

ADMINISTRATIVE CONTROL UNIT, 100 / 2

2338

SHESS SB 177

2338

S

B

177

SB 177

Dr. Rabreau - A+SS - Pub Health, Director

Position - OPPOSED.

Three ISSUES:

1. Current statute includes nurse midwives.
2. No benefit of bill. All practices in state guided by license - will confuse consumer.
3. Insurance coverage based on risk in pool to minimize. Feel this will increase health care cost.

(8)

unclear intent in bill

Vic Present insurance programs?

license determines scope of practice. Stipulations in insurance contracts binding on company and individual.

Vic Would this not allow limits by insur. companies?

Joe Covered ind. Freedom of choice of provider

"SERVICE" must be defined carefully.

Bill lacks clarity.

Concerned that freedom of choice will confuse the consumer

Martin Tinkler - Blue Cross - Wash/Ak.

not entirely sure what it means.

line 20 "other health care practitioners" what does that mean?

"freedom of choice" not necessary

If this is a mandate, it will increase costs since the more providers available - the greater the utilization.

Dr. Paul Davis - Chiro - Ark Chiro Society

after listening to testimony - history → not a unique proposal; exists in most other states.

Many policies do not cover Chiro. Group policies cannot give riders to get coverage desired.

Chiro. care keeps health-care costs down.

Don Kocott - Chief Market Surveillance
Div. of Insurance

discrimination issue AS 21.36 would be
better place. drafted language that -
if service is covered under policy
then any licensed provider should be able
to provide
- stay away from term "freedom of choice"

Neutral view on CS -
addresses concern of Polreau

POSITION PAPER
SENATE BILL NO. 177

For a Bill entitled "An Act providing for freedom to choose providers under medical, hospital or health insurance policies; and providing for an effective date."

This Bill amends AS 21.42 to require health insurance companies to allow policy holders to receive care; and be reimbursed accordingly, from any health professional they select for services covered in the terms of their policies.

DISCUSSION

The Department of Health and Social Services has identified three issues that inhibits clear interpretation and implementation of this Bill. Section 1 defines providers that a policy holder may obtain services from to include; "physicians, dentists, osteopaths, optometrists, chiropractors, nurse midwives, clinics, hospitals or other licnesed health care facilities or health care practitioners.

Current Alaska Statutes (AS 21.31.355), incorporates coverage of the cost of services provided by nurse midwives. It is unclear as to the intent of including nurse midwife services in this new section.

The provision of the diagnostic and treatment services by practitioners are prescribed by the scope of their license. The benefits of incorporating the provisions of this Bill to the policy holder is unclear. The impact of Section 1 may result in confusing the consumer in purchase of health care services; both in terms of understanding a practioners licensed capabilities and obtaining the desired care.

The intent of health insurance coverage is to assure financial access to health care based upon the shared risk of a pool of policy holders. Within the content of continual escalation of health care cost, the impact of this Bill upon the financing of care is questionable. The stipulations of a policy coverage by type of service and health professionals is calculated to minimize the financial risk to the pool of policy holders and maximize the treatment of health problems within the confines of medical science. Removing the stipulation of professional coverage has the potential to increase the cost of health care.

POSITION

In consideration of the previously identified issues and lack of legislative intent of purpose of amending AS 21.42, the Department of Health and Social Services cannot support the Bill at this time.

Recommended by:

E. S. Rabeau
E. S. Rabeau, M.D., Director
Division of Public Health

Date:

Approved by:

Robert London Smith, Ph.D.
Commissioner
Department of Health & Social Services

Date:

I. REQUEST
 Bill/Resolution No.: SB No. 177
 Title: "Providing freedom of choice"
 Sponsor: Josephson
 Requestor: HESS Labor

II. FISCAL DETAIL
 Agency Affected: No anticipated impact
 Program Category Affected: _____
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LANDS & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|------------------------|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |
| | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |
| | 0 | 0 | 0 | 0 | 0 | 0 |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dwayne Peoples Phone: 465-3105
 Division: Public Health Date: 4/6/83

Approved by Commissioner: _____ Date: _____
 Department: Health and Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

[RECEIVED]

MAY 2 - 1983

POSITION PAPER

CS FOR SENATE BILL NO. 177 (HESS)

Josephson,

For an Act entitled "An Act relating to insurance trade practices; and providing for an effective date."

This committee substitute radically changes the intent of the original bill.

Our position paper on the original bill is not applicable to this substitute. Our original objections are no longer valid.

This Department is in a secondary position regarding this bill. The primary organization, the Division of Insurance, Department of Commerce and Economic Development is in favor of this bill.

The Department of Health and Social Services has no objections to CS for Senate Bill No. 177.

Recommended by:

E. S. Rabeau
E. S. Rabeau, H.D., Director
Division of Public Health

Date:

5/13/83

RECEIVED

MAY 2 1983

Josephson,

Approved by:

Robert London Smith
Robert London Smith, Ph.D.
Commissioner, Acting
Department of Health and
Social Services

Date:

18 May 83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSSB 177
 Title: "Relating to insurance practices"
 Sponsor: Josephson
 Requestor: HLESS

II. FISCAL DETAIL

Agency Affected: Health & Soc. Svcs.
 Program Category Affected: Public Health
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LANDS & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|------------------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |
| | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |
| | 0 | 0 | 0 | 0 | 0 | 0 |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: E. S. Rabeau, M.D. *AAA* Phone: 465-3090
 Division: Public Health Date: 5/17/83

Approved by Commissioner: *Orlando J. ...* *Arthur ...* Date: 18 May 83
 Department: Health and Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
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- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSB 177 (HESS)
 Title: Insurance trade practices
 Sponsor: HESS Committee
 Requestor: Senate L&C

II. FISCAL DETAIL

Agency Affected: Commerce & Ec. Dev.
 Program Category Affected: Public Prot.
 BRU, Program of Subprogram(s) Affected:
Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | 0 | 0 | 0 | 0 | 0 |
| 100 PERSONAL SERVICES | | 0 | 0 | 0 | 0 | 0 |
| 200 TRAVEL | | 0 | 0 | 0 | 0 | 0 |
| 300 CONTRACTUAL | | 0 | 0 | 0 | 0 | 0 |
| 400 COMMODITIES | | 0 | 0 | 0 | 0 | 0 |
| 500 EQUIPMENT | | 0 | 0 | 0 | 0 | 0 |
| 600 LAND & STRUCTURES | | 0 | 0 | 0 | 0 | 0 |
| 700 GRANTS, CLAIMS, ETC | | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | 0 | 0 | 0 | 0 | 0 |
| REVENUE | | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | |
|------------------------|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 |
| OTHER (Specify Source) | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | |
|-----------|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kenneth C. Moore, Director
 Division: Insurance

Phone: 465-2515
 Date: 4/22/83

Approved by Commissioner: Richard A. Lyon
 Department: Commerce & Economic Development

Date: 4/26/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
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3/8/83

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
POSITION PAPER

CSSB 177 (HESS): An act relating to insurance trade practices: and providing for an effective date.

The Administration supports this bill. This bill is aimed at preventing unfair discrimination by an insurance company between different kinds of health care providers who are, within the scope of their license, able to perform a service covered by the insurance company's policy. The CS substantially tracks language provided by this department.

 4/26/83

Richard A. Lyon
Commissioner



Davis Chiropractic Clinic

P.O. Box 2600 Juneau, Alaska 99803

P.T. "Tom" Davis, D.C. Barbara J. Davis, D.C.

(907) 789-9549

In the Mendenhall Valley

RECEIVED

May 10, 1983

MAY 13 1983

Senator Joe Josephson
Alaska State Legislature
Pouch V
Juneau, Ak. 99811

Josephson,

Re: SB 177

Dear Senator Josephson:

This is confirmation of the recent testimony which I provided on the above Senate Bill. The following constitutes the essence of the chiropractic position:

(1) Chiropractors are primary care physicians under both U.S. and Alaska State Law.


(2) In the past Chiropractors and other health care providers have been discriminated against in the payment for services rendered under various insurance policies.

(3) The objective of the legislation as we interpret it is to provide for equality for all providers under all insurance policies, especially as related to group policies.

(4) We wish to state that all forms of health care should be available to persons seeking service in order to provide the best service possible to the public at the least cost.

Thank you for your consideration as we do find the substitute bill as discussed to be acceptable.

Sincerely,


P.T. Davis, D.C.
Member, Alaska
Chiropractic Society

PTD/lc

COMMITTEE REPORT
SENATE

3/15/81

FURTHER: Int'l. Conf. on

Date: 3/15/81

Mr. President:

The Committee on HESS has had SA 177

providing for freedom to choose providers under medical,
hospital or health insurance policies; and aff. date.

under consideration and (a majority of the committee) (the committee)
reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SA 177 same title
 new title
- and recommends do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

CHAIRMAN

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SB 177
 Title: freedom choice medical insur.
 Sponsor: Josephson by request
 Requestor: H.E.S.S. Committee.

II. FISCAL DETAIL

Agency Affected: Commerce & Ec. Dev.
 Program Category Affected: Public Prot.
 BRU, Program of Subprogram(s) Affected:
Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | 0 | 0 | 0 | 0 | 0 |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC | | | | | | |
| TOTAL OPERATING | | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | 0 | 0 | 0 | 0 | 0 |
| REVENUE | | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | |
|------------------------|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 |
| OTHER (Specify Source) | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | |
|-----------|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kenneth C. Moore, Director Phone: 465-2515
 Division: Insurance Date: 4/7/83
 Approved by Commissioner: Richard A. Lyon Date: 4/8/83
 Department: Commerce & Economic Development

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
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- Copy to Requestor (if different from Sponsor)

Offered: 4/19/83
Referred: Labor and Commerce

Original sponsor: Josephson by request

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 177 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to insurance trade practices; and

7

providing for an effective date."

8

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

9

* Section 1. AS 21.36.090 is amended by adding a new subsection to

10

read:

11

(d) A person may not make or permit unfair discrimination

12

against a person who provides a service covered under a group dis-

13

ability policy that extends coverage on an expense incurred basis, or

14

under a group service or indemnity type contract issued by a nonprofit

15

corporation, if the service is within the scope of the provider's

16

occupational license. In this subsection, "provider" means a state

17

licensed physician, dentist, osteopath, optometrist, chiropractor or

18

nurse midwife.

19

* Sec. 2. This Act takes effect January 1, 1984.

1. administration supports bill (position
paper from Dick Lyons)

2. zero fiscal note.

3. 34 states have insurance equality laws

Change effective date

ANCHORAGE CENTER FOR CHIROPRACTIC, INC.
KENNETH O. KETZ, D.C., AND ASSOCIATES
3126 SEWARD HIGHWAY
ANCHORAGE, ALASKA 99503
PHONE 274-7821

To date there are a total of thirty-four states which have an insurance equality act, they are as follows:

- | | |
|-------------------|--------------------|
| 1. Arkansas | 18. Nevada |
| 2. California | 19. New Hampshire |
| 3. Colorado | 20. New Mexico |
| 4. Connecticut | 21. New York |
| 5. Delaware | 22. North Carolina |
| 6. Florida | 23. Ohio |
| 7. Illinois | 24. Oklahoma |
| 8. Indiana | 25. Pennsylvania |
| 9. Kansas | 26. Rhoad Island |
| 10. Louisiana | 27. South Dakota |
| 11. Maryland | 28. Utah |
| 12. Massachusetts | 29. Virginia |
| 13. Michigan | 30. Washington |
| 14. Minnesota | 31. West Virginia |
| 15. Missouri | 32. Wisconson |
| 16. Montana | 33. Wyoming |
| 17. Nebraska | 34. New Jersey |

I'm still in the process of combining more information on insurance equality, when I have more I'll forward it on to you.

Sincerely,

Francis J. Corbin D.C.

F.L. (Butch) Corbin, D.C.



ALASKA CHIROPRACTIC SOCIETY

Box 4-1949

ANCHORAGE, ALASKA 99509

KEITH B. GODFREY, D.C.
PRESIDENT
ADRIAN BARBER, D.C.
VICE PRESIDENT
KENNETH O. KEYZ, D.C.
SEC.-TREAS.

December 18, 1972

INSURANCE EQUALITY

Q: What is insurance equality?

A: It requires that all insurance contracts written or renewed in the state which include physician's services must also mandatorily include chiropractic services under the policy.

Q: Why insurance equality?

A: This will provide the policy holder with his constitutional right to freedom of choice (congress guaranteed in Section 1802) to select a licensed and state approved health provider of his own choice.

Q: Will chiropractic inclusion increase the insurance premium?

A: No, insurance companies which write policies including chiropractic benefits have stated in writing that chiropractic benefits do not increase their premiums.

Q: How many states have enacted "insurance equality laws"?

A: There are now 26 states that have enacted such "insurance equality" laws. These 26 states include 64% of the entire American population, according to a chiropractic statement before a Committee on Finance, U.S. Senate Feb. 1, 1972

Q: How does chiropractic differ in health management?

A: Chiropractic offers a distinct, unique and alternate philosophy, Science, Art and Technology in health management.



ALASKA CHIROPRACTIC SOCIETY

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December 18, 1972.

KEITH B. GODFREY, D.C.
PRESIDENT
ADRIAN BARBER, D.C.
VICE PRESIDENT
KENNETH O. KETZ, D.C.
SEC. - TRSAS.

Insurance Equality Cont. Pg. 2

FACTS ABOUT INSURANCE EQUALITY

1. At least 550 insurance companies now pay claims for chiropractic treatment in their health and accident policies.
2. Medicaid coverage including chiropractic has been extended to 24 states.
3. Medicare benefits include chiropractic as of July 1, 1973.
4. General Motors and Mansanto Company, a leading American chemical producer include chiropractic services in their own employee health plans.
5. Studies of Workmen's Compensation records demonstrate conclusively that;
 - (a) Chiropractic care is more effective than medical care in the treatment of industrial back injuries.
 - (b) Chiropractic care reduces treatment costs:

| | <u>Medical</u> | <u>Chiropractic</u> |
|------------------|----------------|---------------------|
| Iowa (1966) | \$118.74 | \$68.24 |
| Iowa (1969) | \$210.86 | \$79.28 |
| Oregon (1969-71) | \$298.52 | \$72.92 |
| Kansas (1971) | \$102.53 | \$65.69 |

- (c) Chiropractic care reduces work time loss.
6. A survey and analysis of the treatment of sprain and strain injuries of the back and neck in industrial cases in Florida revealed the following:
 1. Treatment costs (by a medical doctor) averaged 27.5 % more!



ALASKA CHIROPRACTIC SOCIETY

Box 4-1949

ANCHORAGE, ALASKA 99509

December 18, 1972.

KEITH B. GODFREY, D.O.
PRESIDENT
ADRIAN BARBER, D.O.
VICE PRESIDENT
KENNETH O. KETZ, D.O.
SEC. TREAS.

Insurance Equality Cont. Pg. 3

2. Compensation costs (under care by a medical doctor) averaged 311% more!
3. Worktime losses (under care by a medical doctor) averaged 300% more!

Ref. Chiropractic's "White Paper" May 1969

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
POSITION PAPER

CSSB 177 (HESS): An act relating to insurance trade practices: and providing for an effective date.

The Administration supports this bill. This bill is aimed at preventing unfair discrimination by an insurance company between different kinds of health care providers who are, within the scope of their license, able to perform a service covered by the insurance company's policy. The CS substantially tracks language provided by this department.

 4/26/83

Richard A. Lyon
Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CS/B 177 (HESS)
 Title: Insurance trade practices
 Sponsor: HESS Committee
 Requestor: Senate L&C

II. FISCAL DETAIL

Agency Affected: Commerce & Ec. Dev.
 Program Category Affected: Public Prot.
 BRU, Program of Subprogram(s) Affected: Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | 0 | 0 | 0 | 0 | 0 |
| 100 PERSONAL SERVICES | | 0 | 0 | 0 | 0 | 0 |
| 200 TRAVEL | | 0 | 0 | 0 | 0 | 0 |
| 300 CONTRACTUAL | | 0 | 0 | 0 | 0 | 0 |
| 400 COMMODITIES | | 0 | 0 | 0 | 0 | 0 |
| 500 EQUIPMENT | | 0 | 0 | 0 | 0 | 0 |
| 600 LAND & STRUCTURES | | 0 | 0 | 0 | 0 | 0 |
| 700 GRANTS, CLAIMS, ETC | | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | 0 | 0 | 0 | 0 | 0 |
| REVENUE | | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | |
|------------------------|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 |
| OTHER (Specify Source) | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | |
|-----------|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kenneth C. Moore, Director
 Division: Insurance

Phone: 465-2515

Date: 4/22/83

Approved by Commissioner: Richard A. Lyon
 Department: Commerce & Economic Development

Date: 4/26/83

Distribution:

- Original to Legislative Finance
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3/8/83

[RECEIVED]

MAY 2 - 1983

POSITION PAPER

CS FOR SENATE BILL NO. 177 (HESS)

Josephson,

For an Act entitled "An Act relating to insurance trade practices; and providing for an effective date."

This committee substitute radically changes the intent of the original bill.

Our position paper on the original bill is not applicable to this substitute. Our original objections are no longer valid.

This Department is in a secondary position regarding this bill. The primary organization, the Division of Insurance, Department of Commerce and Economic Development is in favor of this bill.

The Department of Health and Social Services has no objections to CS for Senate Bill No. 177.

Recommended by:

E. S. Rabeau
E. S. Rabeau, M.D., Director
Division of Public Health

Date:

5/13/83

RECEIVED

MAY 2 1983

Josephson,

Approved by:

Robert London Smith
Robert London Smith, Ph.D.
Commissioner, Acting
Department of Health and
Social Services

Date:

18 May 83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSSB 177
 Title: "Relating to insurance practices"
 Sponsor: Josephson
 Requestor: HESS

II. FISCAL DETAIL

Agency Affected: Health & Soc. Svcs.
 Program Category Affected: Public Health
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
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| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|------------------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |
| | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |
| | 0 | 0 | 0 | 0 | 0 | 0 |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any analysis

Prepared By: E. S. Rabeau, M.D. *ASA* Phone: 465-3090
 Division: Public Health Date: 5/17/83

Approved by Commissioner: *Robert D. ...* Date: 18/2/83
 Department: Health and Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83



Davis Chiropractic Clinic

P.O. Box 2600 Juneau, Alaska 99803

P.T. "Tom" Davis, D.C. Barbara J. Davis, D.C.

(907) 789-9549

In the Mendenhall Valley

RECEIVED

May 10, 1983

MAY 12 1983

Senator Joe Josephson
Alaska State Legislature
Pouch V
Juneau, Ak. 99811

Josephson.

Re: SB 177

Dear Senator Josephson:

This is confirmation of the recent testimony which I provided on the above Senate Bill. The following constitutes the essence of the chiropractic position:

(1) Chiropractors are primary care physicians under both U.S. and Alaska State Law.

(2) In the past Chiropractors and other health care providers have been discriminated against in the payment for services rendered under various insurance policies.

(3) The objective of the legislation as we interpret it is to provide for equality for all providers under all insurance policies, especially as related to group policies.

(4) We wish to state that all forms of health care should be available to persons seeking service in order to provide the best service possible to the public at the least cost.

Thank you for your consideration as we do find the substitute bill as discussed to be acceptable.

Sincerely,

P.T. Davis, D.C.
Member, Alaska
Chiropractic Society

PTD/lc

Birch, Jermain, and Horton
Attorneys at Law

1034 West Fourth Avenue
Anchorage, Alaska 99501

November 9, 1972

Dr. Adrian Barber
Alaska Chiropractic Clinic
Klatt Box 10045.
Anchorage, Alaska

Dear Dr. Barber:

You asked that I ascertain the necessary amendments to incorporate an insurance equalization law into our existing health insurance statutes.

As a preliminary matter, I suggest to you that this particular session of the Alaska State Legislature will be difficult for the chiropractic profession. With the return of Dr. Milo Fritz, chiropractors may expect some rough sledding. It is probable that Dr. Fritz will again introduce his bill which would ban the use of the word "doctor" from all professionals except those who have graduated from an accredited medical school. Additionally, he would strongly oppose an insurance equalization law. Tom Fink, whose voice bears great weight on matters such as these, has indicated to me that he would neither oppose nor strongly support an insurance equalization amendment.

To accomplish your objective, two amendments would be necessary, one to the general Insurance Code, and one to Chapter 87, which deals specifically with hospital and medical service corporations.

A.S. 21.87.330 (8) provides that: "participant physician" means a doctor, dentist, osteopath, optometrist, chiropractor or other licensed health care practitioner who has entered into a service agreement with a service corporation.

A.S. 21.87.160 (c) provides that: No contract may restrict the subscriber's right to free choice of physician or hospital, but shall restrict benefits to be provided on a service basis to services rendered by participant physicians and participant hospitals.

Dr. Adrian Barber
November 9, 1972
Page Two

I would suggest an amendment to 21.87.160 (c), so that it would now read: "whenever any policy of insurance issued in this state provides for reimbursement for any service which is within the lawful scope of practice of a duly licensed medical physician, dentist, osteopath, chiropractor, optometrist, podiatrist or other licensed health care practitioner the insured or other person entitled to benefits under such policy shall have full freedom of choice in selecting their doctor and be entitled to reimbursement for such services."

A.S. 21.12.070 (14) (b) needs also to be amended by the sentence "All reimbursement provision of such policies shall be governed by A.S. 21.87.160 (c)."

I have attached for your consideration a draft bill.

With best wishes.

Cordially,

BIRCH, JERMAIN AND HORTON

Ron Birch
Ronald G. Birch

Enclosure

INSURANCE EQUALIZATION LEGISLATION

AN ACT to provide that insureds or other beneficiaries of insurance policies, subscribers to or other beneficiaries of medical, hospital or hospital and medical service plans and contracts, workmen's compensation policies, and beneficiaries under public assistance programs, shall when such services are offered, have full freedom of choice in the selection of any duly licensed Medical Physician, Dentist, Osteopath, Chiropractor, Optometrist, Podiatrist or other licensed health care practitioner in the performance of services which are within the lawful scope of their respective professional practices.

Section 1 - BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA, that Alaska Statutes 21.87.160 (c) and Alaska Statute 21.12.070 (14) (b) are hereby amended to read as follows:

A.S. 21.87.160 (c) "Whenever any policy of insurance issued in this state provides for reimbursement for any service which is within the lawful scope of practice of a duly licensed medical physician, dentist, osteopath, chiropractor, optometrist, podiatrist, or other licensed health care practitioner the insured or other person entitled to benefits under such policy shall have full freedom of choice in selecting their doctor and be entitled to reimbursement for such services."

A.S. 21.12.070 (14) (b) "Provision of medical, hospital, surgical, and funeral benefits, and of coverage against accidental death or injury as incidental to and part of other insurance as stated under (a) (1), (2), (4), and (10) of this section, shall for all purposes be considered to be the same kind of insurance to which it is incidental, and shall not be subject to provisions of this title applicable to life or disability insurances. All reimbursement provision of such policies shall be governed by A.A. 21.87.160 (c).

Section 2 - BE IT FURTHER enacted that nothing in this Act shall be construed as enlarging the scope of practice of any of the licensed professions enumerated in Section 1.

Section 3 - BE IT FURTHER ENACTED that all acts and parts of acts in conflict herewith are hereby repealed.

Section 4 - BE IT FURTHER ENACTED that this Act shall take effect from and after its passage.

Blue Cross of Washington and Alaska suggested substitute language for Senate Bill 177.

15 nonprofit corporation shall require parity of reimbursement
16 for the same health care services performed by all licensees
17 who perform such services within the scope of their
18 respective licenses, thereby assuring the people of the
19 State of Alaska access to the health care services of their
20 choice.

21 *Sec. 2. This act takes effect January 1, 1984.



15700 Dayton Avenue North/P.O. Box 327
Seattle, Washington 98111
206/361-3000

April 12, 1983

The Honorable Joe Josephson
Alaska State Senate
Pouch V
Juneau, Alaska 98111

Dear Senator Josephson:

My testimony of April 8, 1983 indicating Blue Cross of Washington and Alaska programs contained a chiropractic benefit was countered by statements from Dr. Davis. All new Plan programs sold in the State of Alaska since 1980 contain a benefit for chiropractic service. Those groups renewing or upgrading programs purchased before 1980 have been given the opportunity to include this same chiropractic benefit in their program. Some groups have elected to omit the chiropractic benefit.

If I can be of service in obtaining additional information, please don't hesitate to contact me.

Respectfully,

A handwritten signature in cursive script, appearing to read "Martin".

Martin E. Tirador, Manager
Alaska Provider and Government Relations.

1 Discussion substitute for SB 177

2 AS 21.36.090 is amended by adding a new subsection to read:

3 (d) No person may make or permit unfair discrimination
4 between providers of a service covered under a group dis-
5 ability policy that provides coverage on an expense incurred
6 basis, or under a group service or indemnity type contract
7 issued by a nonprofit corporation if the service is within
8 the scope of the providers license. In this subsection,
9 "provider" means a physician, dentist, osteopath, optometrist,
10 chiropractor or nurse midwife.

11

AS 21.12
def. of "disability"



TREVOR V. IRELAND, D.C. (USA), I.C.A., A.C.A., M.C.A.S.A.
DOUGLAS J. MOSHER, D.C. (USA), I.C.A., A.C.A.
PHILIP L. WANER, D.C. (USA), I.C.A., A.C.A.
DONALD W. MOSHER, M.A. (USA), A.P.A., A.A.A.S.
FRANK J. KUFEL, ED.M. (ED. SPEC.) (USA) N.A.S.S.

A PROFESSIONAL CORPORATION
541 WEST 36TH AVENUE
ANCHORAGE, ALASKA 99503
TELEPHONE
(907) 561-1222 - APPOINTMENTS
(907) 562-2734 - BUSINESS

February 23, 1983

Ms. Rebecca Branchflower
Chief of Adjudications
State of Alaska, Department of Labor
Division of Workers' Compensation
3301 Eagle Street, Pouch 7-019
Anchorage, Alaska 99510

Re: Gloria Weinberger and Trevor V. Ireland vs. Matanuska-Susitna School
District Case No. 100798

Dear Ms. Branchflower,

On February 8, 1983, I responded to your letter addressed to Dr. Godfrey (President, Board of Chiropractic Examiners). Copies of this response were mailed to numerous people.

George P. McAndrews, Esq. responded with some objective and pertinent data. I have attached a copy of his letter with a summary of the "Chiropractic in New Zealand" report. (This 1979 report was presented to the House of Representatives by Command of His Excellency the Governor-General).

Please review this material in the correct "spirit of intent". My objective is simply to inform you of factors that you may be unaware of.

Should you require a copy of the 377 page book, I will gladly obtain one for you, at your request.

Sincerely yours,

TREVOR V. IRELAND, D.C.

cc:

Commissioner Jim Robison
Department of Labor
P.O. Box 1149
Juneau, Alaska 99811

February 23, 1983

Ms. Rebecca Branchflower

Re: Gloria Weinberger and Trevor V. Ireland Vs.
Matankuska-Susitna School

Harry Treager, Director
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

Richard D. Pennington, Esq.
733 W. 4th Avenue, Suite 206
Anchorage, Alaska 99501

Jacquelyn McClintock, Director
Workers' Compensation Division
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Juneau, Alaska 99811

Keith B. Godfrey, D.C., President
Board of Chiropractic Examiners
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142 E. 3rd Avenue
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Alaska Workers' Compensation Board
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Anchorage, Alaska 99501

Senator Joe Josephson
Chairman of H.E.S.S. (Senate)
Pouch V
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Wasilla, Alaska 99687

Gene A. Kremer, D.C., President
Alaska Chiropractic Society
Z Plaza, Suite 10
3020 Minnesota Drive
Anchorage, Alaska 99503

Harry N. Rosenfield, Esq.
American Chiropractic Association
1916 Wilson Boulevard
Arlington, Virginia 22201

James D. Harrison, Esq.
International Chiropractor's Assn.
Legal Offices
777 Chamber of Commerce Building
Indianapolis, Indiana 46204

Attachment: 1) Letter dated February 14, 1983 from George P. McAndrews, Esq.
2) Summary of the New Zealand report.

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CABLE ADDRESS
BAIRFREE

February 14, 1983

Trevor V. Ireland, D.C.
Ireland Clinic of Chiropractic
541 West 36th Avenue
Anchorage, Alaska 99503

Dear Trevor:

Thank you for your letter of February 11, 1983. I have carefully reviewed your letter of February 8, 1983 to Ms. Rebecca Branchflower. I believe your case was well presented.

I am not familiar with your briefs in the Supreme Court of Alaska. Possibly you included the following excerpt from the Report of the Royal Commission of Inquiry on Chiropractic in New Zealand that studied chiropractic in five western nations, including the United States, and issued a 377 page report in October of 1979:

"33. The idea that in some matters a medical practitioner will have to defer to the chiropractor may seem at first sight outrageous. It is not outrageous at all. It is simply a question of the scope of professional training. You go to a dentist, not a doctor, for repairs to your teeth. There is nothing surprising in that. Doctors are not experts in dentistry; nor are they experts in spinal manual therapy. So it is right and proper that they should feel the need to defer to those who are experts.

"34. The Commission has found it established beyond any reasonable degree of doubt that chiropractors have a more thorough training in spinal mechanics and spinal manual therapy than any other health professional. It would therefore be astonishing to contemplate that a chiropractor, in

Trevor V. Ireland, D.C.

February 14, 1983

Page Two

those areas of expertise, should be subject to the directions of a medical practitioner who is largely ignorant of those matters simply because he has had no training in them."

It would seem that the above two quoted paragraphs sum up your argument.

Please let me know the outcome of your appeal.

Very truly yours,

A handwritten signature in cursive script, appearing to read "George P. McAndrews". The signature is written in dark ink and is positioned above the printed name.

George P. McAndrews

GPMCA/gc



CHIROPRACTIC IN NEW ZEALAND

REPORT OF THE
COMMISSION OF INQUIRY

1979

*Presented to the House of Representatives by Command of
His Excellency the Governor-General*

BY AUTHORITY
P. H. HANSELLBERG, GOVERNMENT PRINTER, WELLINGTON, NEW ZEALAND—1979
Price \$7.65

IV CHIROPRACTIC IN ITS TRUE PERSPECTIVE

In early 1978 the New Zealand government appointed a Commission of Inquiry to investigate chiropractic. I can unequivocally state that never before has the world seen such an objective

and in depth, look at our profession.

The principal findings of this 377 page document were:-

1. Modern Chiropractic is far from being an 'unscientific cult'.

2. Chiropractic is a branch of the healing arts specialising in the correction by spinal manual therapy of what chiropractors identify as biomechanical disorders of the spinal column. They carry out spinal diagnosis and therapy at a sophisticated and refined level.

3. Chiropractors are the only health practitioners who are necessarily equipped by their education and training to carry out spinal manual therapy.

4. General medical practitioners and physiotherapists have no adequate training in spinal manual therapy, though a few have acquired skill in it subsequent to graduation.

5. Spinal manual therapy in the hands of a registered chiropractor is safe.

6. The education and training of a registered chiropractor are sufficient to enable him to determine whether there are contra-indications to spinal manual therapy in a particular case, and whether the patient should have medical care instead of or as well as chiropractic care.

7. Spinal manual therapy can be effective in relieving musculo-skeletal symptoms such as back pain, and other symptoms known to respond to such therapy, such as migraine.

8. In a limited number of cases where there are organic and/or visceral symptoms, chiropractic treatment may

provide relief, but this is unpredictable, and in such cases the patient should be under concurrent medical care if that is practicable.

9. Chiropractors do not provide an alternative comprehensive system of health care, and should not hold themselves out as doing so.
10. In the public interest and in the interests of patients there must be no impediment to full professional co-operation between chiropractors and medical practitioners.

Some other snippets of interest which appear in the report are:-

"Yet it is astonishing to find that little if any constructive effort has been made by the medical profession to investigate these claims. In the face of that neglect it would appear unreasonable that organised medicine should be so bitterly and adamantly opposed to chiropractic. The approach of organised medicine to chiropractic is not one of detached scientific interest and curiosity about a form of treatment that appears to have helped a large number of patients. That is an approach which might have been expected; but instead it has been one of remorseless and unrelenting opposition."

How prevalent is this attitude not in the Republic too?

As to the general medical submission the commission said:

"The opposition of the New Zealand medical establishment to chiropractic is, for all practical purposes, intense and absolute."

"For medical practitioners are essentially, by their training

T

and expertise, the guardians of public health. In matters lying within the field of expert medical opinion it is a bold step for anyone not medically qualified to venture to disagree with what they say. But in our view there are three factors which must necessarily seriously diminish the weight to be given to medical opinion on chiropractic theory and practice.

In the first place no evidence was placed before us which suggested that medical science has proved current chiropractic theory to be in error, or the practice ineffective. We have no doubt at all that if such evidence had been available it would have been produced. It is all very well to assert - as some of the medical witnesses did - that some chiropractic hypotheses are absurd. But if there is no proof that chiropractic hypotheses are unsound, an assertion by a medical expert that the hypotheses are absurd can logically amount to no more than an assertion that the chiropractic hypotheses do not fit into the framework of concepts within which that medical expert is for the time being working. Hypotheses which do not fit into accepted frameworks have often in the past been derided as absurd.

The medical profession branded Pasteur's hypotheses absurd; the theory as to the circulation of the blood was similarly held up to ridicule by the medical profession at the time it was propounded. The history of medicine contains many other such examples."

"We therefore cannot be confident that the medical profession is always the best judge of concepts which do not for the time being relate to the pattern of established medical thinking."

"We consider the public interest would be better served if the medical establishment made some serious effort to investigate the apparent advantages of chiropractic treatment. Indeed we find it astonishing that the medical establishment has adopted a deliberate policy of ostracism on what we consider to have illogical grounds and for inadequate reasons."

"Looked at on its own the Medical Association's principal submission is a persuasive document. Looked at in the context of the whole of the evidence before the Commission it is a document plainly calculated to present chiropractic in the worst possible light, and to emphasise chiropractic's worst features.

The writer of the submission presented it orally and was cross-examined. We do not doubt his integrity. But as we watched him and listened to him it became clear that he had a degree of bias and prejudice against chiropractic so intense that it deprived him of the capacity to make any balanced or objective assessment of chiropractic. For that reason alone we could not give great weight to the Medical Association's principal submission."

The Commission also found that medical scepticism has its place.

"And chiropractors have only themselves to blame if that scepticism is increased in their case by the more extreme chiropractic literature and the unwise activities of a few chiropractors. But, as we have said, the principal submission of the Medical Association certainly went beyond scepticism. We are satisfied that organised medicine in this country has

never given chiropractic a fair trial."

As most of us know, Dr. Scott Haldeman gave evidence for the N.Z.C.A. What the commission said of him should make us all feel proud.

"On paper he was impressive. He was equally impressive as a witness; indeed, he made one of the most impressive and valuable expert witnesses in the whole inquiry. He showed himself as independent and keen to cut through cant. The presentation of his written and oral evidence, including cross-examination by counsel and questioning by the Commission, occupied three full days. The Commission places substantial importance on his testimony."

The general evaluation of our profession was:-

"The Commission is satisfied that spinal manual therapy can be beneficial. The Commission is satisfied on the evidence that chiropractors are the practitioner best qualified to administer it. The Commission is further satisfied that treatment by a trained chiropractor carries minimal risk - less risk, perhaps, than spinal manual therapy administered by other practitioners because of the intensive training which only chiropractors undergo as a matter of course. The Commission is satisfied that although the chiropractor may not cure life-threatening diseases, he certainly improves the daily lot of many people. Without him, the quality of life of many would be less bearable. Their pain and frustration are undoubtedly relieved. There is no gainsaying that."

ANCHORAGE CENTER FOR CHIROPRACTIC, INC.
KENNETH O. KETZ, D.C., AND ASSOCIATES
3126 SEWARD HIGHWAY
ANCHORAGE, ALASKA 99503
PHONE 274-7621

To date there are twenty-eight states which have chiropractic care covered in their medicaid programs, and one state pending.

They are as follows:

- | | |
|---------------|--------------------------|
| 1. Arkansas | 15. New Hampshire |
| 2. California | 16. New Nersey |
| 3. Kentucky | 17. North Carolina |
| 4. Idaho | 18. North Dakota |
| 5. Illinois | 19. Ohio |
| 6. Indiana | 20. Oregon |
| 7. Iowa | 21. Pennsylvania |
| 8. Kansas | 22. South Carolina |
| 9. Louisiana | 23. South Dakota |
| 10. Maine | 24. Texas |
| 11. Michigan | 25. Utah |
| 12. Minnesota | 26. Washington |
| 13. Nebraska | 27. West Virginia |
| 14. Nevada | 28. Wisconson |
| | * 29. New York - Pending |

More information will be forwarded to you as I receive and segregate it.

Sincerely,

Francis L. Corbin D.C.

F. L. (Butch) Corbin, D.C.

FLC/dh

LEGAL DEPARTMENT
INTERNATIONAL CHIROPRACTORS ASSOCIATION

EXECUTIVE OFFICES
741 BRADY STREET
DAVENPORT, IOWA 52808
TELEPHONE (319) 322-4447

February 5, 1973

JAMES D. HARRISON, COUNSEL
777 CHAMBER OF COMMERCE BUILDING
INDIANAPOLIS, INDIANA 46204
TELEPHONE (317) 639-4511

Trevor V. Ireland, D.C.
Alaska Chiropractic Clinic, Inc.
Klatt Box 10045
Mile 7 Seward Highway
Anchorage, Alaska 99502

Dear Dr. Ireland:

To the best of my knowledge almost all of the Insurance Equality Laws have been subject to some abuses. As long as we are trying to make some portions of the insurance industry do what they do not choose to do, we shall have problems.

If you can choose your own terminology in obtaining an Insurance Equality Law, I would suggest something like the following:

Notwithstanding any provision of any policy or contract of insurance or health benefits issued after the effective date of this act, whenever such policy or contract provides for payment or reimbursement for any service which may be legally performed by a person licensed in this state for the practice of osteopathy, optometry, chiropractic or podiatry, such payment or reimbursement under such policy or contract shall not be denied when such service is rendered by a person so licensed. Terminology in such policy or contract deemed discriminatory against any such person or method of practice shall be void.

I believe the above is about as tight as you can make an Insurance Equality Law. There may be law suits to determine the constitutionality of some such statutes. In addition to this, Blue Shield has found it possible to delete certain services which are those most often performed by doctors of chiropractic. Whether such action can be declared discriminatory, will depend to a great extent upon the courts in your state or upon the attitude of your department of insurance.

Enactment of the Insurance Equality Statute will do a world of good for chiropractic. The results may not be 100%.

- Trevor V. Ireland, D.C.
February 5, 1973
Page 2 --

In the event the above suggestion may not encompass your Workman's Compensation Act, you may wish to include some wording for that purpose. Another thing which you should consider is whether we have the inclusions you desire, namely, osteopathy, optometry, chiropractic and podiatry. You may wish to add to or delete from this list.

We certainly hope you are successful in this legislative effort.

Kindest regards,

James D. Harrison
James D. Harrison

JDH/cv

SAFECO

SAFECO LIFE INSURANCE COMPANY
HOME OFFICE
SAFECO PLAZA
SEATTLE, WASHINGTON 98185

TELEPHONE (206) 545-5000

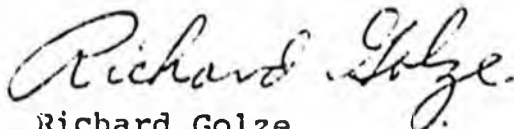
May 28, 1975

Senator William S. Day
Washington State Senate
Olympia, Washington

Dear Senator Day:

In reference to the question as to whether the inclusion of benefits for services performed by licensed chiropractors has had any significant effect on our claims experience for health care service, we find that while SAFECO Life's claims statistics do not separate out payments for chiropractic services from payments made to other licensed practitioners, there does not appear to be any significant increase of claims costs attributable to payments for services by licensed chiropractors which would require any increase in our competitive health insurance premiums.

Cordially yours,



Richard Golze
SAFECO Life Counsel
ah



SAFECO LIFE INSURANCE COMPANY
SAFECO LIFE INSURANCE COMPANY
SAFECO LIFE INSURANCE COMPANY
SAFECO LIFE INSURANCE COMPANY
SAFECO LIFE INSURANCE COMPANY

May 26, 1975

Dr. Kenneth Luedtke
1930 Monroe Street
Madison, WI 53702

Dear Dr. Luedtke:

FOHL-0127/11K-5

You have asked for the experience on the Washington State Group Medical Plan:

| <u>Period Covered</u> | <u>Coverage Enrollment</u> | <u>Chiropractic Expenses</u> | <u>Total Expenses</u> |
|-----------------------|----------------------------|------------------------------|-----------------------|
| 7/72-6/73 | 17,918 | \$179,307 | \$6,789,299 |
| 7/73-6/74 | 13,922 | \$214,294 | \$6,922,857 |
| 7/74-1/75 | 16,922 | \$156,140 | \$4,280,875 |

These figures represent our Plan I which is a basic first dollar plan plus major medical.

If I may be of further assistance, please do not hesitate to call.

Sincerely,

E. W. Lahn
Benefits Supervisor

cc: Wisconsin Chiropractic Assoc.
Paul Gronert

4/5/11

LEGAL DEPARTMENT
INTERNATIONAL CHIROPRACTORS ASSOCIATION

EXECUTIVE OFFICES
741 BRADY STREET
DAVENPORT, IOWA 52808
TELEPHONE (319) 322-4447

February 7, 1977

JAMES D. HARRISON, COUNSEL
777 CHAMBER OF COMMERCE BUILDING
INDIANAPOLIS, INDIANA 46204
TELEPHONE (317) 639-4511

Woody Waldroup, D.C.
Alaska Chiropractic Society
Post Office Box 4-1949
Anchorage, Alaska 99509

RE: Insurance Equality Laws

Dear Dr. Waldroup:

Your letter to Mr. Harrison arrived after he left for the Mid-Year Convention in San Francisco. In his absence, I am taking the liberty of addressing myself to the questions which you raised. (My office staff has suggested that I refuse to assist you until you return our temperate weather in exchange for the immoderate cold we have received of late. However, professionalism has triumphed over jealousy.)

All of the insurance equality statutes with which we are familiar follow substantially the same form as Indiana's. Accordingly, I have enclosed a copy of that statute for your examination. Not infrequently, insurance companies such as Blue Cross-Blue Shield will attempt to evade the purpose of such statutes with policy language such as: "services for the detection and correction by manual or mechanical means of structural imbalance, distortion or subluxation in the human body for the purpose of removing nerve interference and the effects thereof where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column." The companies defend this maneuver by pointing out that such language is equally applicable to M.D.s and chiropractors.

When this was attempted in Indiana, we were able to persuade Blue Cross-Blue Shield to withdraw the exception by the use of political pressure. In two other states who have had the same problem, we have suggested including in the statute a provision such as the following:

Woody Waldroup, D.C.
February 7, 1977
Page Two

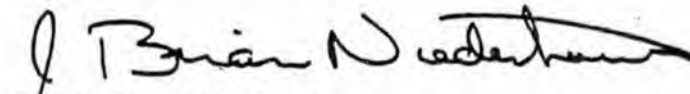
"Terminology in such policy or contract deemed discriminatory against any such person or method of practice shall be void. Any policy provision excluding the methodology or technique of osteopathy, chiropractic, optometry, psychology, or podiatrics without eliminating the illness, injury or condition for which the service is provided shall be null and void."

We are unaware whether any states have enacted such a provision.

We recently corresponded with Lawrence E. Murphy, Suite No. 1, 5625 "O" Street, Lincoln, Nebraska 68510 regarding this issue. Mr. Murphy is the attorney for the Nebraska Chiropractic Physicians Association, and was in the process of compiling information on how the various states handled exclusions from insurance equality laws. We furnished him with this information, and requested that he let us know the results of his efforts. Although he has not done so, it may be that he might respond to the request from you for this information.

If there is anything further we may do to be of assistance, please don't hesitate to let us know.

Very truly yours,


J. Brian Niederhauser

JBN:lmb

CHAPTER

* 409

APPROVED

3/15/69

HOUSE ENROLLED ACT No. 1249

AN ACT concerning insurance policies as the same relates to reimbursement for certain services thereunder.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. Notwithstanding any provision of any individual or group policy of accident and health insurance, or any provision of a policy, contract, plan or agreement for hospital or medical service or indemnity, wherever such policy, contract, plan or agreement provides for reimbursement for any service which is in the lawful scope of practice of a duly licensed osteopath, optometrist or chiropractor, the person entitled to benefits or person performing services under such policy, contract, plan or agreement shall be entitled to reimbursement on an equal basis for such service, whether the said service is performed by a physician, osteopath, optometrist or chiropractor duly licensed under the laws of this state.

SEC. 2. The provisions of this Act shall not apply to any policy, contract, plan or agreement in effect prior to the effective date of this Act.

SEC. 3. All laws and parts of laws in conflict herewith are hereby repealed.

SEC. 4. Whereas an emergency exists for the immediate taking effect of this Act, the same shall be in full force and effect on and after May 1, 1969.

EXECUTIVE OFFICES
INTERNATIONAL CHIROPRACTORS ASSOCIATION
741 BRADY STREET • DAVENPORT, IOWA 52808
TELEPHONE 322-4447

February 4, 1977

Dr. Woody Waldroup
Alaska Chiropractic Society
P.O. Box 4-1949
Anchorage, Alaska 99509

Dear Dr. Waldroup:

Thank you for your letter of January 28 inquiring about background for an insurance equality law for the state of Alaska.

I am enclosing copies of six state insurance equality laws which should serve as a cross section of such laws as they exist in the various states. If you so desire we can supply you with copies of these laws from virtually all states that currently have them on the books.

As you may know, there have been attempts by some carriers to circumvent the intent and/or language of insurance equality laws. These usually take the form of excluding from coverage "adjustment or manipulation of the spine" no matter whether preformed by M.D.'s, D.C.'s, D.O.'s, etc. (sometimes the policy will state such a practice is covered only when preformed in a hospital setting). This approach weakens the chiropractor's argument that discrimination is being shown. With this in mind, I am quoting below what might be called additional "model language" that is designed to help avert the problem encountered by some states. Mr. Harrison prepared the language.

"Terminology in such policy or contract deemed discriminatory against any such person or method of practice shall be void. Any policy provision excluding the methodology or technique of osteopathy, chiropractic, optometry,

Dr. Woody Waldroup
Page 2
February 4, 1977

psychology or podiatrics without eliminating
the illness, injury or condition for which
the service is provided shall be null and void."

I hope these materials are helpful to you and that you will
let us know if you have any further questions.

Best wishes.

Sincerely,


J. F. McANDREWS, D.C.
Executive Director

JFM/dl

cc: Mr. James D. Harrison
Dr. Keith B. Godfrey

Enclosure

Insurance Equality Act

Act No. 92
Public Acts of 1966
Approved by Governor
June 15, 1966 — *passed*

**STATE OF MICHIGAN
73RD LEGISLATURE
REGULAR SESSION OF 1966**

Introduced by Rep. Ryan

ENROLLED HOUSE BILL No. 2712

AN ACT to amend section 3475 of Act No. 218 of the Public Acts of 1956, entitled "An act to revise, consolidate and classify the laws of the state of Michigan relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights powers and immunities and to prescribe the conditions on which other persons, firms, corporations and associations engaged in an insurance or surety business may exercise their powers, to provide for the imposition of a privilege fee on domestic insurance companies and associations, and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on the business of surplus line agents; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide penalties for the violation of this act, and to repeal certain acts," as added by Act No. 56 of the Public Acts of 1963, being section 500.3475 of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Section 1. Section 3475 of Act No. 218 of the Public Acts of 1956, as added by Act No. 56 of the Public Acts of 1963, being section 500.3475 of the Compiled Laws of 1948, is hereby amended to read as follows:

Sec. 3475. Notwithstanding any provision of any policy of insurance or certificate, whenever such insurance policy or certificate provides for reimbursement for any service which may be legally performed by a person licensed in this state for the practice of chiropractic or podiatry, reimbursement under such insurance policy or certificate shall not be denied if such service is rendered by a person licensed to practice chiropractic or podiatry within the statutory provisions provided in his individual practice act.

This act is ordered to take immediate effect.
Approved June 15, 1966.

HOUSE No. 4421

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 6, 1968.

The committee on Insurance, to whom was referred the petition (accompanied by bill, House, No. 1004) of Charles Ohanian and Joseph D. Saulnier relative to discrimination under the provisions of insurance policy certificates or service contracts, report the accompanying bill (House, No. 4421).

For the committee,

A. J. BURKE.

[Representative Mann of Newton dissenting.]

*Dear Jim
Please make
yourself several
Copies.*

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Eight.

**AN ACT PROHIBITING DISCRIMINATION UNDER THE PROVISIONS OF
ANY POLICY OF INSURANCE, CERTIFICATE, OR SERVICE CONTRACT.**

*Be it enacted by the Senate and House of Representatives in
General Court assembled, and by the authority of the same, as
follows:*

- 1 Chapter 175 of the General Laws is hereby amended by
- 2 inserting after section 193J, the following section:—
- 3 *Section 193K.* Whenever an insurance policy, certificate or
- 4 service contract provides for reimbursement or payment for
- 5 any services which may be legally performed by any person,
- 6 licensed under the provisions of chapter one hundred and
- 7 twelve, reimbursements or payments under such insurance
- 8 policy, certificate or service contract shall not be denied
- 9 because of race, color or creed nor shall any insurer make or
- 10 permit any unfair discrimination against particular individ-
- 11 uals or persons licensed under said chapter, to whom reim-
- 12 bursement or payment would be due and payable.

FILED APR 4 1975

SENATE FILE 423

By MILLER of Des Moines, HEYING,
NOLTING, NORPEL, BERGMAN,
VAN GILST, TAYLOR, MERRITT,
CARR, TIEDEN, NYSTROM,
GALLAGHER, CULVER, WINKELMAN,
HANSEN, SCHWENGELS, COLEMAN,
NOLIN, GRIFFIN, BRILES,
HULTMAN, LAMBORN, SCOTT,
ROBINSON, MURRAY and CURTIS

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to insurance proceeds payable to physicians.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Chapter five hundred fourteen A (514A), Code
2 1975, is amended by adding the following new section:

3 NEW SECTION. Whenever a policy of health insurance sub-
4 ject to regulation under this chapter provides for payment
5 of a health service, the performance for the insured of such
6 health service by any physician as defined in subsection five
7 (5) of section one hundred thirty-five point one (135.1) of
8 the Code, acting within the scope of his license is
9 compensable, notwithstanding any provision of the policy.

10 The provisions of this Act shall apply only to policies
11 issued or renewed after June 30, 1975.

12 EXPLANATION

13 This bill provides that there can be no differential of
14 reimbursement from insurance between the different licensed
15 health practitioners.

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PROFESSIONS AND OCCUPATIONS 24 § 902

resentation of facts in the application; or (B) chronic and persistent inebriety or chronic drug addiction; or (C) moral turpitude; or (D) the practice of criminal abortion; or (E) other unethical practices; or (F) public advertising of special ability to cure chronic incurable diseases; or (G) the presentation to the board of examiners of licenses or certificates that have been illegally obtained or have been signed or issued unlawfully or under fraudulent representation.

The Board may act upon complaint in writing made to it, or upon its own motion. The accused person shall be furnished with a copy of the complaint charged, and shall be afforded an opportunity for hearing before the Board in person or by attorney. As amended 50 Del.Laws, Ch. 325, § 3, eff. June 23, 1955

1955 Amendment 50 Del.Laws, Ch. 325, authorized denial of certificate because of moral turpitude.

Del. Laws

§ 717. Chiropractic practitioners eligible for compensation from insurance

For purposes of disability insurance, standard health and accident, sick and other insurance policies, a chiropractic physician shall be entitled to compensation for his services. Added 54 Del.Laws, Ch. 147, § 2, eff. Oct. 11, 1963.

CHAPTER 9. DEADLY WEAPONS DEALERS

§ 901. Necessity for license; exceptions

No person shall sell or expose to sale, any pistol or revolver, or revolver or pistol cartridges, stiletto, steel or brass knuckles, or other deadly weapon made especially for the defense of one's person, without first having obtained a license therefor, which license shall be known as "Special License to Sell Deadly Weapons". No person licensed or unlicensed shall possess, sell, or offer for sale any switch blade knife.

This section shall not apply to toy pistols, pocket knives, or knives used in the domestic household, or surgical instruments or tools of any kind. As amended 49 Del.Laws, Ch. 77, eff. May 20, 1962.

1962 Amendment. 49 Del.Laws, Ch. 77 inserted the sentence in the first paragraph prohibiting the possession, sale or offer for sale of any switch blade knife.

§ 902. Application and fee for license; duration

Whoever desires to engage in the business of selling any of the articles referred to in the first paragraph of section 901 of this title shall apply to the State Tax Department and obtain a license to conduct such business, for which he shall pay the sum of \$50. The li-

An Act

SENATE BILL NO. 74. BY SENATORS Minister, DeBerard, Stockton, MacManus, Kogovsek, Calabrese, Cisneros, Johnson, Parker, Ruland, and Wunsch; also REPRESENTATIVES Sack, Bishop, Strang, Younglund, Köpel, Mullen, Burns, Baer, Bryant, DeMoulin, and Gaon.

PROVIDING THAT CHIROPRACTIC SERVICES BE REIMBURSED UNDER CERTAIN INSURANCE POLICIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 72-10-3 (3), Colorado Revised Statutes 1963 (1971 Supp.), is amended to read:

72-10-3. Form and content of policy. (3) (a) Notwithstanding any provisions of any policy of sickness and accident insurance, whenever any such policy provides for reimbursement for any service which may be lawfully performed by a person licensed in this state for the practice of osteopathy, medicine, optometry, psychology, CHIROPRACTIC, or podiatry, reimbursement under such policy shall not be denied when such service is rendered by a person so licensed. Nothing in this article shall preclude an insurance company from setting different fee schedules in an insurance policy for different professions.

(b) (i) The provisions OF PARAGRAPH (a) of this subsection ~~(b)~~ (3) shall apply:

(ii) To all individual sickness and accident policies issued on and after July 1, 1969, except as pertains to optometry, which shall apply to individual policies issued after July 1, 1971, AND EXCEPT AS PERTAINS TO CHIROPRACTIC, WHICH SHALL APPLY TO INDIVIDUAL POLICIES ISSUED AFTER JULY 1, 1973;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(iii) To all blanket and group sickness and accident policies issued, renewed, or reinstated on and after July 1, 1971, EXCEPT AS PERTAINS TO CHIROPRACTIC, WHICH SHALL APPLY TO ALL BLANKET AND GROUP SICKNESS AND ACCIDENT POLICIES ISSUED, RENEWED, OR REINSTATEED ON AND AFTER JULY 1, 1973.

SECTION 2. Effective date. This act shall take effect July 1, 1973.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

John D. Vanderhoof
PRESIDENT OF THE
SENATE

John D. Fuhr
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Comfort W. Shaw
SECRETARY OF
THE SENATE

Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John A. Love
GOVERNOR OF THE STATE OF COLORADO

Comm.

House Bill No. 8446

PUBLIC ACT NO. 73-73

AN ACT CONCERNING UNFAIR TRADE PRACTICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 38-60 of the general statutes is repealed and the following is substituted in lieu thereof: No person shall engage in this state in any trade practice which is defined in section 38-61 as, or determined pursuant to sections 38-62 and 38-63 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance, nor shall any domestic insurance company engage outside of this state in any act or practice defined in [subsection (1), (2), (3), (4) or (5)] SUBSECTIONS 1 THROUGH 11, INCLUSIVE, of section 38-61. The commissioner shall have power to examine the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by sections 38-60 to 38-64, inclusive. When used in said sections, "person" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters.

Sec. 2. Section 38-61 of the general statutes, as amended, is repealed and the following is substituted in lieu thereof: The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance: (1) Misrepresentations and false advertising of [policy contracts] INSURANCE POLICIES. Making, issuing or circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, [misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of

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any policy or class of policies misrepresenting the true nature thereof.] SALES PRESENTATION, OMISSION OR COMPARISON WHICH: (a) MISREPRESENTS THE BENEFITS, ADVANTAGES, CONDITIONS OR TERMS OF ANY INSURANCE POLICY; (b) MISREPRESENTS THE DIVIDENDS OR SHARE OF THE SURPLUS TO BE RECEIVED, ON ANY INSURANCE POLICY; (c) MAKES ANY FALSE OR MISLEADING STATEMENTS AS TO THE DIVIDENDS OR SHARE OF SURPLUS PREVIOUSLY PAID ON ANY INSURANCE POLICY; (d) IS MISLEADING OR IS A MISREPRESENTATION AS TO THE FINANCIAL CONDITION OF ANY PERSON, OR AS TO THE LEGAL RESERVE SYSTEM UPON WHICH ANY LIFE INSURER OPERATES; (e) USES ANY NAME OR TITLE OF ANY INSURANCE POLICY OR CLASS OF INSURANCE POLICIES MISREPRESENTING THE TRUE NATURE THEREOF; (f) IS A MISREPRESENTATION FOR THE PURPOSE OF INDUCING OR TENDING TO INDUCE TO THE LAPSE, FORFEITURE, EXCHANGE, CONVERSION OR SURRENDER OF ANY INSURANCE POLICY; OR (g) IS A MISREPRESENTATION FOR THE PURPOSE OF EFFECTING A PLEDGE OR ASSIGNMENT OF OR EFFECTING A LOAN AGAINST ANY INSURANCE POLICY; OR (h) MISREPRESENTS ANY INSURANCE POLICY AS BEING SHARES OF STOCK.

(2) False information and advertising generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading. (3) Defamation. Making, publishing, disseminating or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of, any oral or written statement or any pamphlet, circular, article or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance. (4) Boycott, coercion and intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint

House Bill No. 8446

of, or monopoly in, the business of insurance.

(5) False financial statements. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive; or making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer. (6) UNFAIR CLAIM SETTLEMENT PRACTICES. COMMITTING OR PERFORMING WITH SUCH FREQUENCY AS TO INDICATE A GENERAL BUSINESS PRACTICE ANY OF THE FOLLOWING: (a) MISREPRESENTING PERTINENT FACTS OR INSURANCE POLICY PROVISIONS RELATING TO COVERAGES AT ISSUE; (b) FAILING TO ACKNOWLEDGE AND ACT WITH REASONABLE PROMPTNESS UPON COMMUNICATIONS WITH RESPECT TO CLAIMS ARISING UNDER INSURANCE POLICIES; (c) FAILING TO ADOPT AND IMPLEMENT REASONABLE STANDARDS FOR THE PROMPT INVESTIGATION OF CLAIMS ARISING UNDER INSURANCE POLICIES; (d) REFUSING TO PAY CLAIMS WITHOUT CONDUCTING A REASONABLE INVESTIGATION BASED UPON ALL AVAILABLE INFORMATION; (e) FAILING TO AFFIRM OR DENY COVERAGE OF CLAIMS WITHIN A REASONABLE TIME AFTER PROOF OF LOSS STATEMENTS HAVE BEEN COMPLETED; (f) NOT ATTEMPTING IN GOOD FAITH TO EFFECTUATE PROMPT, FAIR AND EQUITABLE SETTLEMENTS OF CLAIMS IN WHICH LIABILITY HAS BECOME REASONABLY CLEAR; (g) COMPELLING INSURED TO INSTITUTE LITIGATION TO RECOVER AMOUNTS DUE UNDER AN INSURANCE POLICY BY OFFERING SUBSTANTIALLY LESS THAN THE AMOUNTS ULTIMATELY RECOVERED IN ACTIONS BROUGHT BY SUCH INSURED; (h) ATTEMPTING TO SETTLE A CLAIM FOR LESS THAN THE AMOUNT TO WHICH A REASONABLE MAN WOULD HAVE BELIEVED HE WAS ENTITLED BY REFERENCE TO WRITTEN OR PRINTED ADVERTISING MATERIAL ACCOMPANYING OR MADE PART OF AN APPLICATION; (i) ATTEMPTING TO SETTLE CLAIMS ON THE BASIS OF AN APPLICATION WHICH WAS ALTERED WITHOUT NOTICE TO,

OR KNOWLEDGE OR CONSENT OF THE INSURED; (j) MAKING CLAIMS PAYMENTS TO INSURED OR BENEFICIARIES NOT ACCOMPANIED BY STATEMENTS SETTING FORTH THE COVERAGE UNDER WHICH THE PAYMENTS ARE BEING MADE; (k) MAKING KNOWN TO INSURED OR CLAIMANTS A POLICY OF APPEALING FROM ARBITRATION AWARDS IN FAVOR OF INSURED OR CLAIMANTS FOR THE PURPOSE OF COMPELLING THEM TO ACCEPT SETTLEMENTS OR COMPROMISES LESS THAN THE AMOUNT AWARDED IN ARBITRATION; (l) DELAYING THE INVESTIGATION OR PAYMENT OF CLAIMS BY REQUIRING AN INSURED, CLAIMANT, OR THE PHYSICIAN OF EITHER TO SUBMIT A PRELIMINARY CLAIM REPORT AND THEN REQUIRING THE SUBSEQUENT SUBMISSION OF FORMAL PROOF OF LOSS FORMS, BOTH OF WHICH SUBMISSIONS CONTAIN SUBSTANTIALLY THE SAME INFORMATION; (m) FAILING TO PROMPTLY SETTLE CLAIMS, WHERE LIABILITY HAS BECOME REASONABLY CLEAR, UNDER ONE PORTION OF THE INSURANCE POLICY COVERAGE IN ORDER TO INFLUENCE SETTLEMENTS UNDER OTHER PORTIONS OF THE INSURANCE POLICY COVERAGE; (n) FAILING TO PROMPTLY PROVIDE A REASONABLE EXPLANATION OF THE BASIS IN THE INSURANCE POLICY IN RELATION TO THE FACTS OR APPLICABLE LAW FOR DENIAL OF A CLAIM OR FOR THE OFFER OF A COMPROMISE SETTLEMENT. (7) FAILURE TO MAINTAIN COMPLAINT HANDLING PROCEDURES. FAILURE OF ANY PERSON TO MAINTAIN COMPLETE RECORD OF ALL THE COMPLAINTS WHICH IT HAS RECEIVED SINCE THE DATE OF ITS LAST EXAMINATION. THIS RECORD SHALL INDICATE THE TOTAL NUMBER OF COMPLAINTS, THEIR CLASSIFICATION BY LINE OF INSURANCE, THE NATURE OF EACH COMPLAINT, THE DISPOSITION OF THESE COMPLAINTS, AND THE TIME IT TOOK TO PROCESS EACH COMPLAINT. FOR PURPOSES OF THIS SUBSECTION "COMPLAINT" SHALL MEAN ANY WRITTEN COMMUNICATION PRIMARILY EXPRESSING A GRIEVANCE. (8) MISREPRESENTATION IN INSURANCE APPLICATIONS. MAKING FALSE OR FRAUDULENT STATEMENTS OR REPRESENTATIONS ON OR RELATIVE TO AN APPLICATION FOR AN INSURANCE POLICY, FOR THE PURPOSE OF OBTAINING A FEE, COMMISSION, MONEY OR OTHER BENEFIT FROM ANY INSURERS, AGENT, BROKER OR INDIVIDUAL. [(6)] (9) Any violation of any one of sections 38-55, 38-56, 38-57, 38-59, 38-149, 38-150 and 38-172. None of the following practices shall be considered discrimination within the meaning of section 38-149 or 38-172 or a rebate within the meaning of section 38-59: (a) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance,

House Bill No. 8446

provided any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders; (b) in the case of policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense; (c) readjustment of the rate of premium for a group insurance policy based on loss or expense experience, or both, at the end of the first or any subsequent policy year, which may be made retroactive for such policy year. [(7)] (10) ✓
Notwithstanding any provision of any policy of insurance, certificate or service contract, whenever such insurance policy or certificate or service contract provides for reimbursement for any services which may be legally performed by any practitioner of the healing arts licensed to practice in this state, reimbursement under such insurance policy, certificate or service contract shall not be denied because of race, color or creed nor shall any insurer make or permit any unfair discrimination against particular individuals or persons so licensed. (11) FAVORED AGENT OR INSURER: COERCION OF DEBTORS. (a) NO PERSON MAY (i) REQUIRE, AS A CONDITION PRECEDENT TO THE LENDING OF MONEY OR EXTENSION OF CREDIT, OR ANY RENEWAL THEREOF, THAT THE PERSON TO WHOM SUCH MONEY OR CREDIT IS EXTENDED OR WHOSE OBLIGATION THE CREDITOR IS TO ACQUIRE OR FINANCE, NEGOTIATE ANY POLICY OR CONTRACT OF INSURANCE THROUGH A PARTICULAR INSURER OR GROUP OF INSURERS OR AGENT OR BROKER OR GROUP OF AGENTS OR BROKERS; (ii) UNREASONABLY DISAPPROVE THE INSURANCE POLICY PROVIDED BY A BORROWER FOR THE PROTECTION OF THE PROPERTY SECURING THE CREDIT OR LIEN; OR (iii) REQUIRE DIRECTLY OR INDIRECTLY THAT ANY BORROWER, MORTGAGOR, PURCHASER, INSURER, BROKER OR AGENT PAY A SEPARATE CHARGE, IN CONNECTION WITH THE HANDLING OF ANY INSURANCE POLICY REQUIRED AS SECURITY FOR A LOAN ON REAL ESTATE OR PAY A SEPARATE CHARGE TO SUBSTITUTE THE INSURANCE POLICY OF ONE INSURER FOR THAT OF ANOTHER; (iv) USE OF DISCLOSE INFORMATION RESULTING FROM A REQUIREMENT THAT A BORROWER, MORTGAGOR OR PURCHASER FURNISH INSURANCE OF ANY KIND ON REAL PROPERTY BEING CONVEYED OR USED AS COLLATERAL SECURITY TO A LOAN, WHEN SUCH INFORMATION IS TO THE ADVANTAGE OF THE MORTGAGEE, VENDOR OR LENDER, OR IS TO THE DETRIMENT OF THE

House Bill No. 8446

BORROWER, MORTGAGOR, PURCHASER, INSURER OR THE AGENT OR BROKER COMPLYING WITH SUCH A REQUIREMENT. (b) (i) SUBSECTION (a) (iii) DOES NOT INCLUDE THE INTEREST WHICH MAY BE CHARGED ON PREMIUM LOANS OR PREMIUM ADVANCEMENTS IN ACCORDANCE WITH THE SECURITY INSTRUMENT. (ii) FOR PURPOSES OF SUBSECTION (a) (ii), SUCH DISAPPROVAL SHALL BE DEEMED UNREASONABLE IF IT IS NOT BASED SOLELY ON REASONABLE STANDARDS UNIFORMLY APPLIED, RELATING TO THE EXTENT OF COVERAGE REQUIRED AND THE FINANCIAL SOUNDNESS AND THE SERVICES OF AN INSURER. SUCH STANDARDS SHALL NOT DISCRIMINATE AGAINST ANY PARTICULAR TYPE OF INSURER, NOR SHALL SUCH STANDARDS CALL FOR THE DISAPPROVAL OF AN INSURANCE POLICY BECAUSE SUCH POLICY CONTAINS COVERAGE IN ADDITION TO THAT REQUIRED. (iii) THE COMMISSIONER MAY INVESTIGATE THE AFFAIRS OF ANY PERSON TO WHOM THIS SUBSECTION APPLIES TO DETERMINE WHETHER SUCH PERSON HAS VIOLATED THIS SUBSECTION. IF A VIOLATION OF THIS SUBSECTION IS FOUND, THE PERSON IN VIOLATION SHALL BE SUBJECT TO THE SAME PROCEDURES AND PENALTIES AS ARE APPLICABLE TO OTHER PROVISIONS OF THIS ACT. (iv) FOR PURPOSES OF THIS SECTION, "PERSON" INCLUDES ANY INDIVIDUAL, CORPORATION, ASSOCIATION, PARTNERSHIP OR OTHER LEGAL ENTITY.

Sec. 3. Subsection (b) of section 38-62 of the general statutes is repealed and the following is substituted in lieu thereof: If, after such hearing, the commissioner determines that the [method of competition or the act or practice in question is defined in section 38-61 and that the person complained of has engaged in such method of competition, act or practice in violation of sections 38-60 to 38-64, inclusive,] PERSON CHARGED HAS ENGAGED IN AN UNFAIR METHOD OF COMPETITION OR AN UNFAIR OR DECEPTIVE ACT OR PRACTICE, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation A COPY OF SUCH FINDINGS AND an order requiring such person to cease and desist from engaging in such method of competition, act or practice AND IF THE ACT OR PRACTICE IS A VIOLATION OF SECTION 38-61, THE COMMISSIONER MAY AT HIS DISCRETION ORDER ANY ONE OR MORE OF THE FOLLOWING: (i) PAYMENT OF A MONETARY PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH AND EVERY ACT OR VIOLATION BUT NOT TO EXCEED AN AGGREGATE PENALTY OF TEN THOUSAND DOLLARS UNLESS THE PERSON KNEW OR REASONABLY SHOULD HAVE KNOWN HE WAS IN VIOLATION OF THIS ACT,

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IN WHICH CASE THE PENALTY SHALL BE NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH AND EVERY ACT OR VIOLATION BUT NOT TO EXCEED AN AGGREGATE PENALTY OF FIFTY THOUSAND DOLLARS IN ANY SIX-MONTH PERIOD; (ii) SUSPENSION OR REVOCATION OF THE PERSON'S LICENSE IF HE KNEW OR REASONABLY SHOULD HAVE KNOWN HE WAS IN VIOLATION OF THIS ACT.

Sec. 4. Subsection (e) of section 38-62 of the general statutes is repealed and the following is substituted in lieu thereof: Any person who violates a cease and desist order of the commissioner made pursuant to this section [shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state a sum not to exceed fifty dollars, except that, if such violation is found to be wilful, the amount of such penalty shall be a sum not to exceed five hundred dollars.] AND WHILE SUCH ORDER IS IN EFFECT MAY AFTER NOTICE AND HEARING AND UPON ORDER OF THE COMMISSIONER BE SUBJECT AT THE DISCRETION OF THE COMMISSIONER TO ANY ONE OR MORE OF THE FOLLOWING: (i) A MONETARY PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH AND EVERY ACT OR VIOLATION; OR (ii) SUSPENSION OR REVOCATION OF SUCH PERSON'S LICENSE.

Certified as correct by

Legislative Commissioner.

Clerk of the Senate.

Clerk of the House.

Approved _____, 1973.

Governor.

LAW OFFICES

BIRCH, HORTON, BITTNER AND MONROE, INC.

1200 AIRPORT HEIGHTS DRIVE-SUITE 320

ANCHORAGE, ALASKA 99504

(907) 279-9801

January 9, 1979

RONALD G. BIRCH
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LLOYD V. ANDERSON
BRUCE MONROE
GREGORY C. TAYLOR
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* NOT ADMITTED IN ALASKA

Francis L. Corbin, D.C., President
Alaska Chiropractic Association
Anchorage Center for Chiropractic
3126 Seward Highway
Anchorage, Alaska 99503

Dear Dr. Corbin:

In line with your request, I have reviewed the insurance equalization and limitation of practice bills introduced in 1973. Neither proposed bill has been affected by subsequent changes in the respective statutes. However, I foresee some problems if the bills both become effective.

The proposed amendment to AS 21.87.160(c) would provide that if a policy covers a service within the lawful scope of a physician, chiropractor, etc., then the patient can choose any particular practitioner licensed to perform that service. Since physicians presently claim to be licensed to practice spinal manipulation and adjustment, then policies broadly covering services rendered by physicians should also cover services rendered by chiropractors. However, if the limitation of practice bill becomes effective, then physicians will no longer be allowed to practice adjustment and manipulations. In that case, it would be very simple for health service organizations to write chiropractic treatment out of their policies by simply providing for services within the lawful scope of practice of a physician or others, not including chiropractors.

One way of overcoming this problem is to amend AS 21.87.170(a) to provide:

(a) Each service agreement and subscriber's contract entered into or issued by a service corporation shall provide for health care services of a substantial and broad character to be rendered to subscribers. Each such service agreement and subscriber's contract shall provide that the subscriber shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist or dentist for treatment of any illness or injury within the lawful scope of his or her practice.

January 9, 1979
Francis L. Corbin, D.C.
Page 2

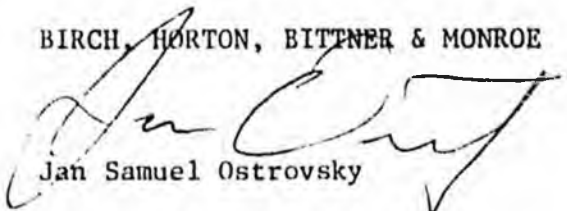
This, of course, would have the obvious effect of mandating coverage for chiropractic care if chiropractors participate in the plans. Section 2 of the proposed equalization bill would have to be changed to note that AS 21.12.070(b) is governed by AS 21.87.170(a) as well as AS 21.87.160(c).

There is one more fundamental problem with the proposed legislation; it changes medical service agreements from a contract between the physician and the health service corporation to a reimbursement type of plan. In other words the statutes presently in effect contemplate physicians making arrangements with Blue Cross/Blue Shield prior to rendering service. The proposed changes would require Blue Cross/Blue Shield to reimburse any physician rendering service regardless of lack of any prior agreements between the physician and the plan. It may prove necessary to amend the entire chapter to accomplish such a sweeping change. I would appreciate your thoughts on this matter.

Please keep me informed as to the legislative course of these bills; perhaps we can be of help.

Very truly yours,

BIRCH, HORTON, BITTNER & MONROE



Jan Samuel Ostrovsky

JSO:ss
Enclosures: Proposed Bills

IN THE LEGISLATURE OF THE STATE OF ALASKA

A BILL

For an Act entitled: "An Act relating to certain insurance benefits."

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

Section 1. AS 21.87.160(c) is repealed and re-enacted to read:

(c) When a policy of insurance issued in the state provides for reimbursement for any service which is within the lawful scope of practice of a physician, dentist, osteopath, chiropractor, optometrist, podiatrist, or other health care practitioner licensed to practice in the state, the insured or other person entitled to benefits under the policy has full freedom of choice in selecting the health care practitioner and is entitled to reimbursement for the services performed.

Section 2. AS 21.87.170(a) is amended to read:

(a) Each service agreement and subscriber's contract entered into or issued by a service corporation shall provide for health care services of a substantial and broad character to be rendered to subscribers. Each such service agreement and subscriber's contract shall provide that the subscriber shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist or dentist for treatment of any illness or injury within the lawful scope of his or her practice.

Section 3. AS 21.12.070(b) is amended to read:

(b) Provision of medical, hospital, surgical, and funeral benefits, and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under (a)(1), (2), (4), and (10) of this section, shall for all purposes be considered to be the same kind of insurance to which it is incidental, and shall not be subject to provisions of this title applicable to life or disability insurances. All reimbursement provisions of the policies under this subsection are governed by the reimbursement provisions of AS 21.87.160(c) and AS 21.87.170(a).

IN THE LEGISLATURE OF THE STATE OF ALASKA

A BILL

For an Act entitled: "An Act relating to the practice of medicine."

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

Section 1. AS 08.64.380(2) is amended to read:

(2) "practice of medicine" or "practice of osteopathy" means any of the following but does not include the practice of chiropractic, as the adjustment or manipulation of the articulations of the spinal column and its immediate articulations:

(A) maintaining an office or place of business for the purpose of treating the sick or injured for pay; or

(B) the public display of one's name and the letters "M.D.", "M.B." or "D.O." or the words "physician" or "osteopath" or "osteopathic physician", or "osteopathic surgeon", or "osteopathic physician and surgeon", or a specialist designation such as "surgeon" or "dermatologist", "psychiatrist", or the like; or

(C) the assumption or promulgation of a title which tends to show that the person is willing or qualified to diagnose or treat the sick or injured; or

(D) for a fee prescribing, directing or recommending for the use of a person, a drug or medicine of the treatment, cure or relief of a disease, infirmity, bodily injury or defect; or

(E) for a fee performing a surgical operation for the cure, relief or reduction fo disease, bodily injury, deformity, or defect; or

(F) Repealed

Telephone 907/279-9404

Birch, Jermain and Horton
Attorneys at Law

1034 West Fourth Avenue
Anchorage, Alaska 99501

November 9, 1972

Dr. Adrian Barber
Alaska Chiropractic Clinic
Klatt Box 10045.
Anchorage, Alaska

Dear Dr. Barber:

You asked that I ascertain the necessary amendments to incorporate an insurance equalization law into our existing health insurance statutes.

As a preliminary matter, I suggest to you that this particular session of the Alaska State Legislature will be difficult for the chiropractic profession. With the return of Dr. Milo Fritz, chiropractors may expect some rough sledding. It is probable that Dr. Fritz will again introduce his bill which would ban the use of the word "doctor" from all professionals except those who have graduated from an accredited medical school. Additionally, he would strongly oppose an insurance equalization law. Tom Fink, whose voice bears great weight on matters such as these, has indicated to me that he would neither oppose nor strongly support an insurance equalization amendment.

To accomplish your objective, two amendments would be necessary, one to the general Insurance Code, and one to Chapter 87, which deals specifically with hospital and medical service corporations.

A.S. 21.87.330 (8) provides that: "participant physician" means a doctor, dentist, osteopath, optometrist, chiropractor or other licensed health care practitioner who has entered into a service agreement with a service corporation.

A.S. 21.87.160 (c) provides that: No contract may restrict the subscriber's right to free choice of physician or hospital, but shall restrict benefits to be provided on a service basis to services rendered by participant physicians and participant hospitals.

Dr. Adrian Barber
November 9, 1972
Page Two

I would suggest an amendment to 21.87.160 (c), so that it would now read: "whenever any policy of insurance issued in this state provides for reimbursement for any service which is within the lawful scope of practice of a duly licensed medical physician, dentist, osteopath, chiropractor, optometrist, podiatrist or other licensed health care practitioner the insured or other person entitled to benefits under such policy shall have full freedom of choice in selecting their doctor and be entitled to reimbursement for such services."

A.S. 21.12.070 (14) (b) needs also to be amended by the sentence "All reimbursement provision of such policies shall be governed by A.S. 21.87.160 (c)."

I have attached for your consideration a draft bill.

With best wishes.

Cordially,

BIRCH, JERMAIN AND HORTON

Ron Birch
Ronald G. Birch

Enclosure

INSURANCE EQUALIZATION LEGISLATION

AN ACT to provide that insureds or other beneficiaries of insurance policies, subscribers to or other beneficiaries of medical, hospital or hospital and medical service plans and contracts, workmen's compensation policies, and beneficiaries under public assistance programs, shall when such services are offered, have full freedom of choice in the selection of any duly licensed Medical Physician, Dentist, Osteopath, Chiropractor, Optometrist, Podiatrist or other licensed health care practitioner in the performance of services which are within the lawful scope of their respective professional practices.

Section 1 - BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA, that Alaska Statutes 21.87.160 (c) and Alaska Statute 21.12.070 (14) (b) are hereby amended to read as follows:

A.S. 21.87.160 (c) "Whenever any policy of insurance issued in this state provides for reimbursement for any service which is within the lawful scope of practice of a duly licensed medical physician, dentist, osteopath, chiropractor, optometrist, podiatrist, or other licensed health care practitioner the insured or other person entitled to benefits under such policy shall have full freedom of choice in selecting their doctor and be entitled to reimbursement for such services."

A.S. 21.12.070 (14) (b) "Provision of medical, hospital, surgical, and funeral benefits, and of coverage against accidental death or injury as incidental to and part of other insurance as stated under (a) (1), (2), (4), and (10) of this section, shall for all purposes be considered to be the same kind of insurance to which it is incidental, and shall not be subject to provisions of this title applicable to life or disability insurances. All reimbursement provision of such policies shall be governed by A.A. 21.87.160 (c).

Section 2 - BE IT FURTHER enacted that nothing in this Act shall be construed as enlarging the scope of practice of any of the licensed professions enumerated in Section 1.

Section 3 - BE IT FURTHER ENACTED that all acts and parts of acts in conflict herewith are hereby repealed.

Section 4 - BE IT FURTHER ENACTED that this Act shall take effect from and after its passage.

CONNECTICUT

Substitute for House Bill No. 4305. Public Act No. 852. AN ACT CONCERNING UNFAIR INSURANCE PRACTICES. Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 38-61 of the general statutes is amended by adding subdivision (7) as follows: Notwithstanding any provision of any policy of insurance, certificate or service contract, whenever such insurance policy or certificate or service contract provides for reimbursement for any services which may be legally performed by any person licensed under the provisions of chapter 372, reimbursement under such insurance policy, certificate or service contract shall not be denied because of race, color or creed nor shall any insurer make or permit any unfair discrimination against particular individuals or persons licensed under said chapter.

Sec. 2. This act shall take effect with respect to contracts issued after the effective date hereof.

DELAWARE

§ 717. CHIROPRACTIC PRACTITIONERS ELIGIBLE FOR COMPENSATION FROM INSURANCE

For purposes of disability insurance, standard health and accident, sick, and other insurance policies, a Chiropractic physician shall be entitled to compensation for his services.

MARYLAND

Section 489 Title, "Insurance"

7. "For the purposes of health and accident, sickness and other insurance policies, a chiropractic physician, duly licensed to practice in the State of Maryland, shall be entitled to compensation for THOSE services WHICH HE IS LICENSED TO PERFORM UNDER THE PROVISIONS OF ARTICLE 43 AND WHICH HE HAS rendered to any insured."

Section 2. And be it further enacted, That this Act shall take effect June 1, 1967.

MICHIGAN

ENROLLED HOUSE BILL NO. 2712

The People of the State of Michigan enact:

Section 1. Section 3475 of Act No. 218 of the Public Acts of 1956, as added by Act No. 56 of the Public Acts of 1963, being section 500.3475 of the Compiled Laws of 1948, is hereby amended to read as follows:

Sec. 3475. Notwithstanding any provision of any policy of insurance or certificate, whenever such insurance policy or certificate provides for reimbursement for any service which may be legally performed by a person licensed in this state for the practice of chiropractic or podiatry, reimbursement under such insurance policy or certificate shall not be denied if such service is rendered by a person licensed to practice chiropractic or podiatry within the statutory provisions provided in his individual practice act.

This act is ordered to take immediate effect.

MONTANA

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING DISABILITY INSURANCE AND WORKMEN'S COMPENSATION POLICIES TO PROVIDE THE INSURED SHALL HAVE FULL FREEDOM OF CHOICE IN THE SELECTION OF ANY DULY LICENSED PHYSICIAN, OSTEO-PATH, CHIROPRACTOR, OPTOMETRIST, CHIROPDIDIST FOR TREATMENT OF ILLNESS OR INJURY; PROVIDING AN EFFECTIVE DATE; AND CONTAINING A REPEALING CLAUSE;"

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1. All policies of disability insurance, including individual, group and blanket policies, and all policies insuring the payment of compensation under the workmen's compensation act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist or chiropodist for treatment of any illness or injury within the scope of his practice.

Section 2. Nothing in this act shall be construed as enlarging the scope of practice of any of the licensed professions enumerated in Section 1; nor shall this act be construed as amending, altering or repealing any statutes relating to the licensing or use of hospitals.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

NEW JERSEY

A supplement to "An act concerning health and accident insurance, supplementing chapter 38 of Title 17 of the Revised Statutes, and repealing section 17:18-7 of the Revised Statutes," approved August 2, 1939 (P.L. 1939, C.305).

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Notwithstanding any provision of a policy or contract of group accident, group health or group accident and health insurance, hereafter issued or delivered in this State, whenever such a policy or contract provides for reimbursement for any service which is within the lawful scope of practice of a licensed chiropractor, a person covered under such group accident, group health and group accident and health policy or contract shall be entitled to reimbursement for such service, when the said service is performed by a licensed chiropractor.

2. This act shall take effect immediately.

(Senate, No. 363 covering individual policies; Senate, No. 364 covering accident and sickness insurance; and Senate, No. 365 covering Workmen's Compensation were also enacted at this time.)

NEW MEXICO

AN ACT RELATING TO INSURANCE AND TO THE SUBMISSION, PROCESSING AND PAYMENT OF PROOFS OF CLAIM THEREUNDER AND PROHIBITING DISCRIMINATION IN CONNECTION THEREWITH, AND DEFINING HOSPITAL CARE AND LICENSED PRACTITIONER OF THE HEALING ARTS. (SENATE CORPORATIONS COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 138; APPROVED MARCH 22, 1963)

Be It Enacted by the Legislature of the State of New Mexico:

Section 1. Within the area of and limits of coverage offered an insured and selected by him in the application for insurance, the right of any person to exercise full freedom of choice, in the selection, of any hospital for hospital care as that term is hereinafter defined, or of any licensed practitioner of the healing arts for treatment of any illness or injury within his scope of practice, shall not be restricted under any new policy of sickness or accident insurance, contract or health care plan issued after January 1, 1964, in this state or in the processing of any claim thereunder. Any

New Mexico Law - continued

person insured or claiming benefits under any such sickness and accident insurance policy, contract or health care plan providing within its coverage for payment of service benefits or indemnity for hospital care, or treatment of persons for the cure or correction of any physical condition, shall be deemed to have complied with the requirements of such policy, contract or health care plan as to submission of proof of loss upon submitting written proof supported by the certificate of any hospital currently licensed by the state department of public health, or any practitioner of the healing arts licensed as such under the laws of the state of New Mexico.

"Hospital care" as herein used means hospital service provided through a hospital which is maintained by the state or any political subdivision of the state, or place, which is currently licensed as a hospital by the state department of public health, and has accommodations for resident bed patients, a licensed professional registered nurse always on duty or on call, a laboratory and an operating room where surgical operations are performed, other than a convalescent or nursing or rest home.

"Licensed practitioner of the healing arts" as herein used means any person holding a license provided for in Section 67-1-3 New Mexico Statutes Annotated, 1953 Compilation, authorizing the licensee to offer or undertake to diagnose, treat, operate on or prescribe for any human pain, injury, disease, deformity, or physical or mental condition.

OHIO

(Amended Senate Bill No. 240)

To enact section 3923.041 of the Revised Code relative to guaranteeing full protection and recompense for insured risk under sickness and accident insurance contracts providing for reimbursement of sickness and bodily injury claims.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 3923.041 of the Revised Code be enacted to read as follows:

Sec. 3923.041. Notwithstanding any provision of any policy of insurance issued or amended after the effective date of this act, whenever such policy provides for reimbursement for any service which may be legally performed by a person licensed in this state for the practice of osteopathy, optometry, chiropractic, or podiatry, reimbursement under such policy shall not be denied when such service is rendered by a person so licensed.



Alaska Thermography

FRONTIER BUILDING
3601 C Street • Suite 390
Anchorage, Alaska 99503
(907) 563-3677

RECEIVED

MAR 17 1983

Josephson,

Dear Colleague:

Your interest in thermography is timely. This space-age technique is used as a diagnostic and screening tool in various formats, including the world of personal injury diagnosis and workers' compensation certification. Thermography is the only objective technique to demonstrate sensory nerve damage, and can do so accurately, efficiently, painlessly, and without risk to the patient. It is completely non-invasive. There is no radiation.

Thermography has the ability to validate the presence of reported pain in the absence of other clinical objective findings or other medical evidence. Thermography finds a reason for pain if there is one. Thermography answers the question, "...is there something...there or not?" The accuracy of the thermogram is often greater than that of the myelogram and/or the EMG, particularly where sensory nerve abnormalities are involved.

Alaska Thermography provides the highest quality thermographic services available in Alaska. Our modern facilities are fully equipped to provide prompt and efficient examinations. We serve patients on a referral basis.

We are able to provide additional information on this subject, provide an education service to organizations, and serve patients, physicians, industry, insurance companies and the trial bar. We welcome your visits and inquiries.

Very truly yours,

Ann M. Barke

The Miami Herald

Sunday, December 5, 1982



The symmetrical image, top, is a thermogram of a 34-year-old man with a normal lower back. The other image, bottom, which has an asymmetrical pattern, is of a 35-year-old male construction worker with damage to his lower back and chronic pain caused by lifting a heavy object.

Heat images detect pain, doctors say

By AVRAM GOLDSTEIN
Herald Staff Writer

Dr. Harry Rein doesn't ask patients, "Where does it hurt?"

Instead he reads films that show variations in body temperature and then tells lawyers, insurance companies and doctors whether the patient's pain is real. If it is real, Rein tells them where it hurts.

Rein is an expert on thermography, the process of recording thermal variations to show areas of the body with reduced blood flow or damaged nerves.

Thermograms are designed to show pain graphically. They have been particularly successful in pinpointing nerve damage in the back, neck and chest, according to medical journals.

Other diagnostic methods, such as myelography and electromyography, test nerves that control body movements. But experts say thermography is the only test for damage to the nerves that control the sensation of feel.

"Patients lie very little," Rein said. "Many treating physicians just don't believe them" about pain.

In hopes of leading a thermographic revolution in Florida's hospitals and courtrooms, Rein and several doctors have set up offices around the state to capitalize on the trend.

In October, the second office of Thermographic Medical Associates Inc. opened down the street from the Broward County Courthouse in Fort Lauderdale. Next month, another is due to open in Miami, and another will follow in West Palm Beach, the firm said. The home base is in Winter Park.

Rein and his colleagues believe thermography is on the verge of gaining widespread acceptance — not only in medical offices, but in court, where claims of pain and suffering often used to be impossible to prove.

Now soft-tissue pain can be documented, said Rein, a family physician and lawyer.

"I predict that thermography . . . will have the same impact as X-rays had 35 to 40 years ago," Rein said.

Dr. Joel Grossman, an Orlando chiropractor and president of the firm, calls thermography "a lie detector for pain."

Grossman, who also is a member of the state Board of Chiropractic, said he plans to meet this month with state insurance officials to demonstrate the accuracy of thermograms in handling disability claims.

Each test, which costs from \$100 to \$300 depending on the problem being diagnosed, lasts about an hour.

An electronic sensor surveys infrared radiation from the patient's body and converts it into a temperature reading, which is converted into a color image.

A series of color photographs might be taken of the infrared video image of the patient.

The machine produces blotchy color images that, based on their gradations and symmetry of the colors, show the presence or lack of heat on the skin.

Grossman said it would be "virtually impossible" for a patient to fake his pain because multiple thermograms are taken not only at each sitting, but on different days.

Dr. Charles Wexler of Encino, Calif., a pioneer in thermography, reported 93 per cent of his thermograms were accurate when checked against clinical findings.

Last month, the firm conducted a short course to introduce more than 50 Broward trial lawyers to the technique, which national legal experts have said could usher in a new era in personal injury and workers' compensation cases.

Heat 'Pictures' of Pain Expected to Aid Sufferers, Detect Fakers

By BOYCE RENSBERGER

PAIN victims who have been told by doctors that the suffering is "all in your head" may have a new ally in thermography, a method of making pictures of temperature variations on the skin.

Scientists have found that thermograms, as the pictures are called, often show the painful areas to be several degrees cooler than normal.

Many cases of what doctors used to call psychogenic pain -- meaning that it was produced in the mind -- are turning out, after thermographic study, to be at least partly physical after all. Even patients who were thought to be faking have been vindicated.

In many cases the images produced by the infrared radiation of heat provide the only objective evidence for disorders that physicians used to dismiss as hypochondria or malingering.

Thermography has had various medical uses, including the detection of breast cancer, for more than 20 years. Its application in pain studies, however, is quite recent. Five years ago, there were only two or three thermography centers dealing with pain in the United States. Now there are about 70 and the number is beginning to grow rapidly.

Recently, thermography has begun to be used in the growing number of court cases where people are seeking disability payments or insurance claims for painful conditions that, heretofore, had no medically verifiable signs. The method is expected not only to aid true sufferers but to weed out malingerers who are getting undeserved disability pay.

Some experts also feel that by separating victims of real pain from the phonies, the method will encourage doctors to look more carefully for physical causes that previously went unrecognized.

"I feel that in the next decade this is going to become one of the most exciting diagnostic tools in pain clinics," Dr. Mathew Lee told the American Pain Society's annual meeting in New York last month. Dr. Lee is director of the Chronic Pain Unit at New York University's Goldwater Memorial Hospital.

Dr. Lee, a leading expert on acupuncture, also said at the meeting that treatments with the ancient Chinese needle method not only relieve many cases of pain but also restore the temperature in afflicted areas of the body to normal.

Other scientists reported similar results, showing that the cooler temperatures of painful parts of the body were restored to normal by pain-killing drugs and, in the more severe cases, surgery to cut the pain nerves.

The lower temperature of painful areas is a result of constricted blood vessels in the area reducing the flow of warm blood from deep within the body. It has been established that known injuries can cause the cooling reaction, and many pain specialists now think that even if no cause is known and no abnormality other than the temperature can be found, thermography indicates that there must be physical problems that simply cannot be detected with existing methods.

Thermographic machines, which cost from \$30,000 to \$70,000, contain cameras that, with rapidly spinning prisms, scan a series of closely spaced points on the body. An electronic detector senses the infrared radiation from each point and converts it into a temperature reading. Usually the reading is displayed on a picture tube as a certain intensity of white light or as a color arbitrarily chosen to represent a narrow temperature range. Many machines can distinguish differences as small as half a degree Fahrenheit.

Surface temperature normally varies considerably over the body. Extremities are cooler than the trunk. Even on the trunk itself there can be normal variations of several degrees. What pain diagnosticians look for is a variation that is not symmetrical; for example, the right hip is compared to the left hip. Or, in the case of migraine, one side of the forehead is compared with the other.

Very often, the skin temperature where the patient says it hurts will be anywhere from 2 to 6 degrees cooler than the opposite side.

Dr. Pierre L. LeRoy, director of the Delaware Pain Clinic in Wilmington and a leading authority on thermography, explained one mechanism that is believed to cause the temperature abnormality. When a tissue is injured, he said, inflammation is an early result. Initially the site becomes warmer because there is an increased blood flow as part of the body's normal healing response. Once healing is complete, however, inflammation subsides and the temperature falls to normal.

In some cases, however, certain nerves in the area, called sympathetic nerves, may remain irritated. These nerves, part of the autonomic nervous system, which controls involuntary mechanisms, send signals that cause blood vessels in the healed tissue to constrict. The area becomes cooler and the reduced blood flow keeps the nerves irritated, producing pain that may persist for many months after the original injury has healed.

"All the conventional evidence of injury may have disappeared," Dr. LeRoy said, "leaving nothing that we can demonstrate physically except a cold spot. Until thermography came along, all we had was the patient's word."

Dr. S. Uematsu of Johns Hopkins University's pain clinic, which was one of the first to use thermography, told the Pain Society meeting that of 800 chronic pain patients who were tested, 54 percent had abnormal thermograms.

Among those who had normal thermograms, only 11 percent were found, after detailed examination and nerve testing, to have any evidence of related physical disorders. The majority were judged to have psychogenic pain or, in other words, pain produced by a psychological disorder. Their pain was real but it could not be traced to a physical injury.

Among patients whose painful areas were about 2 degrees cooler, 30 percent had identifiable physical injuries. When the painful area was 6 degrees cooler, 75 percent were found to have physical injuries.

Dr. Uematsu suggested, on the basis of this study, that a patient's pain be considered most likely to be organic rather than psychogenic if a thermogram showed the purportedly painful area to be more than 2 degrees cooler.



Delaware Pain Clinic

Thermographic readings can provide maps of warm and cool areas of the body. Cool readings, shown by darker shading, are said to indicate the likelihood of genuine pain, even if no other indication of pain is found. Extremely warm areas, shown by lighter colors, are also trouble spots.

JULY 1981

Insurance

NATIONWIDE CIRCULATION

Adjuster

Used for claims

Thermography new method to determine whether pain exists

By MERLE GORS

LOS ANGELES — Thermography, a process that uses sensitive equipment to make an accurate record of heat emissions from the body and photograph them, is gaining increasing acceptance in the courts as a way to prove or disprove that pain exists.

Hippocrates first came up with the theory in 400 B.C. that areas of heat in the body indicated pain and disease.

Modern equipment translates that theory into precise measurement of heat emissions, and the ability to take pictures of these emissions to show where pain exists in the body.

The pictures also show fractures, previous surgery, cuts and old injuries which may have produced organic change but are not necessarily symptomatic.

Two types equipment

There are two basic kinds of equipment now on the market for thermography. One is electronic and very expensive, and the other, developed more recently, is the liquid crystal type. Liquid crystal machines cost about \$5,500.

Both types of machines use precise instruments to record heat emissions on a screen and this graphic representation is photographed with standard film. Both black and white, and color photos are used, the B/W to study overall pain patterns for normal or abnormal distribution, and the color to show intensity of pain or nerve root irritation. Each one degree centigrade is represented by a different shade of color depicted in the pictures by spots and areas of color.

After extensive use for many years in detecting breast cancer, thermography has in recent years been increasingly employed by both plaintiffs and the insurance industry. Its use for insurance purposes has been primarily in California, but there are already some 70 thermography centers in the U.S.

Thermograms are being accepted in disputed cases by the California State Compensation Insurance Fund, which pays for prescribed physician thermograms.

Can disprove claims

The technique is gaining favor with some California insurers who say it's an effective way to disprove a claim. It follows that it's also effective for the plaintiff in helping to prove that the pain exists.

One of the pioneers in medical/legal thermography was the late J. Gershon-Cohen, M.D., of Philadelphia.

A leading exponent of thermography in California is Dr. Charles E. Wexler, 2 Tarzana, California, radiologist who recently wrote a book, *An Overview of Liquid Crystal and Electronic Lumbar, Thoracic & Cervical Thermography*.

Dr. Wexler has played an important role in the development of thermography procedure into a practical, everyday, usable tool.

Will expand in use

The radiologist has done a considerable amount of thermography for both plaintiffs and insurers and has testified in court many times on the process. He predicted thermography will continue to expand "because it works." He said the process is "very objective, if done properly."

One of his purposes in writing his book, Dr. Wexler said, was to acquaint insurance people with what thermography is all about, so they can make the most effective use of the technique. If done improperly, he cautions, thermograms can be subject to abuse.

He said he gets 93% accuracy in his thermograms when correlated with objective clinical findings. In his book, he said the "accuracy of the thermogram is comparable to the EMG and the myelogram. It furnishes a perspective not obtainable by them, and can provide a graphic evaluation of nerve root irritation or significant musculoligamentous spasm. Furthermore, it is totally harmless and painless."

Cost of thermograms at his firm, Dr. Wexler said, is \$250 each for lumbar and cervical, and \$100 for thoracic.

Not making best use

Dr. Wexler feels that insurers are often not making good use of thermograms because they use them as a last resort. He advocates early use of the process, even as early as pre-employment screening.

Thermograms have a very practical use for insurance claims people, Dr. Wexler said. If they come out negative, the insurer knows the case must be fought since there is no injury shown. If the patient refuses the thermogram, that is also significant. If

the thermogram is positive, it means an injury, which could be an old injury or may be recent. This, at least, gives the claims person some knowledge of where he stands with the case, the radiologist said. Setting up a loss reserve, or further tests may be indicated.

And he suggested that what he calls "serial" thermography would be valuable in taking a series of thermograms at intervals after a claimant's injury, to evaluate change in the injury, whether it is transient or chronic, or perhaps has healed.

Dr. Wexler noted that use of thermograms, if they come out normal, can save the cost of myelograms—much more expensive than a thermogram.

Pre-operative uses

He said, "Pre-operatively, the thermogram can be used to discover levels of nerve irritation that may not be apparent from a single- or two-level positive myelogram and—as long as the patient is going to get surgery anyway—the thermogram demonstrates that other areas might be involved, and they might as well be explored at the same time.

"The point is that if there is another level involved and the obvious or more prominent symptomatic levels are cured, it may unmask the minor level which now becomes the patient's major symptoms."

He continued, "Secondly, when the patient is asymptomatic post-operatively and the procedure is thought to be a success, it would be quite valuable to get a baseline thermogram at that time. It will be abnormal, most likely, from surgery, and that's why it is necessary. If the patient has a recurrence, however, which 50 to 85% of these people do, the thermogram is about the only good test I can think of that can evaluate what's really going on. That is, is it the same level—same side, same level—opposite side and different level, etc., that's producing a new symptomatology? At that point the other tests are more or less incapacitated in terms of their value, because of the surgery."

The advent of the lower-cost liquid crystal equipment will probably vastly expand the use of thermograms, Dr. Wexler said.

It looks as though the insurance industry is going to get a lot better acquainted with thermography in the future.

A bill has been enacted in Utah calling for the establishment of a 20-member commission to reorganize the Utah insurance code.



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The utilization the Thermography will be independant of any other diagnostic study.

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1. DO NOT SMOKE for eight (8) hours prior to exam.
2. DO NOT HAVE PHYSIOTHERAPY of any kind, Acupuncture, EMG, or Myelogram the day of the exam.
3. DO NOT WEAR T.E.N.S. unit or similar apparatus 24 hours prior to exam.
4. Shower or bathe no later than the night before the exam.
5. DO NOT SUNBATHE at least two (2) weeks prior to your schedule test.
6. If the patient is female, she should not schedule for the exam during her menstruating.
7. Please do not bring your children with you to the exam.

On arrival at the exam center you will be given instructions. Your exam will be done without any clothing on. You will be allowed (female) to wear a towel covering the breast and genitalia. (Males) will be supplied with adequate genitalia covering also. During the exam time you will be asked not to rub, scratch or irritate the involved areas to be thermographed. Please allow one to one and a half hours for the exam.

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(Thermography will be done by appointment only.)

Thank You.

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Thermography Raises the Stakes in Whiplash, Back Cases

'Pictures of Pain' Pay Off How Thermography Can Color Jurors' Reactions

Thermograms, infrared pictures that show the body's surface heat emissions, and thus possible injury, often present the only objective proof for a plaintiff's subjective complaints of neck or back pains. And the proof usually comes in brightly colored pictures that jurors, with an expert's help, can readily understand.

"The visual impact on the jury is great," said Vernon W. Hunt Jr., a Santa Monica, Calif., lawyer who used thermograms last year to help turn a "typical \$25,000 whiplash case" into a \$137,000 verdict.

But many plaintiffs' lawyers are unsure — or unaware — of the pictures, and those among the defense bar who are familiar with thermography generally debunk the process. "It proves nothing," said Santa Ana, Calif., lawyer James Hammerton, the defense attorney in Mr. Hunt's case, which is now on appeal. "All thermographers agree that it only records skin temperatures. I'm skeptical of its value."

But ever since Hippocrates first used mudpacks, doctors have known that abnormal body heat can indicate injury or disease, said Dr. Charles E. Wexler, an Encino, Calif., radiologist whom most doctors consider the prime mover behind recent thermography research and application.

In 8,000 case studies, Dr. Wexler has documented for the first time that thermography can detect sensory nerve damage. He also has standardized the method of taking and reading thermograms and has found that sensory nerve damage follows a path through portions of the body, much like the route motor nerves take, for instance, when they start in the lower back and continue around to the front of the legs down to the toes.

Sensory nerves near the surface of the skin make possible the sense of touch, while motor nerves operate muscles that allow movement, Dr. Wexler said. And while clinically accepted electromyograms (EMG), myelograms and discograms can detect motor nerve and disk damage, they can't verify any sensory nerve damage usually associated with soft-tissue injuries, such as common whiplash.

"In another year or so, thermograms will be used like thermometers. You can't refute it and the accuracy is outstanding," said Los Angeles lawyer Richard Plotin, who has teamed with Dr. Wexler in cases and booklets.

Dropping the Cases

While defense lawyers contend that thermographic equipment can easily be fooled and some of the operators are poorly trained, Dr. Wexler said his studies show the process to be accurate 93 percent of the time and that studies by other physicians are producing accuracy rates approaching 99 percent.

"Thermography helps patients, lawyers and doctors," said Edward B. Rood Sr., a Tampa Fla., lawyer and former president of the Association of Trial Lawyers of America. "It's a new thing to help us find the truth, and that's what we're all after."

As an example, he said, he sent 12 clients to thermographers and found that three of them weren't injured. "I suspected they weren't telling the truth about their neck strains and back strains. I got out of the cases," he said.

Yet, for all its proponents' claims of accuracy, thermography isn't well-known or often used in the medical field. Dr. Wexler estimates that perhaps several hundred electronic thermography machines are in use across the country, but Dr. Andrew A. Fischer of New York City figures that fewer than 20 doctors are "highly qualified" to take and read thermograms.

Now, doctors and lawyers are setting out to inform the uneducated. For example:

• Dr. Wexler and other physicians met twice last week with defense lawyers at the annual State Bar of California meeting in Sacramento. Like other thermographers, though, most of Dr. Wexler's calls still come from the plaintiffs' bar.

• Dr. Fischer, chief of rehabilitation medicine at the Veterans Administration Hospital in the Bronx, is putting together the first comprehensive training course for using thermography to detect neuromusculoskeletal disorders. For a \$1,500 fee, doctors will hear a dozen radiologists, orthopedists and others explain thermography and its applications in a series of two-day seminars in Glen Cove, N.Y., beginning in October.

• Mr. Rood, who spoke on thermography at last July's annual ATLA meeting in Toronto, is gathering statistics and case studies on the use of thermograms in court. He said he hopes to present a more comprehensive picture at next year's ATLA meeting.

Turning the Tables

"What I think will happen is that defense lawyers are going to fight like crazy to keep thermograms out of court," said Los Angeles lawyer Steven D. Archer, who gave the first ATLA lecture on thermography a year ago. "Then, if plaintiffs' lawyers get them admitted, the defense will start making motions to make all little fender-bender victims submit to thermograms. They'll try to turn the tables on the plaintiffs' bar."

Defense lawyers at the California bar meeting said they decided they'd better learn about thermograms because they're running into them more often in workers' compensation claims and lawsuits.

"The defense bar was at a loss on how to combat this," said Los Angeles attorney Joseph Minor, who attended one of the sessions. Though he hasn't had a case involving the procedure yet, he said, "I'm not afraid of defending against thermography anymore."

One panelist, Dr. Jack Vandernoot, a Los Angeles orthopedic surgeon, minimized the importance of thermography. "I think the test is premature and it only tests sensory nerves indirectly, not directly," he said.

Premature or not, thermograms are rarely excluded from court, lawyers said. From Florida and Louisiana to Wisconsin, from New York to California, the pictures are slowly finding their way into the hands of jurors and arbitrators.

It's tough, lawyers said, to object to demands that a party undergo thermogram testing because it's unlike EMGs, myelograms or discograms, all of which require pins, needles or other invasive techniques that can be painful and dangerous.

Without radiation, without needles, without so much as a pin prick, thermography machines take a heat-sensitive picture of the body's surface. The picture measures changes in temperatures and relies on symmetrical comparisons — the various changes in temperatures in one leg, for instance, should look like those in the other leg, the doctors said.

With 10 different colors, each representing a 1 degree centigrade change, doctors look for an asymmetrical pattern showing at least a 1 degree difference over 25 percent of the area pictured. If the right thigh, for instance, displays a noticeably larger cool area than the left thigh, doctors know something is wrong.



WHAT JURORS SEE: Thermogram of the back of the legs of a patient who suffered a muscle injury in his right calf. Blue area on the right shows a 'cool spot' surrounding the site of injury, indicating that that part of the limb is feeling the effects of a vascular neuropathy.

By JAMES S. GRANELL

National Law Journal Staff Reporter

A LITTLE-USED medical procedure is helping to turn \$10,000 whiplash and back injury cases into \$100,000 verdicts.

By the same token, though, the procedure — involving thermograms, so-called "pictures of pain" — is weeding out litigious opportunists who, for example, fake backaches from rear-end crashes.

In the process, the introduction of thermograms in court during the last three years is wreaking havoc to the age-old trial battles pitting the victim's word against the word of doctors who can't find anything clinically wrong.

Sensory Nerve Damage

What Dr. Wexler found was that sensory nerve route damage near the base of the spine, which appeared as "hot spots" better in black-and-white thermograms. Irritated sensory nerves along a path into the extremities, which showed up as "cool spots" better in color pictures. Cool spots occur when capillaries, tiny blood vessels that surround the nerves, become constricted. Hot spots, on the other hand, denote an accumulation of blood.

So a thermogram showing an injured back could also show coolness down a leg and verify objectively for the first time a person's complaint of numbness in the lower extremities.

Besides picking up sensory nerve damage, thermographers claim their pictures can help them clinically diagnose such complaints as strains, sprains, muscle spasms, infections and inflammations, and can give a different perspective — sometimes the only one — on disk diseases or protrusions.

The photographs often are called "pictures of pain," a misnomer because pain is a perceptible feeling that varies with individuals, the doctors said. But when the pictures reveal something wrong with an area a patient is complaining about, the name seems appropriate.

Just what the pictures show, though, is being debated.

"All it does is tell the treating physician that something's wrong. Maybe it's a disk or maybe it's just too many vitamins," said defense lawyer Hammerton, who agrees that the defense bar will be fighting the use of thermograms in court.

He said thermographers go too far in trying to show that sensory nerve damage can be traced along a pathway correlating with motor nerve pathways or that thermograms can find protruding disks that more accepted tests can't pick up.

"When all the accepted tests turn up negative and the thermogram turns up positive, defense lawyers say this is just a scheme to try to make us believe there's an injury when there really isn't," Mr. Hammerton said.

Besides, he contended, the machine can be fooled. Just sitting with one leg over another for a while before a thermogram is taken will cause asymmetrical colors to appear, he said.

Dr. Vandernoot also claimed that the sharply divergent colors mislead jurors because, for instance, a pink area next to a blue area may represent only a 1 degree difference yet may look drastic. Dr. Wexler said color charts are photographed with each picture to avoid any confusion. The contrasting colors are used only because it's easier for doctors to spot abnormal patterns, especially when going through hundreds of thermograms, he said.

Thermographers argue that their machines are only a diagnostic tool, and are only as good as the treating physician. Lawyers sometimes are getting stuck with doctors who really don't know what they're talking about, Dr. Wexler said.

The procedures can be so standardized and the machine so calibrated — two concerns about the field — that good diagnosticians can pick up the fakes, the doctor said. Those patients who put ice packs or heat on their bodies can't repeat the procedure accurately enough to show the same patterns on subsequent pictures, he said.

"Any time you want to check a thermogram, just repeat it," Dr. Wexler said. "If a person's injured, it'll show up the same way consistently." To prevent phony pictures — he said he's never seen a "false negative" in 6,000 cases — Dr. Wexler requires three pictures to be taken 20 minutes apart under controlled room temperatures. He also takes pictures at later sessions, including shortly before trial.

From 55 to 70 percent of all thermograms show no injury, said doctors and lawyers. In addition, Mr. Hammerton said he has seen "false positives," which Dr. Wexler explained had occurred in 12 percent of his early tests because the thermograms couldn't be compared with anything.

"There's nothing else to heck them against. They're the only thing that detects sensory nerve damage," the doctor said. "That's why we take a number of pictures over time to ensure accuracy."

Settlements and Verdicts

Mr. Hammerton said he doesn't believe thermograms play much of a part in settlements or verdicts, but many other lawyers disagree.

"It's a very effective tool for settlement, even for the defense," said his adversary, Mr. Hunt. "I've had three cases that came up negative" and didn't proceed.

But it's the positive thermograms that end up in court, as the two lawyers found out a year ago.

A sheriff's deputy had rear-ended a car driven by Alberta Jean Mayhugh, who suffered neck and lower back pain that became chronic. Tests by EMG, myelogram and discogram proved negative. But a computer-assisted tomography scan (CAT scan) showed a protruding disk and a thermogram showed the pain distribution in the neck and lower back, said Mr. Hunt, whose settlement demand for \$75,000 was met with an offer for \$25,000.

"Traditionally, the Mayhugh case wouldn't go for more than \$25,000," Mr. Hunt said. "Most cases go for \$7,000 to \$12,000 if you can't prove an injury objectively even though the person is permanently disabled."

The jury returned a verdict of more than \$137,000, which was reduced by \$25,000 that another defendant had been paid in a pretrial settlement. *Mayhugh v. Augusten*, 287434 (Orange Cty., Calif., Super. Ct.)

While Mr. Hunt said the thermograms carried the day for his client, Mr. Hammerton pointed out that eight doctors testified and that four jurors he talked with briefly said they "didn't pay any attention to the thermograms."

"Maybe they didn't rely on them because they believed she really was hurt," Mr. Hammerton said.

But Dr. Wexler, who testified at the trial, said the color pictures have a "tremendous subconscious effect" on jurors. "I've had three cases where the jurors have said they put it aside because the procedure was too new, but they gave an award anyway and there was no other evidence backing up the plaintiffs' claims," he said.

The newness of thermographic applications in soft-tissue injuries is part of the reason for its slow acceptance, said Dr. I. Alfred Breckler, who is also a lawyer practicing in Santa Monica, Calif.

"No one can say he's making his [thermographic] judgment based on a reasonable medical certainty," said Dr. Breckler, who practiced general and thoracic surgery until 1969. "Until the average radiologist or doctor has the ability Wexler has, the procedure will be challenged."

Dr. Breckler, who said he's "enthusiastic about the potential" of thermography, contends that defense attorneys don't want to know about the procedure. "It will take away their crutch," he said. "Right now they can say in court that everyone is litigious, everyone is after the buck. God forbid anyone who has actual pain."

Lawyers also have to watch out in using thermograms to pick physicians who follow established procedures. Too many doctors have abandoned the method of taking thermograms over time or have cut out other portions of the standard procedure, Dr. Wexler and Vandernoot said. Black-and-white thermograms of the lower back, for instance, are beat for showing "hot spots" of irritated nerves, Dr. Wexler said, while color pictures of the rest of the body best show the "cool spots" where less blood is reaching.

Defense lawyer Annette Mann of Los Angeles said she believes that the lack of trained thermographers was one of the best challenges to use in court.

Another drawback to establishing the reliability of thermographic evidence, Dr. Breckler said, is that few statistical studies in the United States exist.

Dr. Breckler, though, doesn't normally have to rely on thermographic evidence because his law practice, limited to medical malpractice, usually involves a variety of other objective material.

The biggest problem in getting thermographic evidence accepted may be the "bad press" of its past history and uses, said Dr. Wexler and others promoting its use in soft-tissue injuries.

Thermography was touted as a detection device for breast cancer in the 1960s, but proved to have only a 70 percent accuracy rate. Other techniques, particularly mammography, proved much more accurate.

Because thermograms are pictures of the surface, they can't "see" a broken bone. They can only detect something gone wrong in the area of the break. So they have also been used with X-rays to track healing of tissue around such injuries as a broken leg.

In fact, the only computerized thermographic machine, developed by Dorex Thermography Services in Santa Ana, is often used to trace aches, pains and other injuries in athletes, said lawyer Marshall Houts of Laguna Beach, Calif., who has been writing about thermography uses in the bimonthly periodical *Trauma* for 24 years.

Mr. Houts claimed the Los Angeles Dodgers baseball team traded National League batting champion Tommy Davis in 1966 because, in part, a thermogram showed that the area around an ankle he broke sliding into second base in a May 1965 game hadn't healed properly. Though he went on to play for nine other teams, Mr. Davis apparently had lost some mobility.

'A Bad Taste'

But such uses of thermograms are simply different applications for the same machine or, worse, different applications of outdated thermographic equipment, Dr. Wexler said.

Because of the failures in breast cancer detection and in other uses, such as phlebitis, the radiologist kept his research of thermograms in soft-tissue injuries quiet while conducting 1,000 tests in 1976. "The whole subject left a bad taste in everyone's mouth," he said. He finally announced his results and released his data in 1977 when he said he felt so sure about the procedure that no one could possibly come up with results different from his.

But it wasn't until a 1979 Los Angeles Superior Court case that lawyers took notice of thermography in soft-tissue suits. In the case, plaintiff's lawyer Plotin was seeking \$75,000 for a woman who complained of a sore neck and back after her car was hit from behind. The defense was willing to settle for \$10,000 even though the insurer claimed the woman wasn't injured. Thermograms were the only evidence supporting her claim and the jurors awarded her \$50,000, Mr. Plotin said. *Stroed v. Bionem*, 52518.

Dr. Wexler, who appeared as an expert witness for the plaintiff in *Stroed* and who now gets \$1,000 to testify in a case, said he wants to stop going to court. "I'm only doing it because I'm trying to establish a new medical technology," he said.

In the process, he helped to develop flexible liquid crystal boxes that can be placed directly on the body to take heat readings. The slower process has one major advantage — cost.

The liquid crystal boxes, put out by Flexitherm Inc. of Westbury, N.Y., a company in which he has no financial interest, cost about \$5,000 for a set of eight, each of which can be used about 700 times. The faster electronic machine put out by several companies runs about \$35,000. The Dorex machine costs \$125,000, but its new computerized machines coming out the first of the year will run about \$50,000 less, said the manufacturer, engineer Al Kutaa.

It still might take three to five years for thermograms of soft-tissue injuries to become a standard procedure accepted routinely in courts. Meantime, Dr. Wexler said, he still sees looks of amazement whenever he explains the process to jurors or lawyers. "It's like future shock to them," he said. ☐

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Says Pain Is Not Diagnosed, Rather The Nerve Tone

Medical Tribune Report

AS EXPLAINED by California's Dr. Paul H. Goodley, "Pain is never diagnosed thermographically. What is diagnosed is an alteration of the sympathetic tone and persistent sympathetic alterations that are reflected by alterations of skin temperature emanation when associated with appropriate segmental clinical pathology. What is revealed is a process that can be abnormal when it is associated with other circumstances."

In the view of California's Dr. Charles Wexler, a clinician, myotomes or muscle patterns are reflected in the lumbar area, since each nerve "twigs" to innervate muscle as it exits from the spine. Abnormalities are seen as "hot" patterns, and, typically, nerve root irritation will trace a color pattern following the course of the nerve root. In the arms and legs, said Dr. Wexler, dermatomes reflect the pathophysiology, which is capillary constriction along the course of the nerves. These are "cold" patterns.

Pain Thermograms Resolving Disputed Cases in Courtroom

BY LARRY CHILNICK

NEW YORK — Thermography, which has been used as a diagnostic and screening tool in various formats, has found a new niche in the multimillion-dollar world of personal injury diagnosis and worker's compensation certification. Pain specialists around the country are employing video-thermography to validate the presence of reported pain in the absence of usually acceptable clinical or other medical evidence, or, sometimes, to invalidate cases in which subjective pain cannot be confirmed on the thermogram.

Courts in California, for example, now routinely accept thermographic evidence to settle insurance disputes when the medical testimonies from physicians conflict.

The new expertise had an SRO airing at the Second General Meeting of the American Pain Society in New York.

Continued



River of yellow demonstrates asymmetry and reflects the apparent source of a referred patient's complaint of pain, localized in area of right eye.

Courtesy Dr. Paul H. Goodley