

241 HJ FCC MALPRACTICE (INCLUDING HB 574)

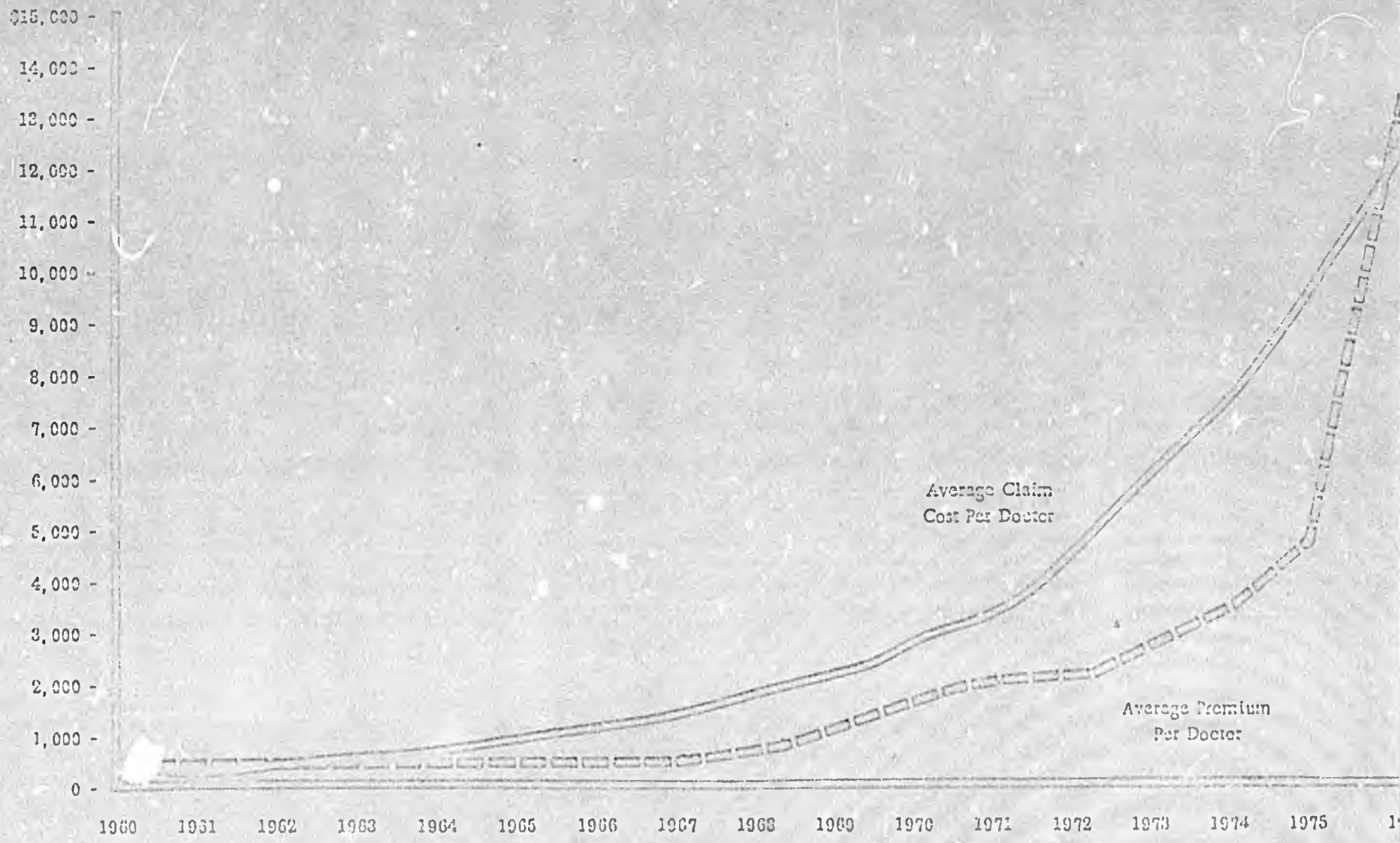
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State of California  
 DEPARTMENT OF INDUSTRIAL ACCIDENTS  
 AND EMPLOYERS LIABILITY

Classification	Percentage Of Doctors	Premium Relationship Indicated by 1970 Rate	Indicated 1970 Premium
Physicians - no surgery	62%	\$ 300	\$ 9,000
Physicians - minor surgery or assisting in major surgery on own patients (4% or less)	15	100	15,000
Ophthalmologists	2	300	10,000
Proctologists	"	250	10,000
Cardiologists - including catheterization, but not including cardiac surgery	0	200	10,000
Anesthesiologists	4	300	10,000
Urologists	1	300	20,000
Otolaryngologists - plastic surgery	1	350	35,000
Otolaryngologists - no plastic surgery	1	400	20,000
Cardiac surgeons	"	400	30,000
Obstetricians - gynecologists	5	400	31,000
Plastic surgeons	"	500	33,000
Surgeons - general - specialists in general surgery	6	500	36,000
Orthopedists	3	700	43,000
Thoracic surgeons	1	300	53,000
Vascular surgeons	"	340	60,000
Neurosurgeons	1	350	33,000
Total	100%	220 (average)	\$ 14,000

\* Less than 1%

Source: Insurance Services Office -- Physicians and surgeons countrywide excluding Texas, policy years ending 1969 - 1970



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# TELEGRAM

BOA ALASKA COMMUNICATIONS, INC.

PHONE: 226-6440

BUREAU, ALASKA 99501

*Copies for  
Members files  
524*

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PMS TERRY GARDINER CARE HOUSE JUDICIARY COMMITTEE

1976 JAN 27 AM 10 57

JUN<sup>919</sup>

AS PRESIDENT OF THE ALASKA CHIROPRACTIC SOCIETY  
I HAVE BEEN DIRECTED BY ITS MEMBERS TO REQUEST  
YOUR ASSISTANCE IN EXCLUDING (TOTALLY) DOCTORS  
OF CHIROPRACTIC FROM SB522 MALPRACTICE CLAIMS ARE NOT  
A PROBLEM WITH OUR PROFESSION AND OUR MEMBERS ARE  
ADEQUATELY INSURED THROUGH OUR NATIONAL CHIROPRACTIC  
AS ORGANIZATION FOR OUR PATIENTS PROTECTION

CECIL S MCLEOD DR



Members file on Malpractice



OFFICE OF THE PRESIDENT

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January 10, 1976

Mr. Langhorne Motley  
Commissioner  
Pouch D.  
Juneau, Alaska 99811

Dear Commissioner Motley:

The Alaska Dental Society wishes to reaffirm it's position in relation to the Malpractice Insurance Commission's proposed legislation.

We object to mandatory inclusion in a joint under-writing association and adhere closely to the points and reasoning brought out in a report to the legislature made by Dr. H.S. Denenberg.

Sincerely;

*Robert R. H. Sutherlin DDS*

R.H. Sutherlin  
President  
Alaska Dental Society

cc: All legislators  
All Health Care Associations  
Governor  
Director of Insurance

TERRY GARDINER

STATE REPRESENTATIVE

POUCH V  
JUNEAU  
99811

BOX 1092  
KETCHIKAN  
99901

file

# Alaska State Legislature

January 30, 1976

Bill Henrickson  
Ketchikan Medical Clinic  
3612 Tongass Ave.  
Ketchikan, Alaska 99901

Dear Dr. Henrickson,

Thank you for your letter in regard to SB 113. SB 113 passed through House Judiciary Committee last year and evidently got stuck in the Rules Committee. As I understand it this issue is not taken care of in the Governor's recommended legislation on medical malpractice. Before passing out the medical malpractice legislation, I will make sure that this issue is taken care of. The issue is not resolved in the Governor's proposed legislation. We will either include it or make sure that SB 113 is passed this session.

The House Judiciary Committee and the Senate Commerce Committee have both been putting in a lot of hours on the malpractice issue. I am confident that we will eventually pass legislation that will be more far-reaching than the malpractice commission's recommendations.

Sincerely,

---

Terry Gardiner

# *Ketchikan Medical Clinic*

3612 TONGASS  
KETCHIKAN, ALASKA 99901

J. W. Mortensen, M. D.  
H. J. Henrickson, M. D.  
D. E. Johnson, M. D.

Phone 225-5144  
Phone 225-5145

January 14, 1976

Representative Terry Gardiner  
Alaska House of Representatives  
Juneau,  
Alaska 99801

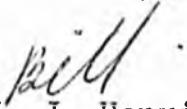
Dear Terry:

Senate Bill 113 which passed, seems to be stuck in committee in the house. If the number is correct, this is the bill that protects the physician from suits while carrying out normal functions on the various hospital committees and boards upon which he must serve.

All of us feel very strongly that we must police our own ranks but in order to do so, must have some freedom from fear of being sued for such actions as we must take.

Any help you can give us in getting this bill out of committee would be appreciated.

Sincerely,

  
H. J. Henrickson, M.D.

### Settlement Delays Drive Up Costs

The malpractice problem is further aggravated by the long time required to resolve claims. According to lawyer James E. Ludlam, of Los Angeles, a specialist in hospital professional liability problems, a malpractice case generally takes 5-6 years to settle.

"In such cases," he says, "defense costs alone can total \$30,000, and both sides might spend \$100,000." (In addition, it is estimated that every day of trial costs the public about \$1,000 just to maintain that part of the court system.)

Such delays work hardships for all parties concerned and drive up costs of eventual settlement. Ludlam calls our present system for resolving medical malpractice cases "extraordinarily expensive, inefficient, and most erratic."

(Source: Reader's Digest, 4/75.)

### The Lawyer's Contingency Fee

The U.S. is the only major nation that allows the contingency fee system, in which a lawyer obtains a fee only if he wins. In return for this risk, he receives on average 1/3 to 1/2 of the court award.

Lawyers say that without this system, some patients with valid suits could not afford to press them. On the other hand, many claims are rejected by lawyers because the potential return is too small.

In New Jersey, a sliding-scale contingency fee has been established: 50% of the first \$1,000 in the settlement; 40% of the next \$2,000; 33 1/3% of the next \$7,000; 20% of the next \$50,000; no more than 10% of any award exceeding \$100,000. Some insurance experts believe the New Jersey Rule might reduce total malpractice losses as much as 20%.

State	Year	Total Settlements	Average Paid
Cal.	1969		\$4,500 (NoCal)
			5,500 (SoCal)
	1973		7,000 (NoCal)
			8,000 (SoCal)
	1975		12,000 (estimated statewide)
	1980		25,000 (estimated statewide)
	1985		32,000 (estimated statewide)
Fla.	1963		1,182
	1975		20,000 (estimated)
Ill.	1974		40,099
	1975		93,465
N.Y.	1963	\$ 1,405,000	4,878
	1969	4,865,490	10,788
	1975	17,452,000	22,894

The above chart shows how average settlements are increasing in some states where the malpractice problem is particularly acute. The sharply geometric upward spiral in these settlements presents a frightening prospect to insurance companies trying to set realistic premiums to cover future claims and to physicians already heavily assessed for such coverage.

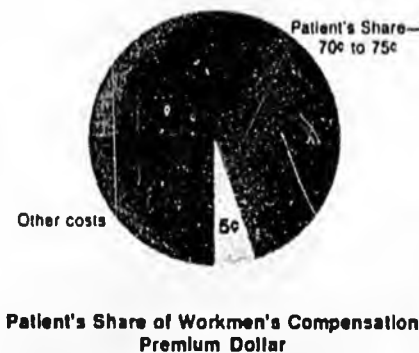
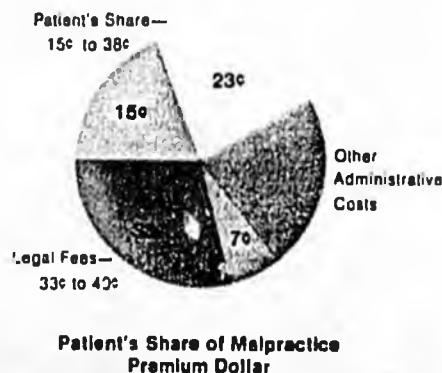
### California Is Loaded With \$1 Million-Plus Awards

- 16 in California history prior to 1/74
- 3 prior to 1971
- 13 since 1971
- 11 in 1973-74
- 1 per month on average, 1975

The increasing number of \$1 million-plus claims and the willingness of California juries to make 7-figure awards is one reason why claims paid in that state jumped from \$15 million in 1971 to \$31 million in 1974. Currently, there is even a claim pending for \$1 billion!

Source: California Medical Association.

### Meanwhile, the Patient's Share Gets Smaller



A 1974 study by the Physicians Crisis Committee in Michigan found that less than 25% of the premium dollar goes to patients—the rest goes for legal fees and other expenses. A similar study at Chicago's Presbyterian-St. Luke's Hospital recently found an even smaller portion going to injured parties—only 15% of every dollar. The 38% estimate that goes to the plaintiff is one advanced in the Library of Congress's "Overview of Medical Malpractice." In an interesting contrast, an injured party's share of an award under Workmen's Compensation varies from 70% to 75%.

Henry G. Storrs, M.D.

SURGEON  
FAIRBANKS, ALASKA

February 16, 1976

Charles Parr  
Alaska Legislature  
Pouch V  
Juneau, Alaska 99801

Dear Mr. Parr:

Thank you for spending your Saturday afternoon discussing the pending mal-practice legislation with the doctors of Fairbanks. It is interesting to note that of the almost thirty doctors there, all but two were specialists!

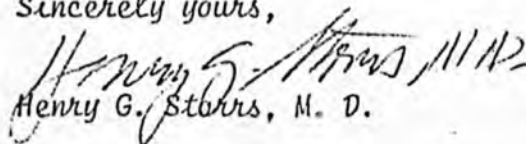
Two points that should probably be considered, perhaps when the bill goes to joint conference with the senate version are; first, limiting the plaintiff's attorney fees to "usual, customary, fair and average." The attorney fees in this area are standardized at between \$50 and \$60 an hour. The medical profession has been well limited to "fair, reasonable, just and average," etc. fees. There is no reason why the attorneys should not likewise be regulated, at least when dealing in this field of their endeavor. Of course, if they wish to forego collection of a fee if their case is unsuccessful, that would be between them and their client. But such a reduction in fees would tend to reduce the enthusiasm with which they pursue useless or "nuisance" cases.

The second point is the limitation of the entire award, taking into consideration other compensation which the citizen may be receiving. The monthly payments are certainly a step in this direction. It should be pointed out that workmen's compensation has a definite fee award limit for damages sustained. It would appropriately apply to the practice of medicine. Sometimes an injured worker is collecting for an injury under workmen's compensation, but then with the aid of some attorney decides he may collect for the disability from a doctor who obtained a less than perfect result from his attempts to correct the injury. The awards in such a case do not take into consideration either the fact that he has already been awarded damages for his injury, nor do they as yet limit his medical award to even the same range of damages.

One final point I hope will be included in the bill is the retroactive date to January 1975 to include all uninsured physicians during any period of that time for both claims made or occurred, and whether or not they have been filed.

Thanks again for your interest in this matter.

Sincerely yours,

  
Henry G. Storrs, M. D.

HGS/ch

DISTRIBUTION OF LOSSES  
 MEDICAL MALPRACTICE  
 ONE YEAR EXPOSURE

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9

	1976	1977	1978	1979	1980	1981	1982	1983	19 -
INCIDENTS	1000000								
REPORTED		450000	250000	150000	50000	25000	12500	12500	50000
PAID		100000	200000	300000	250000	25000	12500	12500	100000

INSTITUTION OF FACILITY  
 MEDICAL MALPRACTICE  
 ONE YEAR EXPOSURE

	1976	1977	1978	1979	1980	1981	1982	1983	1984	TOTAL
<u>OCURRENCE</u>										
CLMS REPORTED	0									
CLMS PAID	0									
IBNR	1000000 -									
PURE PREMIUM	1000000 -									1000000 -
<u>CLAIMS MADE</u>										
CLMS REPORTED		450000 -	250000	150000	50000 -	25000 -	12500 -	12500 -	50000 -	
CLMS PAID										
IBNR										
PURE PREMIUM		450000	250000	150000	50000	25000	12500	12500	50000 -	1000000
<del>CLAIMS PAID</del> <u>CLAIMS PAID</u>										
CLMS PAID		100000	200000	300000	250000	25000	12500 -	12500 -	100000 -	
PURE PREMIUM		100000	200000	300000	250000	25000	12500	12500	100000 -	1000000 -

DISTRIBUTION OF PREMIUM  
 MEDICAL MALPRACTICE  
 ONE YEAR EXPOSURE

	1976	1977	1978	1979	1980	1981	1982	1983	19-	TOTAL
<u>COMMISSION</u>										
CLAIMS RPTD										
CLAIMS PAID					150000	25000	12500	12500	100000	
IBNR	700000									
PURE PREMIUM	700000				150000	25000	12500	12500	100000	1000000 -

EIGHT YEARS OF EXPOSURE  
MEDICAL MAIL PRACTICE

Year	INDENTS	REPORTED	PAID
1976	100000	45000 - 70000	100000 - 300000
1977	1000000 - 1000000	850000	600000
1978	1000000	900000	850000
1979	1000000	925000	875000
1980	1000000	937500	887500
1981	1000000	950000	900000
1982	1000000	2287500	3487500 -
1983	1000000	8000000	8000000
19--		8000000	8000000
TOTAL			

DISTRIBUTION OF PREMIUM  
MEDICAL MAL PRACTICE  
EIGHT YEARS OF EXPOSURE

	1976	1977	1978	1979	1980	1981	1982	1983	19 -	TOTAL
<u>OCCURRENCE</u>	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000	0	8000000
<u>CLMS MADE</u>	0	450000	700000	850000	900000	925000	937500	950000	2287500	8000000
<u>CLMS PAID</u>	0	100000	300000	600000	850000	875000	887500	900000	3487500	8000000
<u>COMMISSION</u>										
<u>OCCURRENCE</u>	700000	700000	700000	700000	700000	700000	700000	700000	0	5600000
<u>PAID</u>	0	0	0	150000	175000	182500	200000	300000	1392500	2400000
<u>PURE PREMIUM</u>	700000	700000	700000	850000	875000	892500	900000	1000000	1392500	

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DISTRIBUTION OF PREMIUM  
MEDICAL MALPRACTICE  
EIGHT YEARS OF EXPOSURE  
25% REDUNDANCY REDUCED BY DEVELOPMENT

	1976	1977	1978	1979	1980	1981	1982	1983	19 -	TOTAL	GAAR
<u>Occurrence Policy</u>											
Loss Development	<del>125000</del>	450000	700000	850000	900000	925000	932500	950000	50000		
IBNR	1250000	< 112500 >	< 62500 >	< 37500 >	< 12500 >	< 6250 >	< 3125 >	< 3125 >			
Pure Premium	1250000	1132500	1075000	1037500	1025000	1018750	1015625	1012500		\$ 8571875	
<u>Commission</u>											
Loss Development	0	450000	700000	700000							
IBNR Change	875000	< 112500 >	< 62500 >	0							
<del>Pure Premium</del>											
CF) CLAIMS PAID	0	0		150000	175000	182500	200000	300000	1392500		
IC) PURE PREMIUM	875000	762500	700000	700000	700000	700000	700000	700000			
RETRO ADJUSTMENT	0	0	0	0	< 43750 >	< 59375 >	< 59375 >	< 59375 >	< 15625 >		
NET PREMIUM	875000	762500	700000	850000	831250	823125	840625	940625	1376875	\$ 6623125	13768
										\$ 8,000,000	

RECOMMENDATION OF GOVERNOR'S COMMISSION ON MALPRACTICE

RECOMMENDATION #1: The liability of the health care provider should terminate three years after occurrence (two years statute of limitations and one year limit on discovery). Any reported case after the third year ought to become the responsibility of a special fund and not the liability of the health care provider.

RECOMMENDATION #2: Any award to which the injured patient is entitled should be reduced by all available collateral sources such as private, group or governmental medical or disability benefits whether contributory or noncontributory, except life insurance, by including the introduction into evidence of the items of damage compensated by collateral sources, except federal programs which by law must seek subrogation.

RECOMMENDATION #3: Medical professionals should be immune from liability to a person who is not his patient for administering emergency medical care where the giving of immediate aid appears to be the only alternative to death or serious bodily injury or harm.

RECOMMENDATION #4: The law should provide that no promise to achieve a certain medical result is valid unless that promise is in writing signed by the health care provider.

RECOMMENDATION #5: The definition of medical negligence be improved by adopting a national standard of acceptable medical care in lieu of a local community standard, limiting the standard to that at the time of the act, and imposing the standard appropriate under all circumstances under which the health care provider was acting.

RECOMMENDATION #6: Cases brought more than three years after the date of the incident alleged to cause the loss complained of must be proven by evidence that is clear and convincing.

RECOMMENDATION #7: There be enacted provision for appointment of ad hoc medical expert panels composed of at least one physician and two health care providers of the same discipline as the health care provider charged, impanelled after filing of an action and prior to any pretrial proceedings to initiate an investigation of available evidence and report to the parties its findings as to medical facts.

RECOMMENDATION #8: The findings of the expert medical panel be admissible as evidence and the panelists subject to cross-examination in any subsequent trial.

RECOMMENDATION #9: There be established a medical adjudication board consisting of nine citizens of the State who are neither health care providers nor legal professionals, nor insurers, and three physicians appointed by the Governor, and one Superior Court judge assigned by the court. This board would be the exclusive tribunal for medical negligence cases.

RECOMMENDATION #10: The legislature enact a joint resolution for the amendment of Article I, Section 16 of the Alaska State Constitution, permitting the legislature to consider an alternative system of adjudicating medical negligence claims which may be a substitution for trial by jury.

RECOMMENDATION #11: Provisions be made to authorize and administer the awards of future income and continuing medical care to be paid periodically rather than in a lump sum.

RECOMMENDATION #12: Jury and board awards shall be rendered by category of loss.

RECOMMENDATION #13: Create a Health Care Providers Indemnity Corporation, a public corporation, which would be regulated by the Director of Insurance as a domestic property and casualty insurer and which would be a mandatory and exclusive source of minimum limits of medical malpractice insurance for all health care providers for the losses reported within the first three years after occurrence.

RECOMMENDATION #14: The corporation may contract with servicing carriers for administrative and claims services and seek contracts of indemnity from admitted carriers retaining for itself no insurable risk.

RECOMMENDATIONS #15: The rates for coverages provided by the corporation should be developed based on Alaska's experience and retrospectively adjusted over a four year period such that each category of health care providers would fully pay for all losses and expenses incurred in the programs yielding an appropriate profit to the indemnity carrier.

RECOMMENDATION #16: The corporation provide coverage retroactively to January 1, 1975 with appropriate additional premiums for those health care providers which had no insurance during that period.

RECOMMENDATION #17: A joint underwriting association should be authorized to be implemented upon a finding by the Director of Insurance that indemnity at a reasonable rate is not available from a private carrier.

RECOMMENDATION #18: The joint underwriting association should be composed of all property, casualty and disability insurers and all health care service contractors.

RECOMMENDATION #19: Create a late claims fund which shall be funded by assessments against all health care providers in amounts determined by the Director of Insurance after public hearing as necessary to actuarially carry all fund liabilities and guaranteed by the State to the extent necessary to cover actuarial deficiencies. There should also be provision for the legislature to reduce the assessment of health care providers upon a finding that the assessment is unaffordable.

RECOMMENDATION #20: Legislation should be enacted which will require the maintenance of separate, specific and detailed statistical information on malpractice claims. Authority should be exercised by the Director of Insurance to more deliberately regulate policy forms and rates for this line.

RECOMMENDATION #21: The proposals of this Commission should inure to the benefit of, and be binding upon all licensed in the State as hospitals, as defined in AS 18.20.130 chiropractors, dental hygienists, dentists, physicians, osteopaths, chiropodists, nurses, opticians, pharmacists, physical therapists, psychologists and psychological assistants.

RECOMMENDATION #22: There should be a legislatively prescribed procedure for informing the patient of the consequences of a procedure and obtaining the consent to perform it and also setting forth the conditions pursuant to which consent is implied or not required.

RECOMMENDATION #23: The appropriate licensing boards should be authorized to render disciplinary sanctions against health care providers other than license suspension. The boards should be able to reprimand, censure, place on probation, restrict practice by time, specialty, procedure or facility or to require continuing education or retraining.

RECOMMENDATION #24: The appropriate licensing board should have authority to require more relevant and more frequent reports on healthcare practices by and from its licensees. Persons reporting should have immunity from defamation actions based on reports made to licensing boards to officially constituted service committees of hospitals and professional organizations.

RECOMMENDATION #25: The legislature appropriate such additional funds as are needed to properly staff the health care licensing boards with investigative and administrative personnel.

RECOMMENDATION #26: Provision should be made for more effective loss control by all health care providers but with specific attention to identified problem areas.

Warehouse

Hotel

Assem

Lavr

State  
Office

Capital

Dept. Administration - 10th (Lobby Card)

Dept Commerce - 9th

Booklet of Legislators

Committees

Senate - Commerce  
Judiciary

House - Judiciary



MEDICAL and DENTAL MALPRACTICE in ALASKA  
1957-1974

Known Claims or Suits  
(after Flewett, Anchorage Daily News, July 31 & August 4, 1975)  
data re-arranged

Year	Number of Claims	Annual Sum of Reported Settlements
1957	3	\$ 395,000
1958	2	100,000
1959	2	130,000
1960	3	100,000
1961	2	30,000
1962	9	46,500
1963	4	60,000
1964	3	180,050
1965	3	63,545
1966	4	87,000
1967	6	335,000
1968	0	-0-
1969	4	-0-
1970	7	187,750
1971	7	565,500
1972	3	503,500
1973	1	7,500
1974	<u>3</u>	<u>119,000</u>

66 (av 3.7/yr) 2,871,345\* (av 160,000/yr)

\*Includes \$ 230,000 awarded against dentists

Awards or Settlements by  
Type of Practice

Surgery	15
General Fract	9
OE-GYN	4
Neurosurgery	3
Orthopedics	3
Dental	2
Internal Med	2
Radiology	<u>1</u>
	39

Claims or Suits Pending  
August 4, 1975

OE-GYN	7
Surgery	5
General Fract	4
Hospitals	3
Anesthesiology	1
Orthopedics	1
Pathology	1
Radiology	<u>1</u>
	23



# Alaska State Legislature

LEGISLATIVE AFFAIRS AGENCY

POUCH Y, STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3800

*file Mal Practice*

MEMORANDUM

February 7, 1976

*Anchorage Medical Clinic  
185,000 - 30 doctors 6,000*

SUBJECT: Medical Malpractice Statistics (W.O. #1911)

TO: The Honorable Robert Bradley  
The Honorable Terry Gardiner ✓

FROM: Louise Crane *LC*  
Research Analyst

The following information was compiled at your request:

1. TOTAL MEDICAID EXPENDITURES BY THE STATE:

Actual Expenditures FY 74	\$ 6,869,286
Actual Expenditures FY 75	11,366,100
Authorization FY 76	14,445,900
Expenditures to date	\$ 4,312,400
Balance & Restricted Funds	\$10,133,500
Budget Request FY 77	\$17,908,500

2. NUMBER OF PHYSICIANS ENROLLED IN MEDICAID PROGRAM.

FY 74	359
FY 75)	
FY 76)	357

3. TOTAL MEDICARE EXPENDITURES BY THE FEDERAL GOVERNMENT

FY 71	\$434,000
FY 72	523,000
FY 73	
FY 74	987,000

(No physician enrollment is necessary in the Medicare Program.)

4. PHYSICIAN EARNINGS STATISTICS

The state (for HEW) collects physician earnings statistics from Medicaid information. No individual physicians earned more than \$100,000 during FY 74 (the latest year the information is available). Three group practices received more than \$100,000 in Medicaid payments during FY 74. These are as follows:

Alaska Clinic, Anchorage	\$177,762
Fairbanks Medical & Surgical, Fairbanks	118,949
Tanana Med. & Surg. Clinic, Fairbanks	108,289

The Medicare Program requires an investigation of physicians receiving over \$65,000 in Medicare payments in one year. The Social Security Office is not aware of any investigations.

You also requested information on the income distribution of Alaska physicians; this data is available but will require compiling the social security numbers from the Department of Commerce files, requesting a special computer run by the Department of Revenue to accumulate the information, and adjusting the information.

In the time allotted, the Research Division has been unable to allocate the more than 80 man-hours estimated as necessary to compile this information. An appropriately directed legislative request might elicit this information directly from the Department.

5. TOTAL MEDICAL MALPRACTICE PREMIUMS BY ALASKAN PHYSICIANS

The Division of Insurance, Department of Commerce & Economic Development is, at the request of the Legislative Affairs Agency, conducting an individual policy survey by polling each broker who markets medical malpractice insurance in Alaska.

The information is being compiled, but there are several crucial elements of information unavailable to date. A supplementary report will be issued as soon as the information is available and edited.

An important tie-in to the factors related to the malpractice premium distribution is that many "high exposure" physicians (class 4, 5 and 6 - i.e., speciality surgeons, etc.) are not purchasing insurance and this factor will skew the validity of the averages.

6. MEDICAL MALPRACTICE PREMIUM DOLLAR BREAKDOWN

The following table illustrates the expense categories that are taken into consideration by insurance companies in developing medical malpractice premium rates. The two columns of figures indicate the percentages of the premium allotted for each cost category according to two different sources. The Insurance Service Office (ISO) is an independent rating organization used by member insurance companies. The "range reported by insurance companies surveyed" refers to a sample survey of medical malpractice insurers by the contractor who prepared an economic analysis of the medical malpractice insurance market for the Secretary's (HEW) Commission of Medical Malpractice, 1973.

ECONOMIC ANALYSIS OF THE MEDICAL MALPRACTICE  
 INSURANCE MARKET ON A NATIONAL LEVEL - 1972

Expense Category	Factors	
	Average Reported by ISO	"Range Reported by Insurance Companies Surveyed"
Acquisition/production	25	5 to 20
Administration/general overhead	12	5 to 12
Miscellaneous	3	3 to 5
Underwriting profit	5	5
Loss adjustment & loss	55	55 to 86

The Department of Commerce & Economic Development has indicated that the medical malpractice insurance premiums in Alaska show approximately the same distribution as the national level listed above.

7. THE NUMBER OF PRACTICING PHYSICIANS IN ALASKA IN THE LAST SEVERAL YEARS IS AS FOLLOWS:

Year	Active Status	With Alaska Address	New License Issued
1975	474	276	87
1974	No figures available		
1973	410	217	83
1972	373	169	64
1971	356	182	80
1970	276	182	86
1969	240	-	66

8. You may also be interested in the national "premium as percent of income" figures developed by Medical Economics Company, 1972 for self-employed general practitioners and self-employed general surgeons.

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<u>PHYSICIANS</u>			
<u>Year</u>	<u>Dollar Cost</u>	<u>Index (1966=100)</u>	<u>Premium as Percent of Income</u>
1960	\$ 110.7	71.9	NA
1962	114.9	74.6	0.5
1964	133.0	86.4	0.5
1966	154.0	100.0	0.6
1968	249.5	162.1	0.8
1970	620.5	403.0	1.8
1971	711.5	462.1	NA
1972	767.2	498.3	NA

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<u>SURGEONS</u>			
<u>Year</u>	<u>Dollar Cost</u>	<u>Index (1966=100)</u>	<u>Premium as Percent of Income</u>
1960	229.1	52.3	NA
1962	279.1	63.7	NA
1964	378.1	86.2	1.2
1966	438.5	100.0	1.2
1968	571.0	130.2	1.4
1970	1,880.9	428.9	4.2
1971	2,094.0	477.5	NA
1972	2,307.4	526.2	NA

---

NA = Not Available

Honorable Robert Bradley  
Honorable Terry Gardiner

-5-

February 7, 1976

As mentioned earlier, the income of Alaskan physicians has not been compiled and, therefore, average premiums cannot at this time be related to average income.

LC:jm

QUESTIONS CONCERNING MALPRACTICE INSURANCE CRISIS

TO BE DIRECTED TOWARD MR. RICHARD BLOCK,

COMMISSIONER OF INSURANCE

1. The mandating of all of the hospitals and doctors in the State into an insurance "pool" is based on the premise that this will provide an attractive package for the insurance industry. Since there are fewer doctors and hospital beds in the entire State of Alaska than in even one section of a metropolitan area in the lower 48, please explain why an insurance company would find our package attractive, when large segments of the lower 48 are having acute insurance problems? *They won't period.*
2. Please supply specific details on which, if any, companies have committed themselves to the entire Commission package; what sort of ball park premium rates are envisioned as being "affordable"; and specifically, what efforts have been made to ascertain this information? *None*
3. You have been quoted as stating that a plan insuring only those currently without insurance would provide adverse experience at the outset. Many physicians whose insurance has been summarily cancelled after many years without a claim doubt the validity of this statement and challenge you to prove that the claims experience of Alaskan doctors currently insured is significantly better than those who are not?
4. Many of the Commission's points were based on the belief that the "Alaskan experience" is better than experience in the lower 48. Since Alaska is being inundated with "nonAlaskans" many physicians believe that the future Alaskan experience will be no better and possibly worse than the lower 48 experience.

5. A tax on physicians gross income is under active consideration as a basis for "premium" determination. As this would bear no relationship to risk factors and, in different garb, would be called a piece of the action, house cut, protection money, etc., how do you fit such a tax into broad insurance concepts?
  
6. It has been repeatedly asserted that mandatory participation of all of the States physicians and hospitals is necessary for actuarial soundness. Please provide firm statistical evidence: a) that any meaningful data can be derived in the foreseeable future, considering the huge variation qualitatively within our small population of physicians and hospitals and the equally huge variation to be expected both qualitatively and quantitatively in any potential claims; b) that the chance current physician population to be mandated into the plan somehow, coincidentally, represents the minimum sample population which would be actuarially sound.

*file Malpractice*



## Ketchikan Medical Society

3100 TONGASS AVENUE - KETCHIKAN, ALASKA 99901

March 29, 1976

Representative Terry Gardiner  
Pouch V  
Juneau, Alaska 99801

Dear Terry:

I am writing in reference to your activities on the combined select committee on the malpractice legislation. I would like to let you know about our priorities and feelings concerning the issues yet to be decided in your committee.

Of all the issues yet to be decided, we believe the advisory panel concept is the most important. This would represent a true departure from the current situation, and offers patients the real possibility of early resolution of cases at the least expense, leaving the bulk of malpractice insurance premiums for injured patients, which is where they ought to go. Except where cases involved health care providers other than physicians, physicians should make up the panel.

Secondly, we strongly urge that language be refined to spell out very clearly the increased powers given the respective boards. Specifically, we support the changes in terminology offered by the medical association lobbyists in their March 15th releases. A copy of that paragraph is attached.

Thirdly, we favor sharpening the list of questions to be answered by the advisory panel. Again, I have attached the specific language previously offered by the medical association lobbyists.

Fourthly, we believe that basing malpractice premiums in considerable degree on medical revenues is the most realistic. A net medical income basis would avoid penalizing high overhead practices.

We support the concepts of toughening the licensing boards, clarifying informed consent and requiring participation in the insurance program. While there are further reforms we would like to see that are not included, we are pleased that the legislature is addressing this problem.

Thank you for your leadership.

Yours truly,

David E. Johnson, M.D.  
President

Ketchikan Medical Society

SUGGESTED CHANGES TO CSHB 574

Firmer deliniation of responsibilities of professional board of examiners:

That by reason of demonstrated deficiency of competence, experience, or education, or because of physical or mental illness, the authority to practice should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice, require further formal education approved by the board, or may suspend or revoke the license.

More specific listing of questions for advisory board:

- (1) What was the disorder for which the person sought medical care?
- (2) What would have been the outcome without medical care?
- (3) Was the treatment selected appropriate for the case?
- (4) Did an injury arise from the medical care?
- (5) What is the injury?
- (6) How extensive and how disabling is the injury?
- (7) Is the injury stable; or will it improve or become worse?
- (8) What specifically caused the injury?
- (9) Was the injury the result of negligent medical care?
- (10) Is the outcome different than would otherwise have been expected?

Supplement to the Report to the Legislature  
of the State of Alaska on  
Medical Malpractice Proposals

by Dr. Herbert S. Denenberg  
P. O. Box 146  
Wynnewood, Pa. 19096

(Initial Report Dated December 4, 1975 and presented in Juneau, Alaska  
on December 9 and in Anchorage on December 10, 1975)

February 20, 1976

1. On December 9, 1975, I met in Juneau, Alaska with a group that included Representative Mike Miller, Vice Chairman of the Legislative Council, Senator John Huber, Representative Fred Brown, Representative Larry T. Davis and staff members.

2. The next day I had a series of meetings with various members of the legislature, including Senator Chancy Croft, Senator Jalmar M. Kertulla, Senator Patrick Rodey, Representative Fred Brown, Representative Larry Davis, Representative Samuel R. Cotten, Representative Kathryn Ostrowsky, Representative Charles Parr, and staff members. In addition I talked to members of the Judiciary Committee before their meeting on Rent Control. Those attending, in addition to members of the legislature, included some members of the Governor's Commission on Medical Malpractice and other members of the public.

3. In the course of these meetings, and other informal discussions with members of the legislature, I made a series of comments and recommendations, which do not appear in my report. Some of these additional remarks are briefly summarized here to serve as a supplement to my initial report dated December 4, 1975. I have also included my response to several questions raised by members of the legislature.

4. The law of Alaska should be clarified so any advance payments on malpractice or other claims would not be considered an admission of liability and would be deducted from any final judgment.

Indiana, Louisiana, Nebraska, Nevada and Wisconsin have passed laws relating to this matter. Nebraska (Legislative Bill 560, passed in 1975) provides any advance payment will not be an admission of liability, and further that: "In the event of a trial involving such a claim, the fact that such payments have been made shall not be admissible in evidence or brought to the attention of the jury, and the matter of any credit to be deducted from a judgment shall be determined by a court in a separate hearing or upon the stipulation of the parties."

This should encourage early payment on claims, early settlements, and attempts to minimize damages by early medical treatment.

(A similar approach has been suggested in the report on no-fault as to auto liability claims.)

5. Mandatory arbitration should be considered to provide a more economical determination of cases and a sweeping out of some of the flimsy claims. This would not impair the right to trial by jury as there would be a right of appeal de novo to the courts.

6. The Governor's Commission recommended legislation (p.15, sec.9.55.540(c) ) subjecting claims more than three years old to a higher standard of proof than would be otherwise imposed on civil claims. This appears to be an unfair and unreasonable requirement, and any attempt to apply such a standard would probably create more confusion and problems than it would dispel.

7. Senator Huber asked me to comment on a provision in the crime compensation act making attorney's fees an addition to any award. This is certainly a sound provision and will help assure that any damages assessed will not be diverted immediately from the purposes for which they are awarded.

Whether this kind of provision is essential depends on the kind of compensation program being considered. For example, in workmen's compensation, the law may be designed to make sure the worker can collect without the need for a lawyer. If this is the case and if the assumption is sound, paying for all attorney fees may simply bring in lawyers needlessly and increase costs.

The National Commission on State Workmen's Compensation Laws had this to say on attorney fees: "An additional question is whether the employee or the employer should pay the employee's attorney's fee. With the adoption of our recommendations for improvements in the delivery system and the adequacy of benefits, it is not unreasonable to hold the employee primarily responsible for any attorney's fees that he incurs. However, States should consider the shifting of these fees to the employer as a form of penalty in those cases in which the employer or his insurer has acted in an unjustified manner."

This view of the National Commission is not entirely logical. Even if benefits are adequate, they will be rendered inadequate by deduction of attorney's fees.

The National Commission of Malpractice also considered the question of attorney's fees. It recommended regulating the contingent legal fee by establishing a scale in which the fee decreases as the recovery amount increases (a similar recommendation appears in my earlier report on malpractice).

Here, too, recoveries, if properly determined, will be rendered inadequate by deduction of attorney's fees. However, some believe juries tend to pad awards to cover legal expenses.

Ideally, recovery should include actual damages as well as expenses of litigation. To do so would increase the cost of malpractice insurance. It would also raise the question of charging the plaintiff with the defendant's attorney's fees in cases which the defendant won. All of this would introduce further uncertainties into the litigation process, and perhaps make the right to a day in court even more difficult to obtain.

Although the addition of attorney's fees in another context may be entirely appropriate, it is not clear that in the malpractice field this would be a wise practical measure.

There would be general agreement that requiring the payment of attorney's fees in cases in which there is unreasonable failure to pay benefits (or other unjustified action) is an appropriate measure. This kind of provision can be found in workmen's compensation laws. There, it has practical value, as most cases are clear cut with no room for argument, but in malpractice cases few claims are so clear cut, so the provision would have little practical value.

8. Representative Parr asked me to comment on how the malpractice system could be changed to make it possible for a small but meritorious claim to be collected. In small malpractice claims, it may not pay an attorney to handle the matter on a contingent fee basis. The National Commission on Medical Malpractice found cases in which claimants had to abandon a case which might be worth \$10,000 because even such a meritorious case did not offer adequate incentive to an attorney working on a contingent fee basis (See p. 35 of National Malpractice Commission Report).

The only remedy the National Commission could suggest is to establish "public legal assistance mechanisms" or to expand those that already exist "to assure adequate legal representation to persons with small malpractice claims."

The ready availability of arbitration may somewhat ease the problem. Another suggestion is to establish small claims courts presided over by those technically proficient in the area of medical legal malpractice. In other words, this would be a special small claims court for malpractice claims.

There is probably no good answer for this problem at the present time. Perhaps at one point no-fault malpractice compensation systems will become practical, and enable small meritorious malpractice claims to be adequately compensated.

196853  
FILE NUMBER



STATE OF WASHINGTON | DEPARTMENT OF STATE

I, A. LUDLOW KRAMER, Secretary of State of the State of Washington and custodian of its seal, hereby certify that

AMENDED

ARTICLES OF INCORPORATION



of WASHINGTON HOSPITAL SERVICE ASSOCIATION  
a domestic corporation of Seattle, Washington,  
(Amending Article II (purposes) and Article V (directors); and changing name  
to BLUE CROSS WASHINGTON-ALASKA, INC.)

was filed for record in this office on this date, and I further certify that such Articles remain on file in this office.

FILED FOR RECORD

*Apr 11, 1969*

State of Alaska  
Division of Insurance

By # 31209

*BH*

In witness whereof I have signed and have affixed the seal of the State of Washington to this certificate at Olympia, the State Capitol,

March 24, 1969



A. LUDLOW KRAMER  
SECRETARY OF STATE



Board of Directors for the purpose of acting as their agent, to provide hospital care to the subscribers of the plan; to promote the general and social welfare of such persons as may become subscribers of the plan, and to do all things necessary, proper or convenient for the purpose of promoting, establishing and operating such non-profit hospital service plan, to furnish to individuals, on a non-profit basis, prepaid medical, surgical, dental, other therapeutic services and home nursing care by this corporation, through any means found desirable, including but not limited to this corporation, entering into contractual relations with, corporations, firms, associations or individuals who or which furnish such prepaid medical, surgical, dental, other therapeutic services and/or home nursing care on a prepayment for services or indemnity basis, or furnish insurance covering such medical, surgical, dental, other therapeutic services or home nursing care; to act as agent for such corporation, firm, association or individual, and to do all things necessary, proper or convenient, in connection therewith."

#### ARTICLE V.

"Directors: The number of Directors shall be not less than five nor more than twenty-five, as shall be determined from time to time by the Board of Directors and the names of the Board of Directors who shall manage the affairs of the corporation until the next annual meeting of the corporation shall be:

Don J. Robbins	Pacific Northwest Bell Company 1616 Exchange Building Seattle, Washington 98104
Robert N. Rabideau	Overlake Memorial Hospital 1035 - 116th N. E. Bellevue, Washington 98004
Walter L. Huber	Tacoma General Hospital 315 South "K" Street Tacoma, Washington 98405
Theodore E. McCaffray	National Fruit Canning Company P. O. Box 9366 Seattle, Washington 98109
Irving S. Smith	Continental, Inc. 701 Second Avenue Seattle, Washington 98104

Elmer A. Hill	Seattle General Hospital Fifth & Marion Seattle, Washington 98104
Sister Georgette Jean	St. Elizabeth Hospital 110 South Ninth Avenue Yakima, Washington 98902
William E. Murray	Valley General Hospital 4th & Shattuck Renton, Washington 98055
Sister Barbara Ellen	Providence Hospital 3200 Providence Drive Anchorage, Alaska 99504
Fred Huleen	The Boeing Company P.O. Box 3707 Seattle, Washington 98124
C. J. Kretchmer	Blue Cross Washington-Alaska, Inc. P.O. Box 327 Seattle, Washington 98111
Willis Parr	Skagit Valley Hospital 1415 Kincaid Street Mount Vernon, Washington 98273
Sister Virginia Schwager	Providence Hospital 17th & East Jefferson Seattle, Washington 98122
Larry D. McIntyre	Prosser Memorial Hospital Prosser, Washington 99350
Sister Xavier Richardson	St. Ignatius Province East 9 Ninth Avenue Spokane, Washington 99202
George H. Stone	Children's Orthopedic Hospital 4800 Sandpoint Way Seattle, Washington 98105
John A. Dare	Virginia Mason Hospital 1111 Terry Avenue Seattle, Washington 98101
C. Grover Wilson	811 West 26th Avenue Spokane, Washington 99202
Thomas L. McQuaid	1220 Dexter-Horton Building Seattle, Washington 98104
John W. Kludt	St. Luke's General Hospital 809 East Chestnut Bellingham, Washington 98225
Eugene W. Pray	Columbia Basin Hospital Ephrata, Washington 98823
Rev. Lawrence Willenborg	St. Vincent dePaul Parish 30525 - 8th Avenue South Federal Way, Washington

Harold E. Silvernail

Edmonds School District No. 15  
3800 - 196th S.W.

Rev. Chester Finkbeiner

Lynnwood, Washington  
Central Washington Deaconess Hospital  
Okanogan & Kittitas Streets  
Wenatchee, Washington 98801

Charles Y. McGarrigle

Puget Power  
P.O. Box 329

Robert W. Bradley

Renton, Washington 98055  
Harrison Memorial Hospital  
2520 Cherry Street  
Bremerton, Washington 98310

WASHINGTON HOSPITAL SERVICE ASSOCIATION

s/ *Don J. Robbins*  
Don J. Robbins, President

s/ *Theodore E. McCaffray*  
Theodore E. McCaffray, Secretary

SUBSCRIBED AND SWORN TO before me this 14 day of March, 1969.

*Arthur S. Carter*  
Notary Public in and for the State of Washington  
residing at Seattle

ARTICLES OF INCORPORATION

OF

WASHINGTON HOSPITAL SERVICE ASSOCIATION

FILED FOR RECORD  
STATE OF THE ALASKA  
TERRITORY OF ALASKA  
JUN 28 1952  
NEIL F. MOORE - Auditor

Know All Men By These Presents:

That we, Walter Heath, Howard C. Ries, A. L. Holberg, Sister Mary of the Cross, Herina I. Eklind, Ethel V. Soper, Mother M. Teresa, and John A. Dare, desiring to organize a corporation not formed for profit, as provided by the laws of the State of Washington under Remington's Revised Statutes, sections 3888 to 3900, and for the promotion of social welfare, hereby associate ourselves and adopt, in triplicate, the following Articles of Incorporation:

ARTICLE I.

Name: The name of this corporation shall be:

WASHINGTON HOSPITAL SERVICE ASSOCIATION.

ARTICLE II.

Purpose: The particular business and object of the corporation shall be to establish, maintain and operate, with no individual being entitled to any of the net income thereof, a non-profit hospital service plan whereby hospital care shall be provided to persons who become subscribers to the plan of the corporation under contract entitling each subscriber to certain hospital care by and at the hospitals with which the corporation may from time to time contract, to contract with such hospitals as may be approved and selected by the Board of Trustees for the purpose of acting as their agent, to provide hospital care to the subscribers of the plan; to promote the general and social welfare of such persons as may become subscribers of the plan and to

do all things necessary, proper or convenient for the purpose of promoting, establishing and operating such non-profit hospital service plan.

ARTICLE III.

Principal Place of Business: The principal place of business of this corporation shall be in Seattle, King County, Washington.

ARTICLE IV.

Term of Existence: The term for which this corporation is to exist is fifty years.

ARTICLE V.

Trustees: The number of Trustees shall be not less than five nor more than twenty-five, as shall be determined from time to time by the Trustees, and the names of the Trustees who shall manage the affairs of the corporation until September 15, 1945 shall be:

<u>Names</u>	<u>Addresses:</u>
Dr. Herbert Coe	Summit & Madison, Seattle, Washington
Dr. C. W. Knudson	Seattle General, " "
Herina I. Eklind	Swedish Hospital, " "
Sister Brendon	Sacred Heart Hospital, Spokane, "
Sister Maria of Providence	Providence Hospital, Seattle, "
Sister Joan Marie	St. Joseph's Hospital, Bellingham, Washington
Sister Mary Jane	" " " Tacoma, Washington
Mother M. Teresa	Columbus Hospital, Seattle, Washington
Rev. Cornelius Harrington	Seattle, Washington
John A. Dare	Virginia Mason Hospital, Seattle, Washington
A. L. Howarth	Deaconess Hospital, Wenatchee, Washington
Howard C. Ries	Everett, Washington
Gordon Gilbert	St. Luke's Hospital, Spokane, Washington
Horace Turner	Deaconess Hospital, " "
Dr. H. E. Rhodehamel	Spokane, Washington
Walter Heath	Tacoma General Hospital, Tacoma, Washington
Cecile Tracy Spry	Everett General Hospital, Everett, Washington
A. L. Holberg	Maynard Hospital, Seattle, Washington
Sister Providence of the Sacred Heart	St. Elizabeth's Hospital, Yakima, Washington

IN WITNESS WHEREOF, we, the undersigned, being each of the original incorporators hereinbefore named, for the purpose of forming a

corporation to do business within the State of Washington, do make and file these Articles of Incorporation, hereby certifying and declaring that the facts herein stated are true and, accordingly, have hereunto set our hands and seals this 4th day of May, 1945.

Walter Heath

Howard C. Ries

A. L. Holberg

Sister Mary of the Cross

Herina I. Ekland

Mother M. Teresa

Ethel V. Soper

John A. Dare

State of Washington, )  
  : ss  
County of King         )

THIS IS TO CERTIFY that before me, the undersigned notary public in and for the State of Washington, duly commissioned, sworn and qualified, personally appeared the above named incorporators: Walter Heath,

Howard C. Ries, A. L. Holberg, Herina I. Eklind, Ethel V. Soper, Mother M. Teresa and John A. Dare, to me personally known to be the individuals who signed the foregoing Articles of Incorporation, and jointly and individually acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and seal of office this 4th day of May, 1945.

Lewis L. Stedman  
Notary Public in and for the State  
of Washington, residing at Seattle.

State of Washington, )  
                                  : ss  
County of                    )

THIS IS TO CERTIFY that before me, the undersigned notary public in and for the State of Washington, duly commissioned, sworn and qualified, personally appeared Sister Mary of the Cross, one of the above named incorporators, personally known to me to be one of the individuals who signed the Articles of Incorporation and who acknowledged to me that she signed, sealed and executed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and seal of office this 8th day of May, 1945.

Lewis L. Stedman  
Notary Public in and for the State  
of Washington, residing at Seattle.

AMENDED ARTICLES OF INCORPORATION

of

WASHINGTON HOSPITAL SERVICE ASSOCIATION

We, Howard C. Ries and Sister Maria of Providence, president and secretary, respectively, of the Washington Hospital Service Association, do hereby certify that at a special meeting of said Association held June 30, 1947, at which meeting more than two-thirds of its members were present in person or by proxy, by resolution duly made, seconded and unanimously adopted, Article II of the Articles of Incorporation of said Association was amended to read as follows:

Article II.

Purpose: The particular business and object of the corporation shall be to establish, maintain and operate, with no individual being entitled to any of the net income thereof, a non-profit hospital service plan whereby hospital care shall be provided to persons who become subscribers to the plan of the corporation under contract entitling each subscriber to certain hospital care by and at the hospital with which the corporation may from time to time contract, to contract with such hospitals as may be approved and selected by the Board of Trustees for the purpose of acting as their agent, to provide hospital care to the subscriber of the plan; to promote the general and social welfare of such persons as may become subscribers of the plan, and to do all things necessary, proper or convenient for the purpose of promoting, establishing and operating such non-profit hospital service plan, to furnish to individuals, on a non-profit basis, prepaid medical surgical and home nursing care by this corporation, through any means found desirable, including but not limited to this corporation entering into contractual relations with, corporations, firms, associations, or individuals who or which furnish such prepaid medical, surgical and/or home nursing care on a prepayment or indemnity basis, or furnish insurance covering such medical, surgical or home nursing care; to act as agent for such corporation, firm, association or individual, and to do all things necessary, proper or convenient in connection therewith.

Dated at Seattle, Washington, this June 30, 1947.

Howard C. Ries  
\_\_\_\_\_  
President

Sister Maria of Providence  
\_\_\_\_\_  
Secretary

State of Washington, )  
  : ss  
County of King.        )

Howard C. Ries, as president of the Washington Hospital Service Association, being first duly sworn on oath deposes and says:

That the foregoing copy of Article II of the Article of Incorporation of Washington Hospital Service Association is a full, true and correct copy of such Article II, as amended, as duly adopted by a vote of more than two-thirds of the members of said Association at a special meeting duly called for the purpose of so amending the Articles of Incorporation, notice of which meeting was given in the manner provided by the By-Laws of the Association for the giving of notices and election of trustees.

Howard C. Ries

Subscribed and sworn to before me this June 30, 1947.

G. P. Locker

Notary Public in and for the State of  
Washington, residing at Seattle.

State of Washington, )  
  : ss  
County of Clark        )

Sister Maria of Providence, as secretary of the Washington Hospital Service Association, being first duly sworn on oath deposes and says:

That the foregoing copy of Article II of the Articles of Incorporation of Washington Hospital Service Association is a full, true and correct copy of such Article II, as amended, as duly adopted by a vote of more than two-thirds of the members of said Association at a special meeting duly called for the purpose of so amending the Articles of Incorporation, notice of which meeting was given in the manner provided by the By-Laws of the Association for the giving of notices and election of trustees.

Sister Maria of Providence

Subscribed and sworn to before me this 7th day of July 1947.

Claire Lewis

Notary Public in and for the State of  
Washington, residing at Camas

I, Herina I. Eklind, Secretary of the Washington Hospital Service Association do certify that the foregoing are true copies of the By-Laws of the Washington Hospital Service Association and the amended By-Laws of the Washington Hospital Service Association.



Signed

*Herina I. Eklind*

# THE ALASKA CLINIC

A PROFESSIONAL CORPORATION

825 L STREET

ANCHORAGE, ALASKA 99501

907-279-0622

November 17, 1975

**DEPARTMENT OF INTERNAL MEDICINE**

GARY ARCHER, M.D.  
DALE I. WOOD, M.D.  
W.S. BEACMAN, M.D.  
ARNE H. MORRIS, M.D.  
BERNARD G. MORRIS, M.D.  
RICHARD A. ANSCHUTZ, M.D.

**SECTION OF NEUROLOGY**

JANICE RASTELLA, M.D.

**SECTION OF PSYCHIATRY**

ROBERT MC HANNON, M.D.  
RONALD A. PERCH, M.D.  
ROYAL P. RIEHL, M.D.

**DEPARTMENT OF FAMILY AND INDUSTRIAL MEDICINE**

VERNON A. GATES, M.D.  
TRYON S. WILSON, M.D.  
JERRY LITTLE, M.D.  
ROBERT BEVELL, M.D.  
GILBERT S. BIEHL, M.D.  
THOMAS E. WILSON, M.D.  
JANICE BARRY, M.D.  
S.E. MELVILLE, M.D.

**DEPARTMENT OF GENERAL THORACIC AND VASCULAR SURGERY**

SAM DE PALATIS, M.D.  
DAVID M. BIEHL, M.D.

**DEPARTMENT OF OBSTETRICS AND GYNECOLOGY**

BURNETT W. NEWTON, M.D.  
WILLIAM M. IVY, M.D.  
RICHARD W. BURTON, M.D.  
JERRY GREEN, M.D.  
GEORGE STRANIKY, M.D.

**DEPARTMENT OF ORTHOPAEDIC SURGERY**

JOHN D. PROBY, M.D.

**DEPARTMENT OF PATHOLOGY**

RONALD H. ROGERS, M.D.  
MICHAEL T. PROBY, M.D.

**DEPARTMENT OF PEDIATRICS AND ADOLESCENT MEDICINE**

WILLIAM W. LARSON, M.D.  
ALAN HENRICHSON, M.D.  
PHYLLIS S. BIEHL, M.D.

**DEPARTMENT OF UROLOGIC SURGERY**

HERBERT BISS, M.D.

**DEPARTMENT OF EMERGENCY SERVICES**

ALEXANDER BUDELMAN, M.D.

**DEPARTMENT OF ADMINISTRATION**

MAX KERSBERGEN, ADMINISTRATOR  
JAMES KOONIG, BUSINESS MANAGER

Governor Jay Hammond  
Juneau,  
Alaska

Dear Governor Hammond:

The Alaska Clinic has been criticized by some in the medical community for failing to take a stand regarding the recent malpractice insurance problem. The Clinic has adequate insurance from a commercial carrier and in addition, is currently negotiating with another company for even more favorable coverage. Therefore, we are not as urgently affected as are some of our colleagues. This is not to say that we are ignorant of, or insensitive to the problem which is nationwide in scope. We, too, feel that the present system of handling malpractice claims has evolved into an unworkable one and that some fundamental change is essential. We have felt that the actions of some local physicians have been ill-advised and counter-productive. We have elected to remain silent until specific proposals are available for consideration. Since the Governor's commission has now made its recommendations available, we will break our silence.

The principle of making malpractice risks more predictable is obviously valid and, therefore, we support the concept of a more reasonable statute of limitations, reduction of awards by collateral sources of compensation, requiring "clear and convincing" evidence of negligence, periodic versus lump-sum payments, establishment of professional review boards to evaluate claims out of court, strengthening of the disciplinary functions of the State Licensure Board, and limiting contingency fees by lawyers to a reasonable level. These measures alone could make Alaska more attractive to insurance companies and would greatly help to restore a measure of justice to the currently chaotic situation.

The Clinic is opposed to the creation of a "Health Care Providers Indemnity Corporation", membership in which would be mandatory. This provision might benefit solo practitioners, but at great expense to group practices. It is

conceivable that a state-created monopoly could result in very high premiums. It should be noted that group practices have a risk record that has allowed them to remain insured while those in solo practice are losing their coverage. It would be grossly unfair to require groups to give up their reasonably-priced policies to join such a corporation.

The Clinic is also opposed to the creation of a "Late Claims Fund", to be financed by a tax on gross billings. This approach would result in wide variation of actual contributions since net income is so variable among the specialties and between groups and soloists. It should be noted that The Alaska Clinic is intimately associated with a general hospital and provides laboratory and x-ray services to that hospital at cost. This greatly increases the gross billings of the Clinic, but the increase is not reflected in our net. The creation of such a fund on that basis would necessitate substantial increases in both professional fees and hospital room rates. If such a fund is deemed essential, the contribution should be assessed in a manner directly proportional to risk, as is the case with other forms of liability coverage. Again, however, mandatory membership is unfair since most groups have occurrence-type policies which give continual protection thus making participation in such a fund unnecessary. Mandatory involvement in such a scheme might even be found unconstitutional.

The Clinic is also opposed to the concept of a JUA which, even if deemed legal, does not seem reasonable from the standpoint of insurance companies which, after all, are profit making organizations operating in a supposedly free-enterprise system. They should not be forced into unprofitable business ventures by government.

The Clinic would support the development of a mechanism embodying those principles alluded to in paragraph #2, which would assure reasonable compensation to patients truly injured by genuine physician negligence, which would operate in the free-enterprise system, which would be funded by premiums based on risk, and which would incorporate procedures designed to minimize the burden on the legal system.

Sincerely yours,

Donald R. Rogers, M.D.

DRR/ds

# THE ALASKA CLINIC

A PROFESSIONAL CORPORATION  
825 L STREET  
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Representative Terry Gardiner  
Chairman, House Judiciary Committee  
State Capitol  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Gardiner:

As we discussed on the phone earlier today, the physicians who belong to the larger groups in Anchorage, Fairbanks and Soldotna are opposed to mandatory inclusion into any proposed State sponsored medical malpractice insurance plan. While I cannot document this statistic, our insurance carrier assures us that group practices have a much better record regarding incidence of lawsuits. This facts allows us to buy insurance at a reasonable rate even when some soloists cannot acquire it at any cost. We feel it unfair to us and to our patients (who ultimately pay for it) to be forced to subsidize the soloists. While this may sound insensitive, our feeling is that any plan which manipulates only the insurance rates will not solve the basic problem - that of the manner in which tort law is applied. If reform in that area were to come about, the insurance industry would probably be able to function in the traditional fashion.

I believe that two members of the ASMA have lobbied in favor of the mandatory provisions of the Commissioner's plan giving the impression that support is unanimous among Alaska physicians. I think that I speak for approximately one-third of the doctors in the State in opposition to these provisions (the third who continued to work during last summer's slow down).

I would appreciate it if you would share these thoughts with your committee members. Enclosed is a copy of a letter which I wrote to the Governor late last year which amplifies somewhat.

Sincerely yours,

  
Donald R. Rogers, M.D.  
President, Board of Directors

DRR/ds