competence, experience, education,
13 or health, the authority to practice dentistry should be limited or
14 conditioned or the practitioner disciplined, the board may censure,
15 place on probation, restrict practice by specialty, procedure, or
16 facility, or require 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. 9. AS 08.64.010 is amended to read:

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

28 * See: 10: AS 08.64.090 is amended to read:

29 Sec. 08.64.090. QUORUM. Four [THREE] members of the board

1 constitute a quorum for the transaction of all business properly before
2 the board.

3 * Sec. 11. AS 08.64 is amended by adding new sections to read:

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

9 (b) The director of insurance or his designee shall waive the
10 requirement in (a) of this section for a person if that person fur-
11 nishes satisfactory evidence of his having other insurance providing
12 coverage in amounts not less than those specified in (a) of this sec-
13 tion. No waiver granted under this subsection may extend beyond the
14 normal expiration date of the person's insurance policy or January 1,
15 1977, whichever occurs first.

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

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

26 * Sec. 12. AS 08.68.010 is amended to read:

27 Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING.
28 There is created a Board of Nursing, consisting of seven [FIVE] members
29 appointed by the governor. One member shall be currently involved in

1 institutional nursing service, one member in community or public health
2 nursing and two members in basic or continuing nursing education, [AND]
3 one nurse at large, and two persons who have no direct financial in-
4 terest in the health care industry.

5 * Sec. 13. 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 [^{RS}NU~~RS~~] in the state, and [MEMBERS] shall have been actively
10 engaged in nursing for not less than four years before appointment, two
11 years of which were within the five years preceding appointment.

12 * Sec. 14. AS 08.68 is amended by adding a new section to read:

13 Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
14 to action under sec. 270 of this chapter, upon a finding that by reason
15 of demonstrated problems of competence, experience, education, or health
16 the authority to practice nursing should be limited or conditioned or
17 the practitioner disciplined, the board may reprimand, censure, place
18 on probation, restrict practice by specialty, procedure, or facility,
19 or require continuing education or retraining.

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

22 * Sec. 15. AS 08.71.020 is amended to read:

23 Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM
24 OF OFFICE. The board consists of seven [FIVE] persons appointed by the
25 governor. [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A LIST OF
26 QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN THE
27 STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST 30
28 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER A
29 VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS

1 THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR
2 SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST.] The
3 term of office of each member is three years. [HOWEVER, OF THE FIRST
4 MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO
5 FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the
6 board shall be filled for the unexpired term in the same manner as
7 original appointment.

8 * Sec. 16. AS 08.71.030 is amended to read:

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

13 * Sec. 17. AS 08.71 is amended by adding a new section to read:

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

25 Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The
26 board consists of five [THREE] persons, appointed by the governor. The
27 term of each member is three years. [ONE MEMBER ONLY IS APPOINTED
28 EACH YEAR, EXCEPT WHEN VACANCIES FOR UNEXPIRED TERMS ARE FILLED.]

29 * Sec. 19. AS 08.72.040 is repealed and re-enacted to read:

1 Sec. 08.72.04C. QUALIFICATIONS. Three board members shall be
2 licensed, practicing optometrists who have been residents for at least
3 three years. Two shall be persons who have no direct financial interest
4 in the health care industry.

5 * Sec. 20. AS 08.72 is amended by adding a new section to read:

6 Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
7 In addition to action under secs. 240 and 250 of this chapter, upon a
8 finding that by reason of demonstrated problems of competence, experi-
9 ence, education, or health the authority to practice optometry under
10 this chapter should be limited or conditioned or the practitioner
11 disciplined, the board may reprimand, censure, place on probation,
12 restrict practice by specialty, procedure, or facility, or require
13 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. 21. AS 08.80.010 is amended to read:

17 Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY.
18 There is created the Board of Pharmacy, composed of seven [FIVE] members:
19 five [EACH] of whom shall be pharmacists [A PHARMACIST] licensed in the
20 state who has been actively engaged in the practice of pharmacy in the
21 state for a period of three years immediately preceding his appointment
22 Two shall be persons with no direct financial interest in the health
23 care industry. Whenever possible, the board shall include at least one
24 member from each judicial district.

25 * Sec. 22. AS 80.80 is amended by adding a new section to read:

26 Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
27 In addition to action under sec. 260 of this chapter, upon a finding
28 that by reason of demonstrated problems of competence, experience,
29 education, or health the authority to practice pharmacy under this

chapter should be limited or conditioned or the practitioner disciplined. the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

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

* Sec. 23. AS 08.84 is amended by adding a new section to read:

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

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

* Sec. 24. AS 08.86.010 is amended to read:

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

* Sec. 25. AS 08.86 is amended by adding a new section to read:

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure, 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. 26. AS 09.55 is amended by adding new sections to read:

4 Sec. 09.55.535. MANDATORY ARBITRATION. (a) It is the purpose of
5 these arbitration provisions to establish a system that will provide
6 incentive to settle malpractice disputes without prolonged litigation
7 and that will provide a method by which parties to a medical malpractice
8 claim can obtain a prompt determination of its merits, and the amount
9 of damages, if any, that should be allowed.

10 (b) Upon the filing of any malpractice claim against a physician
11 or hospital, the claim shall be submitted to an arbitration board; ~~pro-~~
12 ~~vided,~~ however, ~~that~~ submission to an arbitration board may not be
13 required if all parties object to arbitration or if the parties have
14 agreed to follow the procedures prescribed in sec. 536 of this chapter.

15 (c) The arbitration board shall consist of three arbitrators; one
16 arbitrator designated by the plaintiff ~~or plaintiff's attorney~~, one arbitrator
17 designated by the defendant ~~or defendant's attorney~~, and a third arbitrator
18 designated by mutual agreement who shall serve as chairman of the board.
19 If the parties cannot agree on the third person, the court will provide
20 a list of three or more persons who might serve as chairman of the
21 arbitration board, which shall be furnished by the attorney general.
22 Plaintiff or plaintiff's together and defendant and defendants together
23 may each strike one or more names from the list, so after each side has
24 done so, at least one name remains on the list, providing a basis for
25 the final selection by the court.

26 (d) The attorney general shall prepare a list of panels' con-
27 sisting of lawyers or other persons qualified to serve as chairmen of
28 arbitration boards. They shall be selected on basis of their technical
29 expertise, judicial temperament, and capability of impartially acting

1 on malpractice claims. The attorney general shall submit a list of
2 at least three names of panelists whenever requested to do so by the
3 court along with detailed biographical information on each panelist.

4 (e) Each member of the board shall receive reasonable compensa-
5 tion based on the extent and duration of services rendered ~~and paid in~~
6 ~~by the court. The court will also pay for the costs of~~
7 ~~equal proportion to the parties in interest. In a claim accompanied by~~
8 ~~an affidavit stating that a party cannot afford the cost of arbitration,~~
9 ~~that party's share of the cost of arbitration costs shall be borne by~~
10 ~~the court, and~~ If all parties agree in advance to binding arbitration,
11 then the cost of arbitration shall be borne by the court.

12 (f) The provisions of the Uniform Arbitration Act, AS 09.43.010 -
13 09.43.180, apply to arbitrations under this section insofar as they
14 are applicable and in accordance with any rules of court which may be
15 adopted.

16 (g) If the decision of the arbitration board is not accepted by
17 all parties, the decision of the arbitration board, including its con-
18 clusions as to the merits of the claim and appropriate damages, together
19 with any dissenting opinions, shall be admissible in evidence at trial
20 upon the offer of any party, if the court conducts a review of the
21 arbitration decision and any other relevant information submitted by
22 the parties and concludes that:

23 (1) the findings of fact by the arbitration board were not
24 clearly erroneous;

25 (2) the decision is in accordance with applicable law;

26 (3) the procedures required for conducting the hearing and
27 rendering the decision were followed fairly and properly without pre-
28 judice to any party;

29 (4) any party who has not offered the arbitration decision
in evidence may subpoena any member ~~or members~~ of the arbitration board

1 or purposes of cross-examination.

2 Sec. 09.55.536. VOLUNTARY ARBITRATION. (a) A patient and any
3 health care provider may execute an agreement to submit to arbitration
4 any dispute, controversy, or issue arising out of care of treatment by
5 the health care provider during the period that the agreement is in
6 force or that has already arisen between the parties.

7 (b) An agreement to arbitrate executed before care of treatment
8 is provided between a patient and health care provider shall clearly
9 provide that execution of the agreement by the patient is not ^apre-
10 requisite to receiving care or treatment, and this provision shall be
11 explained orally to the patient before he is asked to sign. If this
12 subsection is not complied with by the health care provider, the agree-
13 ment to arbitrate is void. The form to be used shall be approved in
14 advance by the director of insurance to assure it fairly informs the
15 patient and properly protects his interests.

16 (c) Each admission to a hospital shall be treated as separate and
17 distinct for the purposes of an agreement to arbitrate, but a person
18 receiving outpatient care from a hospital or clinic or a member of a
19 health maintenance organization may execute an agreement with the
20 hospital which provides for continuation of the agreement for a contin-
21 uing program of treatment or during continued membership.

22 (d) Arbitration shall take place under the same procedures pre-
23 scribed for mandatory arbitration under sec. 536 of this chapter unless
24 the parties agree otherwise in accordance with general guidelines pro-
25 mulgated as regulations by the director of insurance to assure fairness
26 to the parties.

27 (e) ~~The reasonable costs of voluntary binding arbitration shall~~
28 ~~be borne by the court.~~ *Compensation based on the extent and duration*
29 *of services rendered and paid will be paid to members of the arbitration*
board by the court as well as cost of experts required by the court.

* Sec. 27. AS 09.55.540 is amended to read:

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

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

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

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

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

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

20 Sec. 09.55.546. ADVANCE PAYMENTS. In an action to recover damages
21 under secs. ~~530 - 540~~ of this chapter, no advance payment made by the
22 defendant health care provider or his professional liability insurer
23 to or on behalf of the plaintiff may be admissible as evidence or may
24 be construed as an admission of liability for injuries or damages
25 suffered by the plaintiff; however, a final award in favor of the
26 plaintiff shall be reduced to the extent of any advance payment. The
27 advance payment shall inure to the exclusive benefit of the defendant
28 or the insurer making the payment.

29 Sec. 09.55.547. AD DAMNUM. In a cause of action against a health

1 care provider for malpractice, the complain^t or any other pleadings may
2 not contain an ad damnum clause or monetary amount claimed against the
3 defendant health care provider, except as necessary for jurisdictional
4 purposes.

5 Sec. 09.55.548. AWARDS, COLLATERAL SOURCE, PROVIDER'S LIABILITY.

6 (a) Damages shall be awarded in accordance with principles of the
7 common law. The fact finder in a malpractice action shall render an
8 award as to damages by category of loss. The court may enter a judg-
9 ment that future damages be paid in whole or in part by periodic pay-
10 ments rather than by a lump-sum payment; the judgment shall include, if
11 necessary, other provisions to assure that funds will be available as
12 periodic payments become due. In this subsection, future damages
13 includes damages for future medical treatment, care or custody, loss of
14 future earnings, or loss of bodily function of the claimant.

15 (b) Except when the collateral source is a federal program which
16 by law must seek subrogation and except death benefits paid under life
17 insurance, a claimant may only recover damages from the defendant which
18 exceed amounts received by the claimant as compensation for his injuries
19 from collateral sources, whether private, group or governmental, and
20 whether contributory or noncontributory. Evidence of collateral
21 sources, other than a federal program which must by law seek subrogation
22 and the death benefit paid under life insurance, is admissible after
23 the fact finder has rendered an award, but the court shall also take
24 into account the value of claimant's rights to coverage exhausted or
25 depleted by payment of these collateral benefits. It may do so by add-
26 ing back a reasonable estimate of their probable value, or by earmark-
27 ing and holding for possible periodic payment under (a) ^{this section} that amount of
28 the award that would otherwise have been deducted, to see if the impair-
29 ment of claimant's rights actually takes place in the future.

1 * Sec. 29. AS 09.55.550 is amended to read:

2 Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]
3 malpractice actions the jury shall be instructed that the plaintiff has
4 the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the
5 health care provider's negligence or wilful misconduct in accordance
6 with the standard of proof specified in sec. 540 of this chapter [OF
7 THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that
8 injury alone does not raise a presumption of the health care provider's
9 [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

10 * Sec. 30. AS 09.55 is amended by adding new sections to read:

11 Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is
12 liable for failure to obtain the informed consent of a patient if the
13 claimant establishes by a preponderance of the evidence that the pro-
14 vider has failed to inform the patient of the common risks and reason-
15 able alternatives to the proposed treatment or procedure, and that but
16 for the ^{at} failure the claimant would not have consented to the proposed
17 treatment or procedure.

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

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

22 (2) the patient stated to the health care provider that he
23 would undergo the treatment or procedure regardless of the risk involved
24 or that he did not want to be informed of the matters to which he would
25 be entitled to be informed;

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

28 (4) the health care provider after considering all of the
29 attendant facts and circumstances used reasonable discretion as to the

1 manner and extent that the alternatives or risks were disclosed to the
2 patient because he reasonably believed that a full disclosure would
3 have a substantially adverse effect on the patient's condition.

4 Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter
5 "health care provider" means a chiropractor licensed under AS 08.20; a
6 dental hygienist licensed under AS 08.32; a dentist licensed under
7 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician li-
8 censed under AS 08.71; an optometrist licensed under AS 08.72; a pharma-
9 cist licensed under AS 08.80; a physical therapist licensed under
10 AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psycho-
11 logist and a psychological associate licensed under AS 08.86; and a
12 hospital as defined in AS 18.20.130, including a governmentally owned or
13 operated hospital.

14 * Sec. 31. AS 18.20 is amended by adding a new section to read:

15 Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a
16 condition of licensure, shall maintain and submit to the department
17 evidence of insurance against liability to inpatients and outpatients
18 for malpractice issued by the Health Care Providers Indemnity Corpora-
19 tion, in amounts of not less than \$200,000 per occurrence, and an
20 aggregate liability per year of \$1,000,000 minimum, and an additional
21 \$20,000 for each bed over 50.

22 (b) The director of insurance or his designee shall waive the
23 requirement in (a) of this section for a hospital if the hospital fur-
24 nishes satisfactory evidence of having other insurance providing
25 coverage in amounts not less than those specified in (a) of this sec-
26 tion. No waiver granted under this subsection may extend beyond the
27 normal expiration date of the hospital's insurance policy or January 1,
28 1977, whichever occurs first.

29 * Sec. 32. AS 18 is amended by adding a new chapter to read:

1 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

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

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

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

27 Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION

28 (a) Except as provided in (b) of this section, all data and information
29 acquired by a review organization, in the exercise of its duties and

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

19 (b) Testimony, documents, proceedings, records, and other evidence
20 adduced before a review organization that are otherwise inaccessible
21 under this section may be obtained by a health care provider who claims
22 that denial is unreasonable, or may be obtained under subpoena or
23 discovery proceedings brought by a plaintiff who claims that information
24 provided to a review organization was false and claims that the person
25 providing the information knew or had reason to know the information was
26 false.

27 (c) Nothing in this chapter prevents a person whose conduct or
28 competence has been reviewed under this chapter from obtaining, for the
29 purpose of appellate review of the action of the review organization,

1 any testimony, documents, proceedings, records and other evidence
2 adduced before the review organization.

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

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

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

15 Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context
16 otherwise requires,

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

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

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

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

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

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

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

18 (B) reducing morbidity or mortality;

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

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

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

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

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

1 (H) reviewing, ruling on, or advising on controversies,
2 disputes or questions between

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

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

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

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

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

20 (I) acting on the recommendation of a credential review
21 committee or a grievance committee.

22 * Sec. 33. AS 21 is amended by adding a new chapter to read:

23 CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

24 ARTICLE 1. PURPOSE.

25 Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this
26 chapter to provide a means of furnishing health care providers with
27 adequate insurance against liability for medical negligence by concen-
28 trating all such insurance in one entity which can negotiate more
29 successfully for insurance from casualty insurers and to distribute

1 equitably the true cost of the insurance among the health care providers
2 insured.

3 ARTICLE 2. INDEMNITY CORPORATION.

4 Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska
5 Health Care Providers Indemnity Corporation which is a public corpora-
6 tion having a legal existence independent of and separate from the
7 state. Obligations issued by the corporation do not constitute a debt,
8 liability or obligation of the state or a pledge of full faith and
9 credit of the state.

10 Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The cor-
11 poration shall exercise its powers through a board of governors which
12 shall be appointed by the governor of the state and confirmed by the
13 legislature as provided in (b) of this section.

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

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

19 (2) one person employed by a hospital or on the board of
20 directors of a hospital;

21 (3) two professionals in the insurance field;

22 (4) two persons who are not health care providers or finan-
23 cially interested in the field of health care, attorneys, or represen-
24 tatives of the insurance industry.

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

29 (d) Upon the expiration of the term of a governor, the director

1 shall appoint a successor who shall be from the same class described in
2 (b) of this section as the governor whose term has expired.

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

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

11 (g) Each member of the board of governors shall be allowed com-
12 pensation for services and reimbursement for reasonable expenses in-
13 curred in attending meetings of the board and transacting corporation
14 business, as set out in the plan of operation.

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

28 (b) The plan of operation shall

29 (1) establish the procedures by which all the powers and

1 duties of the corporation specified in sec. 50 of this chapter shall be
2 performed;

3 (2) establish procedures for handling assets and discharging
4 liabilities of the corporation;

5 (3) establish regular places and times for meetings of the
6 board of governors;

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

10 (5) establish the amount and method of reimbursing and
11 compensating members of the board of governors;

12 (6) establish the procedures for awarding contracts to in-
13 demnify or defend or to provide other services and to compensate the
14 indemnitors or vendors;

15 (7) establish the procedures for issuing contracts of insur-
16 ance as provided in sec. 50 of this chapter and for the determination of
17 rates;

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

20 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
21 corporation shall

22 (1) in the form approved by the director, issue to all
23 health care providers who pay the premiums for it a contract indemnify-
24 ing the health care provider and his employees who are health care
25 providers against loss by reason of liability for professional services
26 and agreeing to tender on behalf of the health care provider and his
27 employees who are health care providers a defense in a proceeding
28 brought under AS 09.55.530 - 09.55.560; the limit of liability shall be
29 no less than the minimum liability coverage requirements to be main-

1 tained under AS 08.64.215 and AS 18.20.045; the contract shall cover
2 the defense against but need not indemnify a claim for punitive
3 damages; at the option of the health care provider and for an additional
4 premium the contract may cover claims against the health care provider
5 that arise out of professional services performed by the health care
6 provider after December 31, 1974 and are filed within three years after
7 those services were performed, except that coverage will not be pro-
8 vided for a claim already filed or of which the health care provider
9 had or reasonably should have had notice at the time the retroactive
10 insurance was purchased;

11 (2) charge a premium for the protection provided by the
12 contracts issued under (1) of this subsection which shall be determined
13 by the board of governors in accordance with sec. 80 of this chapter
14 and subject to the approval of the director;

15 (3) negotiate for and procure reinsurance from a casualty
16 insurer or reinsurer for all of its liability incurred by contracts
17 issued under (1) of this subsection; the corporation may not incur or
18 retain under those contracts liability which is not reinsured as pro-
19 vided in this paragraph; if, after the exercise of due diligence, no
20 reinsurance ^{for all of portion of the risk} can be procured at reasonable rates from a casualty insurer
21 or reinsurer, the corporation through the board of governors, shall so
22 certify to the director; reinsurance ^{for all of portion not covered by a health carrier} shall then be provided by the
23 Health Care Joint Underwriting Association as provided in sec. 110 et
24 seq. of this chapter;

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

29 (5) carry out the obligations of the contracts issued under

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

7 (6) provide coverage to health care providers for liability
8 in excess of the minimum limits required for licensure as a health care
9 provider, but limited to \$1,000,000 for individual health care providers
10 and \$5,000,000 for hospitals, if there is a finding by the director that
11 this coverage is unavailable at a reasonable cost and that this coverage
12 can be made available at a reasonable cost through the corporation; if
13 this paragraph is implemented, then each health care provider obtaining
14 excess coverage up to these amounts shall obtain it from the corpora-
15 tion.

16 (b) The corporation may

17 (1) in the form approved by the director, issue contracts of
18 professional liability insurance to chiropractors licensed under AS 08.-
19 20, dental hygienists licensed under AS 08.32, dentists licensed under
20 AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed
21 under AS 08.71, optometrists licensed under AS 08.72, pharmacists li-
22 censed under AS 08.80, physical therapists licensed under AS 08.81, and
23 psychologists and psychological associates licensed under AS 08.86;

24 (2) employ or retain persons, individual or corporate, to
25 discharge its obligations and pay reasonable compensation for those
26 services; employees of the corporation are not considered state em-
27 ployees;

28 (3) provide coverage to health care providers for other
29 hazards where there is a finding by the director that this coverage is

1 otherwise unavailable by reason of the operation of the corporation;

2 (4) borrow or advance funds necessary to effectuate the
3 purposes of the corporation;

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

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

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

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

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

1 . . . include the names of health care providers or claimants or information
2 that will permit by inference the identity of specific health care
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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 may not be excessive; rates are excessive if, after
8 a period of time and with respect to an amount of gross premium which
9 are actuarially credible, the premiums exceed losses incurred by the
10 corporation, including losses paid, reserves for claims reported and
11 unpaid, reserves for claims incurred during the policy period and not
12 reported, and reasonable expenses for the operation of the corporation;

13 (2) rates shall not be inadequate; rates are inadequate if,
14 based on available actuarial data, the premiums to be paid by the
15 health care providers are or may reasonably be expected to be insuf-
16 ficient to pay for losses incurred by the corporation, including claims
17 paid, reserves for claims reported and unpaid, reserves for claims
18 incurred during the policy period and not reported; and reasonable
19 expenses for the operation of the corporation;

20 (3) *rates shall not be unfairly discriminatory;*

(4) rates shall be adjusted annually;

21 (5) rates for any policy year shall be calculated to include
22 the adjustment for actual experience of the corporation, ~~and the~~

23 ~~and the~~
24 (6) in considering losses to be incurred, changes in the law,
25 national, regional or local trends in medical negligence awards, and
26 other relevant factors may be considered;

27 (7) income from the investment of reserves shall be con-
28 sidered;

29 (8) individual risk underwriting factors shall be considered.

1 Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corporation
2 shall provide insurance to all health care providers otherwise eligible
3 for licensure under AS 08.64 and AS 18.20. The corporation may provide
4 for installment payment of premiums in which event each installment is
5 due by the date specified. The corporation may cancel any of its
6 policies in the event of nonpayment of any premium or installment on a
7 premium, or other charge, by mailing or delivering to the insured at
8 the address shown on the policy and to the agency of the state issuing
9 the insured's license written notice stating when, not less than 10 days
10 after notice is received by the insured, the cancellation is effective.

11 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

12 Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Pro-
13 viders Joint Underwriting Association is created consisting of all *licensed*

- 14 (1) ~~licensed~~ health care service corporations as defined in
15 AS 21.87.330;
16 (2) disability insurers as defined in AS 21.12.050;
17 (3) property insurers as defined in AS 21.12.060; and
18 (4) casualty insurers as defined in AS 21.12.070.

19 (b) Every insurer described in (a) of this section shall be a
20 member of the association and shall remain a member as a condition of
21 its authority to continue to transact that kind of business in this
22 state; except that any disability insurer may elect to pay any tax or
23 assessments due without otherwise participating as a member.

24 (c) The association shall commence operation upon a finding by the
25 director, after public hearing, that after the exercise of due diligence
26 no reinsurance could be procured at reasonable rates by the corporation.
27 from a casualty insurer or reinsurer. After the association has com-
28 menced operation, if the director determines, after public hearing, that
29 health care malpractice insurance is available through insurers licensed

1 in this state with respect to which he has previously made the former
2 finding, the association shall cease its underwriting operations. At
3 any time, after notice and hearing, the director may, upon a finding
4 that it is no longer needed, terminate the operation of the association.

5 Sec. 21.88.120. PURPOSE. The purpose of the association is to
6 provide a market for medical malpractice insurance to the corporation on
7 a self-supporting basis without subsidy from association members.

8 Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM. The asso-
9 ciation shall be governed by a board of directors appointed by the
10 governor of the state and consisting of two representatives of domestic
11 casualty and property insurers, one representative of admitted dis-
12 ability insurers, one representative of health care service corpora-
13 tions, one representative of foreign casualty and property insurers, and
14 two persons from the public. Members of the board of directors serve
15 three-year terms.

16 Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30
17 days after the association's creation the board of directors shall
18 prepare and submit to the director for his approval a plan of operation
19 which provides for the fair, reasonable and equitable administration of
20 the affairs of the association and the discharge of the purposes for
21 which it is created. The plan and any amendments of it become effective
22 upon the director's approval. If the board of directors has failed to
23 submit a plan of operation, or if at any subsequent time the board of
24 directors fails to submit suitable amendments to the plan, the director
25 shall, after notice and hearing, adopt and promulgate a plan of opera-
26 tion or amendments which are necessary or advisable to effectuate the
27 provisions of this chapter. Adoption of the plan is not subject to the
28 Administrative Procedure Act (AS 44.62).

29 (b) The plan of operation shall

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

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

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

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

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

12 (6) establish the procedures for awarding contracts to indem-
13 nify or defend or to provide other services and to compensate the indem-
14 niters or vendors;

15 (7) establish the procedures for issuing contracts of insur-
16 ance as provided in sec. 150 of this chapter and for the determination
17 of rates;

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

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

22 (1) provide reinsurance to the corporation covering contracts
23 issued by the corporation indemnifying health care providers and their
24 employees who are health care providers against loss by reason of
25 liability for professional services and agreeing to tender on behalf
26 of the health care providers and their employees who are health care
27 providers a defense in an action brought under AS 09.55.530 - 09.55.560;
28 the limit of liability shall be no less than the minimum liability
29 required to be indemnified as provided in AS 08.64.215 and AS 18.20.045,

1 and the coverage shall be the same as that which the Health Care Pro-
2 viders Indemnity Corporation is required to provide under sec. 50 of
3 this chapter;

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

8 (3) comply with or be subject to AS 21.06.090; 21.06.120;
9 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250;
10 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and
11 36 of this title;

12 (4) carry out the obligations of the contracts issued under
13 sec. 50 of this chapter by defending all covered claims made against
14 insured health care providers and paying all liabilities which are
15 finally adjudicated against the insured health care provider or which
16 may in the opinion of the association reasonably be expected to be
17 finally adjudicated against the health care provider to the extent of
18 the contract obligation.

19 (b) The association may

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

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

27 (3) provide reinsurance to the corporation for coverage to
28 health care providers for liability under AS 09.55.530 - 09.55.560 in
29 excess of the minimum limits required for licensure as a health care

2 | unavailable at a reasonable cost and that this coverage can be made

1 | available at a reasonable cost through the corporation;

2 | (4) provide reinsurance to the corporation for coverage for
3 | liability under AS 09.55.530 - 09.55.560 to chiropractors licensed und
4 | AS 08.20, dental hygienists licensed under AS 08.32, dentists licensed
5 | under AS 08.36, nurses licensed under AS 08.68, dispensing opticians
6 | licensed under AS 08.71, optometrists licensed under AS 08.72, pharma-
7 | cists licensed under AS 08.80, physical therapists licensed under
8 | AS 08.84, and psychologists and psychological associates licensed under
9 | AS 08.86;

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

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

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

15 | (8) cede or assume reinsurance;

16 | (9) perform all other acts necessary and proper to effectuat
17 | the association.

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

26 | Sec. 21.88.170. ASSESSMENT. If sufficient funds are not available
27 | for the sound financial operation of the association, all members shall
28 | contribute to the financial requirements of the association by paying to
29 |

1 . . . the association an assessment to be determined by the board of governors
2 of the association, these assessments to be prorated among all members
3 in proportion to their direct written premiums or revenues in this state
4 in the insurance lines the writing of which require membership in the
5 association, in the two years ending on the preceding December 31, after
6 deducting the applicable cancellations, returned premium, the unabsorbed
7 portion of any deposit premium, all policy dividends, unabsorbed premi-
8 ums refunded to policyholders, refunds, savings, savings coupons and
9 other similar returns paid or credited to policyholders with respect to
10 their policies. Any assessment under this section is a tax obligation
11 in addition to taxes required under AS 21.09.210 and notwithstanding
12 the provisions of AS 21.09.210(e). ~~Insure~~

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

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

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

24 Sec. 21.88.190. REPORTS. At least annually the association shall
25 report to the director concerning its affairs. The report shall be in
26 the form prescribed by the director.
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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 four years at an annual interest rate of seven per cent.

(d) The director may sell at par value to the Department of Revenue 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 purchase 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. 3⁴. AS 21.18.090 is amended by adding a new paragraph to read:

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

7 * Sec. 3⁵. 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
10 by reason of his performance of a duty, function, or activity as a
11 member of a licensing board or by reason of a recommendation or action
12 of the board when the person acts in the reasonable belief that his
13 action or recommendation is warranted by facts known to him or to the
14 board after reasonable efforts to ascertain the facts upon which the
15 action or recommendation is made.

16 * Sec. 3⁶. AS 08.64.365 and AS 08.68.040 are repealed.

17 * Sec. 3⁷. This Act takes effect 30 days after enactment.
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Our intent ~~was~~ to tie this in with FDA guide
on ^{drug} equivalence. ~~Also ~~do~~~~

- ① Voluntary Binding Arbitration
- ② Mandatory Arbitration - Right Trial De Novo
- ③ Straight to Court if both agree
and don't want arbitration

Residential Community Action Group

- (1) [Illegible]
 - (2) [Illegible]
 - (3) Consent of the purchaser
- Line 12 was amended to with the

Pass

labor agreement

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. *842*

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 pay differentials between state
7 ferry employees residing inside and outside the state."

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

9 * Section 1. AS 23.40.040 is amended to read:

10 Sec. 23.40.040. COLLECTIVE BARGAINING AGREEMENT. The commissioner
11 of public works or his authorized representative, in accordance with
12 secs. 10 - 30 of this chapter, may negotiate and enter into collective
13 bargaining agreements concerning wages, hours, working conditions, and
14 other employment benefits with the employees of the division of marine
15 transportation engaged in operating the state ferry system as masters
16 or members of the crews of vessels or their bargaining agent. No
17 collective bargaining agreement is final without the concurrence of the
18 commissioner of public works. The commissioner of public works may
19 make provision in the collective bargaining agreement for the settlement
20 of labor disputes by arbitration, and for area differentials in pay as
21 between employees residing inside and outside the state, not to exceed
22 six pay steps.

*Call Compton
Call A.G.*

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

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

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

10 *Dental Hygienists*
11 Sec. 08.32.015. INSURANCE REQUIRED. (a) To be eligible for an
12 active license under this chapter, a person must maintain insurance
13 against liability to patients for malpractice in limits of not less than
14 \$200,000 per occurrence and \$600,000 aggregate liability per year. This
15 requirement is satisfied if the person's employer maintains insurance
16 for him in the required amounts.

17 (b) The commissioner of commerce and economic development may
18 require all persons licensed under this chapter to obtain the insurance
19 required under (a) of this section from the Health Care Providers In-
20 demnity Corporation if, after public hearing, he finds that unavaila-
21 bility of malpractice insurance on the voluntary market for dental
22 hygienists is impairing the delivery of dental hygienists' services to
23 the public.

24 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
25 to action under sec. 160 of this chapter, upon a finding that by reason
26 of demonstrated competence, experience, or education the authority to
practice dental hygiene should be limited or conditioned or the practi-
tioner disciplined, the board may reprimand, censure, place on proba-
tion, restrict practice by specialty, procedure, or facility, or require

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

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

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

11 (b) The commissioner of commerce and economic development may
12 require all persons licensed under this chapter to obtain the insurance
13 required under (a) of this section from the Health Care Providers In-
14 demnity Corporation if, after public hearing, he finds that unavaila-
15 bility of malpractice insurance on the voluntary market for dentists is
16 impairing the delivery of dentist services to the public.

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

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

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

27 Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an
28 active license under this chapter, a person must maintain insurance
29 issued by the Health Care Providers Indemnity Corporation against
30 liability to patients for medical malpractice in limits of not less than

1 \$200,000 per occurrence and \$600,000 aggregate liability per year. This
2 requirement is satisfied if a person's employer maintains insurance for
3 him ^{and} in the required amounts ~~from MIC~~.

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

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

15 (b) Before a license may be renewed the licensee shall submit evi-
16 dence satisfactory to the board of his successful completion of 15 hours
17 of continuing education annually in medicine as prescribed by regula-
18 tions of the board. Courses approved by the board shall include, but
19 are not limited to, review courses and instruction on new techniques and
20 developments in medicine. *miscellaneous*

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

26 Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
27 In addition to action under sec. 330 of this chapter, upon a finding
that by reason of demonstrated competence, experience, or education the
28 authority to practice under this chapter should be limited or condi-

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

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

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

nurses
Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an active license as a nurse under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than \$200,000 per occurrence and \$600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

may buy from MLC
(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for nurses is impairing the delivery of nurse services to the public.

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

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

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

dispensing opticians
Sec. 08.71.965. INSURANCE REQUIRED. (a) To be eligible for an

1 active license under this chapter, a person must maintain insurance
2 against liability to patients for malpractice in limits of not less than
3 \$200,000 per occurrence and \$600,000 aggregate liability per year. This
4 requirement is satisfied if a person's employer maintains insurance for
5 him in the required amounts.

6 (b) The commissioner of commerce and economic development may
7 require that all persons licensed under this chapter obtain the insur-
8 ance required under (a) of this section if, after public hearing, he
9 finds that unavailability of malpractice insurance on the voluntary
10 market for dispensing opticians is impairing delivery of the services of
11 dispensing opticians to the public.

12 Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
13 In addition to action under sec. 170 of this chapter, upon a finding
14 that by reason of demonstrated competence, experience, or education the
15 authority to practice as a dispensing optician under this chapter should
16 be limited or conditioned or the practitioner disciplined, the board may
17 reprimand, censure, place on probation, restrict practice by procedure
18 or facility, or require continuing 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. 8. AS 08.72 is amended by adding new sections to read:

22 Sec. 08.72.115. INSURANCE REQUIRED. (a) To be eligible for an
23 active license under this chapter, a person must maintain insurance
24 against liability to patients for malpractice in limits of not less than
\$200,000 per occurrence and \$600,000 aggregate liability per year. This
requirement is satisfied if a person's employer maintains insurance for
him in the required amounts.

(b) The commissioner of commerce and economic development may
require all persons licensed under this chapter to obtain insurance

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2 required under (a) of this section from the Health Care Providers
3 Indemnity Corporation if, after public hearing, he finds that unavaila-
4 bility of malpractice insurance on the voluntary market for optometrists
5 is impairing delivery of optometrist services to the public.

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

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

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

16 *Pharmacists*
17 Sec. 08.80.115. INSURANCE REQUIRED. (a) To be eligible for
18 active registration as a pharmacist, a person must maintain insurance
19 against liability to patients for malpractice in limits of not less than
20 \$200,000 per occurrence and \$600,000 aggregate liability per year. This
21 requirement is satisfied if a person's employer maintains insurance for
22 him in the required amounts.

23 (b) The commissioner of commerce and economic development may
24 require that all persons licensed under this chapter obtain the insur-
25 ance required under (a) of this section from the Health Care Providers
26 Indemnity Corporation if, after public hearing, he finds that unavaila-
27 bility of malpractice insurance on the voluntary market for pharmacists
28 is impairing delivery of pharmacist services to the public.

29 Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)

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1 authority to practice pharmacy under this chapter should be limited or
2 conditioned or the practitioner disciplined, the board may reprimand,
3 censure, place on probation, restrict practice by specialty, procedure,
4 or facility, or require continuing education or retraining.

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

7 Sec. 10. AS 08.84 is amended by adding new sections to read:

8 *Physical Therapists*
9 Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for
10 active registration as a physical therapist under this chapter, a
11 person must maintain insurance against liability to patients for mal-
12 practice in limits of not less than \$200,000 per occurrence and \$600,000
13 aggregate liability per year. This requirement is satisfied if a per-
14 son's employer maintains insurance for him in the required amounts.

15 (b) The commissioner of commerce and economic development may
16 require that all persons licensed under this chapter obtain the insurance
17 required in (a) of this section from the Health Care Providers Indemnity
18 Corporation if, after public hearing, he finds that unavailability of
19 malpractice insurance on the voluntary market for physical therapists
20 is impairing delivery of physical therapist services to the public.

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

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

29 # Sec. 11. AS 08.36.120 is amended to read:
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Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes the examination given by the board and possesses the insurance required by sec. 125 of this chapter is entitled to be licensed as a psychologist

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

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

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

Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for active licensure as a psychologist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than \$200,000 per occurrence and \$600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for psychologists is impairing the delivery of psychologist services to the public.

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated competence, experience, or education the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure, or facility,

(b) The Administrative Procedure Act (AS 04.02) applies to any

1 action taken by the board under this section.

2 Sec. 14. AS 09.55.530 is repealed and re-enacted to read:

3 ARTICLE 6. MALPRACTICE ACTIONS.

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

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

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

24 (b) The expert advisory panel may compel the attendance of wit-
25 nesses, ^{am 2-Wilson} [physically or orally examine the parties] consult with the
26 specialists or learned works they consider appropriate, and compel the
27 production of and examine all relevant hospital, medical, or other
28 records, ^{or materials} relating to the health care treatment. The panel may meet in
29 ~~secret~~, shall maintain a record of any testimony or oral statements

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1 of witnesses, and shall keep copies of all written statements and opinions
2 it receives. Not less than 30 days after selection of the panel, it
3 shall make a written report to the parties and to the court, substan-
4 tially answering the following questions in addition to any other ques-
5 tion which the court puts to the panel:

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

8 (2) What was the adverse effect?

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

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

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

1 give expert testimony.

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

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

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

29 (g) Parties to the case and their counsel may not ^{initiate} communicate ^{one with} each other.

of the award which is paid on periodic basis shall be increased by an annual interest rate of seven per cent from the date the award is made.

Insert Block # 7

In this subsection, future damages, include damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

for which periodic payments will be made

future pain & suffering, loss of mental services, loss of consortium

Related

(c) Except when the collateral source is a federal program which by law must seek subrogation, an award to which a claimant is entitled may only cover damages which exceed any amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory, except life insurance. Evidence of damages compensated by a collateral source, other than a federal program which must seek subrogation, is admissible after the fact finder has rendered its award. Notwithstanding other provisions of state law and except as provided in this subsection, a collateral source does not have a right of subrogation.

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

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

include other providers housekeeping to include above

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

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider

revises oral contracts

of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

Sec. 16. AS 09.55.540 is amended to read:

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

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

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

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

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

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

Sec. 09.55.546. AWARDS, COLLATERAL SOURCES. (a) In a malpractice action damages shall be awarded according to the principles of the common law. The fact finder, in rendering its award for damages, shall specify the amount awarded for each category of loss. Awards for loss of future earnings shall be ^{computed} ~~made~~ on a monthly basis. The court may award periodic payments rather than by a lump sum payment; however, any part

making changes to burden of proof. physicians must practice degree of care. late claims fund

1 has failed to inform the patient of common risks and reasonable alter-
2 natives to the proposed treatment or procedure, and that, but for that
3 failure, the claimant would not have consented to the proposed treatment
4 or procedure.

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

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

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

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

15 (4) the health care provider, after considering all of the
16 attendant facts and circumstances [and consulting with two other health
17 care providers] used reasonable discretion as to the manner and extent to
18 which the alternatives or risks were disclosed to the patient because he
19 reasonably believed that the manner and extent of such a disclosure
20 would reasonably be expected to adversely and substantially affect the
21 patient's condition.

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

23 (1) "health care provider" means a chiropractor licensed
24 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
25 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
26 optician licensed under AS 08.71; an optometrist licensed under AS 08.-
27 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
28 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
29 psychologist and a psychological associate licensed under AS 08.86; and

1 a hospital as defined in AS 18.20.130, including a governmentally owned
2 or operated hospital;

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

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

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

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

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

16 *addition* Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a con-
17 *of Risk* dition of licensure, shall submit to the department and maintain evi-
18 *management* dence of insurance against liability to inpatients and outpatients for
19 *proposals.* malpractice issued by the Health Care Providers Indemnity Corporation,
20 in amounts of not less than \$200,000 per occurrence, and an aggregate
21 liability per year of not less than \$1,000,000 for every 50 beds or
22 *lots of* fraction of that number for which the hospital is licensed.
23 *superior*

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

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

(2) develop and implement measures to minimize the risk of
injury to patients from adverse incidents; in developing these measures

*It's medical
ambulance staff. hc-p-11c
Wilson*

1 each hospital shall take into account recommendations of private under-
2 writers, industry standards, experience of other hospitals, and recom-
3 mendations of licensing boards of other health care providers; and

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

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

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

12 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

13 *Down
No. 50113
Rept. ?*
14 Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING
15 INFORMATION TO REVIEW ORGANIZATION. (a) No person providing informa-
16 tion to a review organization is subject to action for damages or other
17 relief by reason of having furnished that information, unless the
18 information is false and the person providing the information knew or
19 had reason to know the information was false.

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

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

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

10 Sec. 18.23.030. CONFIDENTIALITY OF RECCRDS OF REVIEW ORGANIZATION.

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