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INSURANCE - DENTAL EXAMINERS

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JOHN L. LASTER
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August 14, 1985

Hon. Rick Rule
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
Tenth and Constitution Avenues, N.W.
Washington, D.C. 20530

Dear Mr. Rule:

I am writing on behalf of the National Insurance Consumer Organization to bring to your attention evidence of concerted anticompetitive conduct within the property casualty insurance industry that is not exempt under the McCarran-Ferguson Act.

The industry is now going through one of its periodic capacity scares. As in previous incidents, the public suffers severe and economically debilitating dislocations. After a period of glut, when premiums drop to a fraction of their prior fixed-price levels, underwriting tightens like a vise and important major manufacturing and service industries find themselves unable to purchase insurance protection at any price from any company.

To be sure, much of this pattern may reflect nothing more than the operation of the business cycle in an industry not under reasonable and effective regulatory oversight at the national level. The extremely aggressive price competition in commercial property/casualty lines in the late 1970s, and perhaps the subsequent price increases as well, appears to reflect such market forces. Some of the industry's responses may also reflect the mindless herd instinct which so distinctively marks the insurance industry. This is perhaps to be expected in an industry with a long history of price-fixing and other cooperative anticompetitive arrangements under state regulation that from the consumers' perspective ranges from lax to impotent, but so be it.

But the response of the industry to recent developments in their customer industries -- and the statements of industry leaders explaining their conduct -- suggest that something more is occurring.

Spokesmen for the reinsurance industry have told state regulators that they plan to withdraw en masse if they -- the regulators -- do not approve new insurance policy forms jointly developed by the reinsurers and the industry price-fixing agency (Insurance Services Office, Inc.). These new policy forms severely

Mr. Rick Rule
August 14, 1985
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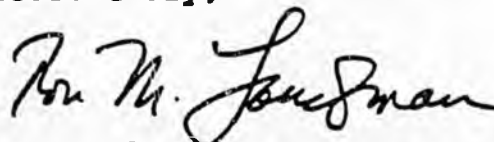
Narrow the protection provided to the insurers' commercial customers, changes about which they are, to say the least, extremely unhappy. See Attachment A. Along the same lines, a well-known insurance company executive has justified the mass departure of insurers from medical, toxic waste, and directors' and officers' liability lines by "the social good" in "let[ting] the pressures build in the courts and the state legislatures" to change laws respecting their customers' -- and the insurers' -- liability. See Attachment B.

There is, finally, irrational market conduct that goes beyond even this industry's herd instinct. They have withdrawn from lines for risks with experience ranging from good to excellent and which even the insurers admit could and should be written. See Attachment C.

Boycotts to force action by state and federal officials, be they judges, legislators, or regulators, are illegal. The McCarran-Ferguson Act specifically does not exempt boycotts from federal antitrust enforcement. In St. Paul Fire and Marine Insurance Co. v. Barry, 438 U.S. 531 (1978), the Supreme Court held that the term boycott was broadly applicable to joint action to deny coverage to customers. Nor is there protection to be had under any of the familiar non-statutory exemptions. The Noerr-Pennington doctrine does not exempt "an express or implied agreement ... that the participants will jointly give up their trade freedom, or help one another to take away the trade freedom of others through ... boycotts" Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 136 (1961). And Parker v. Brown, 317 U.S. 341 (1943), does not exempt joint product-fixing absent state statutes authorizing such joint action. The debates on the McCarran-Ferguson Act reflect absolutely no consideration of agreements respecting products, and the state laws enacted in response to it by and large do not adopt such joint action as state policy. Southern Motor Carriers Rate Conference v. United States, --- U.S. ---, 53 U.S.L.W. 4422 (March 27, 1985).

Property/casualty insurance industry conduct, as explained by industry leaders themselves, may be but a prelude to a larger campaign to force major industries, from the chemical and drug manufacturers to physicians and others, to bend to the interests and will of insurers. If their means include non-exempt joint anticompetitive action, however, then you may hold the key to important public protection. I urge you to investigate to ascertain whether the federal antitrust laws are being violated.

Yours truly,



Ron M. Landsman
Counsel, National Insurance
Consumer Organization

RML/kd

Appendix A

JRC 6/18/85

Insurers Told: Exit Some Lines

By JAMES NOLAN
Journal of Commerce Staff

WOODBIDGE, N.J. — The insurance industry should quit covering doctors, chemical manufacturers and corporate officers and directors. And the sooner the industry quits such lines of business, the sooner it will free itself from its bondage to a court system "that has run amok."

This was the message delivered to a meeting of actuaries here Monday by John J. Byrne, chairman and chief executive officer of Geico Corp., the Washington-based personal lines insurance company.

Mr. Byrne said that the single thread running through such lines of business for underwriters was that they have fallen under the sway of the courts.

"There will be no problem with insuring homeowners or autos in the coming years," he said. "But anyone who puts his private capital behind lines such as malpractice is putting himself in the hands of a zany judge or jury out in California. To my mind, he is absolutely stupid."

Mr. Byrne's comments came in the midst of a discussion at a meeting of the Casualty Actuaries of New York about what kinds of insurance products might be available in the future.

The touchstone for the discussion was a presentation by the Insurance Services Office Inc., an industry-rating and data-gathering service. The ISO estimates that in the next few

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years the insurance industry will suffer a \$62 billion shortfall in capacity. This means that corporate America will not be able to buy all the insurance it needs because insurers ability to cover them will fall short by that amount.

Mr. Byrne said the industry was responding to these issues in precisely the right way by refusing to cover lines of business that are hostage to court interpretations. "It will be best for the social good to let society know that the problem is not one for the insurance industry but for society as a whole. It is right for the industry to withdraw and let the pressures for reform build in the courts and in the state legislatures." Mr. Byrne said.

He said he saw little hope for reform in such things as the federal program for Superfund, a toxic waste cleanup measure. He said the vast amount of money thus far spent by Superfund was to "educate lawyers on how to refine their suits brought on the part of plaintiffs against industry."

"Anybody who leaves his private

capital where the courts can grab it has not done the right thing for his owners," Mr. Byrne said.

On a related score, Thomas A. Greene, president of his reinsurance brokerage firm in New York, said that still more pressure would be brought to bear on the American property and casualty industry by underwriters at Lloyd's of London. Mr. Greene said that beginning in 1986, Lloyd's syndicates would "simply not write reinsurance for the American casualty industry, especially in the lines mentioned by Mr. Byrne." He said further that reinsurance underwriters would virtually dictate to the ISO about a proposed commercial general liability form. He said the domestic reinsurance industry will not write treaties unless the industry adopts the new CGL form.

As to the stability of insurance companies suffering through this trying period, at least one of the actuaries said that current measures of company solvency used by the National Association of Insurance Commissioners were less than adequate.

Kevin M. Ryan of the National Council of Compensation Insurance urged the actuaries to model industry solvency judgments on a study done by the Aetna Life & Casualty Co. a few years ago.

Aetna studied the financial data of companies that had actually failed and the resultant ratios were absolutely realistic, Mr. Ryan said.

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EPA Chief Deems It Necessary To Keep Toxic Liability Powers

By LEAH R. YOUNG
Journal of Commerce Staff

WASHINGTON — The Environmental Protection Agency must keep the authority allowing it a wide choice of whom to sue for cleaning up toxic waste sites, Administrator Lee M. Thomas said.

While acknowledging that the market for all kinds of environmental insurance is drying up, Mr. Thomas insisted in an interview that the EPA cannot give up the "strict, joint and several liability" powers that courts have given it.

The insurance industry has been arguing that it cannot insure and collect premiums from individual companies when a court can require one or a few companies to pay all the costs of cleaning up a site.

That is especially true, insurers add, when many of the policies being interpreted by state courts never were intended to pay for hazardous waste cleanup.

But Mr. Thomas pointed out that he is responsible for getting such sites cleaned up while ensuring to the extent possible that the polluter, not the federal government, bears the costs.

The insurance industry would like to divide liability so that its clients are held responsible only for their share of damage, but the EPA finds that in most Superfund waste cleanup sites substances are mixed and records are poor.

When the EPA tried to apportion

responsibility — an approach that is surfacing again among some congressmen at the behest of the insurance industry — it became "just as controversial among the private parties as utilization of joint and several" liability, Mr. Thomas said.

The EPA tried to base responsibility on the volume of waste, he said, but the companies fell into long debates over whose waste was more toxic.

However, as adamant as he is that strict, joint and several liability must be part of any Superfund program, Mr. Thomas opposes attempts by House Energy and Commerce Subcommittee Chairman James Florio, D-N.J., to write it into the pending Superfund bill.

"We don't think it should be specifically mandated," Mr. Thomas said. "Trying to get language in the statute has the potential of opening up the whole issue again to litigation."

But Rep. Florio argues that while he is "heartened" by the district court rulings to date, "this principle could be gutted by a specific district court or by the Justice Department."

He wants to make sure that industry cannot convince the administration to abandon this unwritten interpretation.

Rep. Florio lost a battle in his subcommittee on the issue to a group headed by Energy and Commerce Committee Chairman John Dingell, D-Mich.

In spite of the setback, Rep. Florio has vowed to continue his fight on the issue, and for other provisions the subcommittee rejected, in the full committee and on the House floor.

His rejection in subcommittee is no reason for rejoicing by the insurance industry. Many who opposed Rep. Florio support the views of Mr. Thomas.

Rep. Jim Slattery, D-Kan., explained that injecting joint and several liability into the legislation could lead to a situation in which the provision was either stricken or filibustered in the Senate.

That would create legislative history that might convince state courts that such liability is not part of Superfund.

While Mr. Thomas is determined to keep joint and several liability in spite of evidence of growing insurance problems, Mr. Thomas does not have any recommendations to alleviate the burden on the insurance industry.

He pointed out that a lot of the problems are not related just to Superfund, but rather to the general economic situation in the property-casualty insurance industry.

He noted that the European reinsurance market is drying up for environmental policies. There has been poor experience with asbestos, and a general desire to "establish a less risky base of insurance."

Under such circumstances, he said, he has been unable to win from the insurance industry any assurances that particular steps taken on the federal level will result in a return to the environment market.

Instead, insurance industry spokesmen will only say that if some steps are not taken "there is a chance we won't get back in the market," Mr. Thomas said.

It is possible that there is a need for federal involvement in the environmental liability field, but the debate has not reached the point where he thinks he can draw any conclu-

In the meantime, EPA recognizes that many hazardous waste sites being licensed under the Resource Conservation and Recovery Act may not prove financial responsibility on Nov. 8 as required.

Without insurance, some facilities may use their own net worth, Mr. Thomas said, but others may just be forced out of business.

Fewer facilities will require companies that are generating wastes to modify their procedures to incinerate or otherwise minimize waste that until now was cheaper to send to land disposal facilities.

It is too soon to analyze the impact of this scenario, he said, in light of the congressional decision to encourage companies to move away from land disposal.

The only thing he is at all sure of now is that solving the problems of insuring hazardous waste facilities would not solve the entire insurance dilemma.

The House subcommittee did vote against one provision that disturbed the insurance industry. Congressmen rejected an amendment to permit citizens to sue private parties if they perceived a dangerous situation being ignored by the Environmental Protection Agency.

Only one Florio amendment was attached to the Superfund bill that goes to the full Commerce Committee.

That provision requests that the House Ways and Means Committee revise as part of the taxing scheme an import fee to reduce the share of general federal revenues envisioned in the bill from \$250 million to \$110 million.

The idea is to tax imported feedstock derivatives equally with domestic feedstock components in order not to give an advantage to foreign derivatives.

Mr. Thomas said the administration still opposes new Superfund taxes.

TOC
7/21/85

In Day-Care Crisis Cited

Official Criticizes Insurance Firms

By Sandra Sugawara
Washington Post Staff Writer

Maryland Insurance Commissioner Edward J. Muhl said yesterday that "hysteria" had caused insurance companies to discontinue coverage of day-care centers and that Maryland officials had blocked an attempt by one California firm to cancel 242 day-care policies.

Muhl also said that state officials were studying a wide variety of options, including the creation of a mutual liability insurance fund in Maryland similar to the one created in 1974 by the General Assembly to help physicians hit by an insurance malpractice crisis.

Muhl testified yesterday before the House Select Committee on Children, Youth and Families, which is holding hearings on the nationwide insurance crisis in the day-care industry. Muhl, who appeared on behalf of the National Association of Insurance Commissioners, criticized insurance companies for wholesale cancellation of day-care policies, saying the insurance industry was overreacting to news accounts of sexual abuse and court suits involving some day-care centers.

Muhl said a California insurance carrier canceled policies at 242 Maryland day-care centers before they were to expire. He said he recently ordered that firm to revoke the midterm cancellations, although he said the company does not have to renew the policies.

Muhl said he was sympathetic to the plight of the insurance industry, which had its worst year ever in 1984. He said the Association of Insurance Commissioners expects the industry to sell \$67 billion less in insurance this year than last year.

Muhl said he has signed 20 notices of insolvency for Maryland insurance firms this year. Those firms have gone out of business or must stop writing policies because of financial problems.

Insurance industry executives testified yesterday that the industry was in a slump and urged Congress to allow the industry to voluntarily



EDWARD J. MUHL

... testifies before House committee

gress would be forced to get involved if the insurance industry failed to take immediate action to prevent the closing of thousands of day-care centers.

Insurance industry representatives have said the financial slump was caused by excessively low rates that companies charged during the late 1970s, when they were trying to increase business. They tried to make up the losses through investments, but were hurt by falling interest rates, according to Marvis A. Walter, senior vice president of Insurance Services Offices Inc., which compiles statistics and rate information for the industry.

Because of the financial problems, insurance firms began dropping high-risk industries, and they place the blame on the high awards given in liability cases.

The potential for multimillion-dollar judgments exists even though no such award has yet been paid in a child-abuse case, said Frank Neuhauser Jr., vice president of AIG Risk Management Inc., an insurance group based in New York. "Many of us believe we are living under a tort system that is completely out of control."

But J. Robert Hunter, former head of the Federal Insurance Administration during the Ford and Carter administrations, said that the insurance industry is using the courts "as a scapegoat."

"It's a self-inflicted problem, and to take it out on day-care centers is wrong," said Hunter.

Mike Casey is on vacation. The Federal Diary will resume when he returns.

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Appendix B

JOC 6/18/85

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Insurers Told: Exit Some Lines

By JAMES NOLAN
Journal of Commerce Staff

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Insurers Urge Adoption Of New Policy

By JAMES NOLAN
Journal of Commerce Staff

CHICAGO — The very fate of the American liability insurance industry hangs on state regulatory approval of new liability insurance forms.

An array of insurance industry spokesmen argued this position in public hearings Thursday before a panel of insurance regulators from 8 states.

The industry representatives protested further that American business and industry in all 50 states could go unprotected by insurers' general liability claims on their assets unless the regulators approve a proposed uniform commercial general liability form for use by Jan. 1, 1986.

The hearings were organized by Illinois, New York and Texas insurance commissioners after a meeting of the National Association of Insurance Commissioners in Kansas City in June.

The commissioners at that time said they felt they wanted to hear from the industry in a single presentation, rather than taking testimony on a state-by-state basis as is usually the case when insurers seek approval for a new policy form.

Illinois Insurance Director John E. Washburn, chairman of the regulator panel, grouped supporters of the new policy in the morning and afternoon session.

Opponents, such as the Risk and Insurance Management Society, the voice of corporate insurance buyers,

were to present their case later in the day and continue this morning.

Speaking in support of the new policy John C. Morrison, a senior vice president at Cigna Corp., said the use of the new commercial general liability policy drafted by the

Insurance Services Office, an industry policy-making group, "will help to forestall a very serious threat to the financial solvency of some members of our industry."

"Without approval of the new ISO program, there will likely be an unacceptable number of insurer insolvencies — and this problem could have disastrous consequences for the general public."

The ISO in a statement said the industry's existing "occurrence" policy would be replaced by a "claims-made" version.

An occurrence policy covers the insured for injury and property damage that happen during the policy contract year.

The claims-made policy covers the insured only if a claim is made for the damage during the year the policy is in force.

Christopher C. Mansfield, vice president and general counsel, Liberty Mutual Insurance Co. said that "unless we act positively, our industry may not be able to provide the risk shifting and loss distribution capacity which our customers require and society demands."

Fred R. Maroon, ISO executive vice president and chief operating officer, said, "There has been a complete breakdown in confidence on the part of risk takers: confidence in the predictability of loss, the efficacy of the underwriting process and the ability of insurers to control their own financial destinies."

Supporters of the new policy were united in placing the major share of the blame for the crisis on the judicial system.

Industry officials say almost with one voice that it is the courts' redefinition of policy contract language that has led to awards in pollution liability, product liability and medical malpractice that are bankrupting liability underwriters.

Gerald Wakefield, chief executive, North American reinsurance division of C.T. Bowring & Co., presented the views of Lloyd's of London reinsurers, vigorous supporters of the new policy.

Mr. Wakefield conceded that Lloyd's cannot dictate to American regulators on policy approval, but he wryly said that if the new form is not approved, Lloyd's will not reinsure American liability underwriters.

"Worldwide reinsurance capacity at this juncture is so short that further erosion could cause a fundamental change in the fabric of the U.S. insurance industry's mode of operation." He concluded: "ISO's proposed new claims-made form, certainly goes a long way toward the retention of such reinsurance market support which currently looks so tenuous."

The industry spokesmen returned to the hearing table later in the day for questioning by the insurance commissioners.

Vs. Occurrence

Journal of Commerce Staff

CHICAGO — The casualty insurance industry and its biggest customers, corporate America, are having problems with words.

Three words in particular.

The words occurrence and claims made refer to that most important facet of the insurance business, the payment of claims and the question of who will make the payment.

To put it as simply as is possible, no small thing in a sea of policy language complexity, when you buy an occurrence insurance policy, your claim is good for damages you sustained in the period for which you paid the premium, usually one year.

You may not discover the damage until years later, but still your claim is valid and the underwriter who sold you that occurrence policy must pay the claim.

If you bought a claims made policy, your claim is good only if you file the claim during the period in which the policy contract is in force.

So if you are a doctor or make your living by making anything from cookie tins to insect spray, you most assuredly want that occurrence coverage. Who knows what you did 10 years ago to lay yourself open to a claim?

Now we get to the sticky part.

It is the occurrence policy and the way law courts are defining the words therein that is bleeding the casualty industry white, industry leaders say.

The insurance industry, therefore, wants to sell only claims made coverage beginning in January 1986.

In the process, the coverage afforded by the occurrence policy as it is understood by the corporations who buy it would be no more.

Understandly, then, the Risk and Insurance Management Society, the voice of insurance buyers for America's corporations, is, to a

ew Liability

By JAMES HOLLAN

Journal of Commerce Staff

CHICAGO — Major state insurance regulators were openly skeptical last week about the property-casualty industry's plans to use a commercial general liability and policy form.

Hearings convened by the Illinois Insurance Department, regulators from New York, Texas, Connecticut and Illinois said time and that the insurance industry intent on reducing the amount of liability coverage corporations buy beginning in January.

Further, the regulators argued industry representatives during hours of intense questioning the proposed policy was much simpler for corporate insurance to understand.

More than a dozen industry representatives countered with arguments the new policy form was an absolute necessity for the survival of the industry.

The burden of the industry's case was carried by delegates from the Insurance Services Office, an industry policy-making body, who had fashioned the new policy form.

In the industry arguments read that casualty underwriters had been suffering catastrophically in recent years.

Lloyd's of London delegate who spoke expressly for the meeting said unless the U.S. industry committed to adopt the new form, Lloyd's reinsurance market would discontinue backing American underwriters forthwith. Such a move would severely limit the U.S. ability to buy reinsurance, leading risks on major disasters such as a supertanker sinking, an offshore oil well disaster and the big claims associated with the Bhopal India, gas leak catastrophe which killed more than 2,000 and injured tens of thousands more less than a year ago.

Lloyd's has had a substantial position for generations in supporting American primary underwriters with reinsurance for product liability, pollution and environmental impairment coverages, directors and officers liability and medical and other professional malpractice coverages.

The industry forum was organized by commissioners from Illinois, Texas and New York. They were joined by commissioners and staff regulators from 14 other states after they found they were reacting in a piecemeal fashion to pleas from the industry, state by state, for permission to adopt the new system.

Although the commissioners protested that they were open minded about the issues, their questioning showed mounting skepticism.

For example, Peter Gillies, Connecticut commissioner, said that traditionally the industry position on a new policy filing has been that policy contract language is virtually cast in bronze and should not be changed.

"The purpose of this whole exercise is to avoid litigation. But aren't we going to just march lock step into court on this issue?" Mr. Gillies said.

"When the industry does not want us to approve something in a policy form the argument is made that if you change it, we will have to go and litigate. And you know what this means in the courts, so for God's sake, don't do that to us.

"Now you are asking us to approve a form which is going to make some very dramatic changes in a whole host of areas. How do you avoid the courts?" Mr. Gillies said.

Richard Savage of the ISO said that the danger of litigation was lessened because the new contracts were worded most carefully.

To put the kindest face possible on the matter, the response drew laughter from the regulator's table.

Later, Fred R. Marcon, ISO executive vice president, conceded that the possibility of new litigation had been much on the mind of those who shaped the new form. But, he added, the property-casualty industry has no other course if it is to survive.

At another point, Gerald H.C. Wakefield, chief executive, North American reinsurance division of C.T. Bowring at Lloyd's of London, employed an extended anecdote to explain the genesis of a legal liability principal.

He said that a British court had ruled in the days of Queen Victoria that if a householder was foolish enough to keep a tiger in the back garden, the householder was liable for damages the tiger did when he got out.

At a later moment in the proceedings, Mr. Wakefield sought permission to address the panel on a point.

"Fine," said James P. Corcoran, New York Insurance Superintendent, "but, please, no lions and tigers."

Outright hostility to the new policy forms was repeated at the meeting by a delegation from the Risk and Insurance Management Society, an organization of some 3,000 corporate insurance buyers.

William Bluck Jr. of the Allen Group, a New York auto parts maker, and spokesman for the society, said the group stood fast on the position it took in public hearings before the New York Insurance Department in May.

The society then accused the ISO of "an abuse of the antitrust exemption granted to insurers by the McCarran Ferguson Act," and that the new policy had been fashioned "with little or no concern as to the impact these changes will have on the insured or potential claimants."

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7/2/85

**STATEMENT
OF THE
AMERICAN
INSURANCE
ASSOCIATION**

**BEFORE THE
HOUSE SELECT COMMITTEE ON CHILDREN, YOUTH AND FAMILIES
CONCERNING
CHILD CARE AND INSURANCE
JULY 30, 1985**

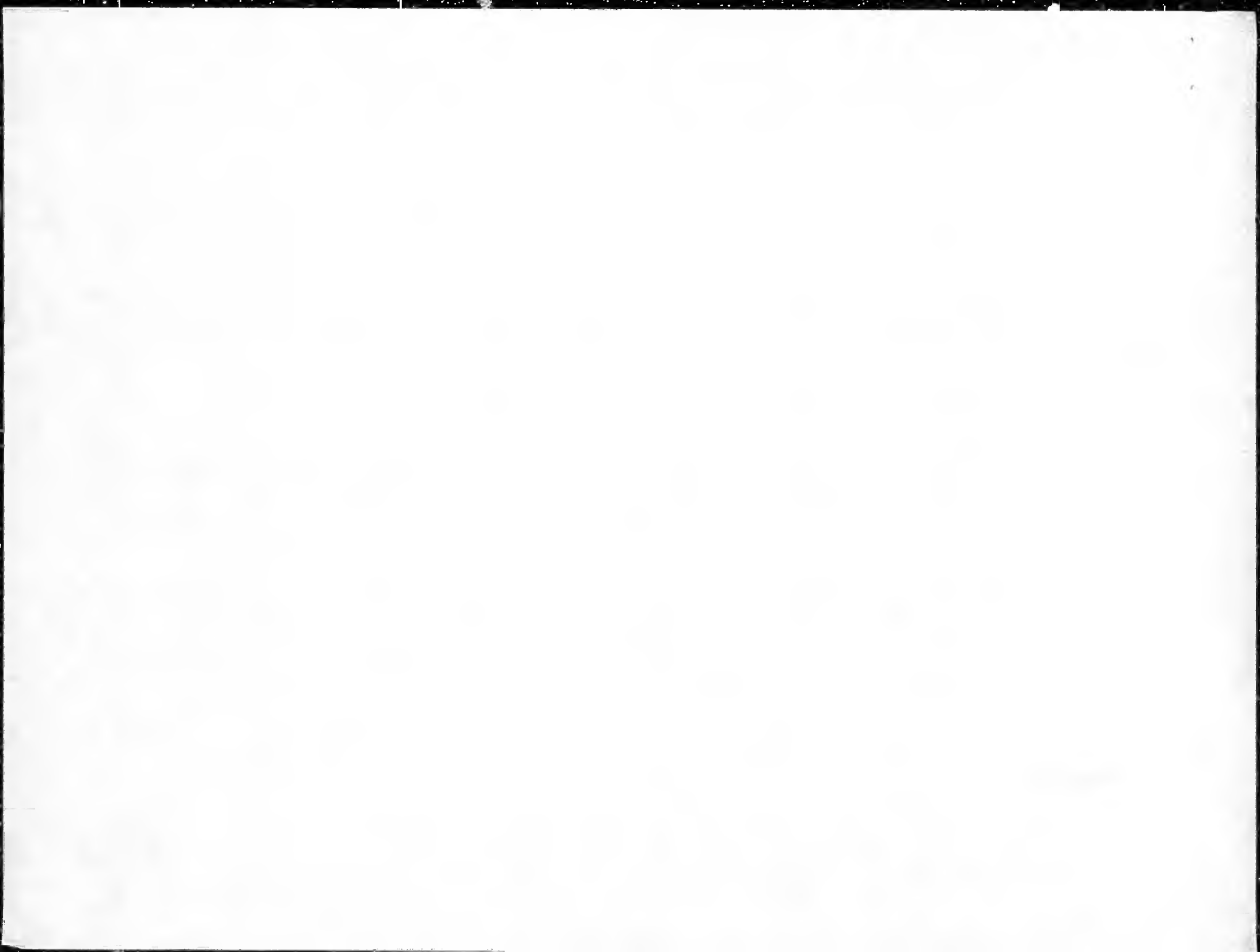


The American Insurance Association is a national
trade organization of casualty insurers.

The American Insurance Association (AIA) is a trade association which represents 172 property and casualty insurance companies. The member companies of the Association provide a majority of the commercial line insurance coverages written throughout the United States. Some of AIA's members provide general liability coverage to professional day care centers. Liability insurance is provided to some family day care homes through the application of the "business pursuits" endorsement which removes the business exclusion from the homeowner's policy.

Professional day care centers and family day care homes are currently experiencing a liability insurance availability and affordability problem. To the extent that state law mandates the acquisition of general liability insurance coverage as a prerequisite for doing business, the availability/affordability situation is exacerbated. Current insurance market conditions for professional day care centers suggest a market in transition rather than chaos. The countrywide experience for those companies reporting premium and loss data to the Insurance Services Office, Inc. (ISO) for advisory ratemaking purposes for day nurseries appears to conform with the current loss experience for the majority of commercial insurance lines. If expense factors are built into the loss and loss adjustment data for day care nurseries provided by ISO, the combined ratio approaches the aggregate general liability combined ratio of 152. Although these losses clearly indicate the need for increased rates, they do not suggest that insurers should abandon the market.

Insurance availability and affordability problems are not confined to the day care industry. Societal litigiousness and our legal system's movement



STATEMENT OF
RALPH NADER
BEFORE THE
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION AND TOURISM
OF THE
COMMITTEE ON ENERGY AND COMMERCE
US HOUSE OF REPRESENTATIVES

THE GREAT INSURANCE INDUSTRY BOYCOTT OF 1985

SEPTEMBER 19, 1985

Good morning. Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify on the sharp increases in insurance premiums and widespread cancellations.

Consumers of insurance products in America are facing a crisis. The crisis is not one of availability nor one of affordability, but one of confidence. This crisis in confidence lies in whether this Congress will take necessary steps at the federal level to give consumers relief from abusive practices of the insurance industry.

By massively canceling policies or refusing to sell coverage without 300 to 1000 percent increases for day-care centers, nurse-midwives, transit authorities, physicians, municipalities, fishing fleets--to name a few sectors of the economy--the industry is betting that the resultant pressure will lead the states to grant (excessive) rate increases and changes in policy forms, and the state legislatures and the Congress to enact restrictions on injured people's right to sue. The insurance industry is gambling for high stakes, if successful the bet will pay off in billions.

The insurance industry has won on this bet once before. There seems to be an underwriters' 10-year itch of greed operating here. Ten years ago, the companies bellowed about the "medical malpractice and product liability crises" and got higher premiums from state authorities and favorable changes in the laws in many states. Subsequent studies, including one by the U.S. Department of Commerce, revealed no such crises but the damage was done to consumers' rights and their pocketbooks. 1/ Insurer profits soared.

Now, 10 years later, we are witnessing what actuary Robert Hunter calls "a manufactured crisis intended to bloat insurer profits and reduce victims' rights." Already, in the first six months of 1985, auto insurance premiums have risen 9.1 percent, more than the rate of increase for all of 1984. 2/ At this rate, auto rates will rise 18.2 percent this year, far in excess of increases in claims or inflation. All the elements for a repeat of the 1975 "crises" are in place. Even the Congress has fallen into line. Bills are pending or will be introduced before the House and Senate that would restrict victims' rights in product liability, medical malpractice and admiralty related suits.

It is to be hoped that this "strike 'em or gouge 'em" gamble will backfire. Americans do not like companies which refuse to sell to them, or which refuse to sell to them unless they get three or five or ten times the previous price. The insurance industry is brazenly unique in these quantum price

jumps or arbitrary refusals to deal. This kind of abuse turns people off. If the insurance industry is selectively going on strike, or abandoning certain markets or imposing wildly extortionate prices, then federal or even state government pools of insurance can be established to provide coverage for people who lose coverage through no fault of their own. The Congress could articulate standards by which the states must regulate insurance. The Department of Justice could investigate and take steps to protect consumers.

Insurance is a necessity and affected businesses cannot be required to close down. Products which are safe and beneficial might be kept from markets. Physicians and surgeons may quit practice because of unavailable or unaffordable insurance. Society cannot function properly when its commerce is so disrupted. When those same insurers refused to offer insurance to properties in the center cities during the disruptions of the '60s, the federal government offered the FAIR plans that kept insurance available in the cities. The government made money in this business, contrary to insurance industry predictions.

The government has offered insurance in the past when private insurers have balked ---crop insurance for farmers, bank deposit insurance for savings accounts, crime insurance in the less affluent areas of the country and for some years flood insurance for properties on flood plains. Federal law

has facilitated self-insurance pools for companies which want to get together for coverage in the product liability area. So the insurance industry is gambling also with the risk of inviting Uncle Sam's intervention and self-insurance by syndicates of their former customers.

Leaders in the industry think they will win. They've won before. John J. Byrne formerly head of GEICO Insurance and new CEO of the Fireman's Fund has said; "It is right for the industry to withdraw and let the pressures for reform build in the courts and in the state legislatures." 3/ Thomas A. Greene, president of his own reinsurance brokerage firm, has said Lloyd's would "simply not write reinsurance for the American casualty industry." 4/ Gerald Wakefield, a Lloyd's representative was reported as having wryly said that if new policy forms limiting insureds' rights were not approved, Lloyd's would not reinsure American liability underwriters. 5/ Lloyd's chair Peter Miller said later that; "This is not a threat." 6/ The Subcommittee would advance the purpose of its inquiry were it to examine the lobbying and pressures on domestic insurers and state regulators and lawmakers by this British giant, Lloyds of London -- a major initiator of the domestic insurers' over-reaching.

Instead of this massive industry using its economic leverage for claims prevention by advancing pollution control and clean-up, safer consumer products and workplaces; instead of using its leverage to help stabilize the economy, it is, with

few exceptions, behaving like a spoiled brat. The insurance industry should be more than a cash cow; it should be a safety bull to reduce the basis for claims. This spoiled brat must be weaned of the fruits of its manufactured "crises" and not allowed to increase prices while restricting cover for insureds and the legal rights of victims.

For example, Engineering Times reports that the main underwriters for the 11,000 architectural/engineering firms will include a "pollution exclusion" in all future policies. This means that firms working on municipal treatment plants or projects involving emissions or recycling, reconditioning or reclaiming waste products won't have insurance for these activities. Other policy changes would include the cost of defending suits within the limit of liability in a policy. This means that if a buyer has a million dollars of coverage and the insurer defense lawyers spend a million dollars defending the suit, nothing remains for any victim recovery.

The insurance companies are using judges and juries as their favorite whipping boys, blaming verdicts and settlements for their troubles. Their favorite figure to bandy about is "\$3.8 billion in losses last year." A U.S. General Accounting Office (GAO) report on insurer profitability shows a \$300 million profit over underwriting losses last year for the property/casualty insurance industry. 7/ If insurers are losing so much money, why are their stocks selling at record prices on the stock exchange? A.M. Best's Insurance Index

shows an increase of 30% for property/casualty stocks in the first six months of 1985. The S&P Industrials languished at a mere 14% and the Dow Jones Industrials at a paltry 10% for the first six months of 1985. 8/ If insurers are losing so much money, why are stockbrokers recommending that these companies are such great buys? The brokers know that the industry will continue to be as profitable as it has been over the last 10 years where, according to the GAO, investment income has exceeded underwriting losses by \$72.1 Billion (and they got a \$63 million tax refund)! 9/

It will take an informed citizenry and an informed media to stop the great insurance industry boycott of 1985. This hearing is an important first step toward providing that essential information. The insurance industry must be required to support its assertions of losses with data unencumbered by accounting flimflam. During the phony product liability crisis in the mid-seventies, this industry would not even produce data as to how much was paid out in verdicts and settlements compared to what it took in in product liability premiums. I hope this is only the first of a series of hearings on the insurance "crisis" and that perhaps regional hearings might be held to give all of America the opportunity to see that the crisis need not be manufactured, but rather that they see a renewed dedication by the Congress to the protection of all consumers.

I would like to include for the record some detailed letters

by small businesses who have been abandoned or gouged by
insurance companies.

Thank you.

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
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OFFICE OF THE COMMISSIONER

December 17, 1985

Honorable Bill Sheffield
Governor
Juneau, AK 99811

Dear Governor Sheffield:

As chairman of your Task Force on Insurance Availability and Pricing, it is my pleasure to submit the report of the task force. I believe we have fulfilled our clearly delineated responsibility. The report summarizes the testimony and documentation presented to the task force without making specific recommendations.

The issue of insurance availability and pricing is expansive. The task force accumulated a huge amount of documentation on the subject. The documents appended to the report are only a fraction of the available data. We included in the report only the minimal documentation necessary to adequately explain the issues.

The task force believes that insurance issues will continue to be at the forefront for at least another year. We also believe that an ongoing review of insurance issues would be beneficial.

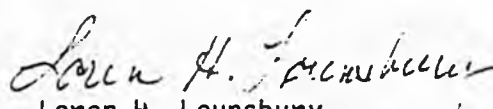
Throughout the work of the task force, the issue of tort reform was suggested as one of several probable causes of the insurance crisis.

It is apparent that tort reform will be a major issue in the next Legislature and will receive prominent attention. You may, therefore, wish to consider appointing a task force or advisory group to further study this specific issue.

The task force is pleased to report to you that State agencies universally expressed their desire to work with licensees, vendors and contractors to resolve insurance problems stemming from State mandated insurance requirements. We believe this reflects positively on your Administration.

Thank you for giving us this opportunity to assist.

Sincerely,


Loren H. Lounsbury
Commissioner

Rec'd SKB
11/13/85

TASK FORCE ON INSURANCE AVAILABILITY AND PRICING

REPORT TO GOVERNOR BILL SHEFFIELD

STATE OF ALASKA
OFFICE OF THE GOVERNOR
DECEMBER, 1985

9/26/85

GOVERNOR'S TASK FORCE ON INSURANCE
AVAILABILITY AND PRICING

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INSURANCE TASK FORCE REPORT

EXHIBITS

- I. Written Testimony
- II. New Jersey Liability Survey
- III. State Regulation and the NAIC
- IV. NAIC Accounting Procedures
- V. Typical Annual Statement
- VI. Reports of Insurance Services Office
- VII. Surplus Lines Insurance
- VIII. Civil Justices Response
- IX. Position of the Citizens Coalition for Tort Reform
- X. Opposition to Tort Reform
- XI. Typical Insurance Rate Filing
- XII. Alaska News Articles
- XIII. National News Articles
- XIV. Report of the Governor's Medical Malpractice Insurance Commission
- XV. Bodily Injury Reparations Advisory Committee

SCOPE

The Task Force has been charged with determining the scope and seriousness of problems of insurance availability and pricing.

Prior to appointment of the Task Force, it was recognized that a crisis existed in insurance. No one had compiled sufficient information on the various groups affected or the extent of the problem to delineate clearly what the real crisis is. Although many solutions were being proposed (from all sides), the basis for rational examination of the entire problem had not been collected.

The intent of this Task Force Report is to delineate clearly the problem, examine the reasons for the problem, define the persons or groups affected by the problem, capsule pertinent testimony, and to present the documents and evidence collected by the Task Force.

It is not within the scope of the Task Force to make recommendations or to endorse recommendations made by others.

SUMMARY

The Task Force has found that the problems associated with insurance availability and cost are not unique to Alaska. They impact directly or indirectly every citizen in the entire country.

Many underlying causes contribute to the numerous separate problems which have been referred to as the insurance crisis. We have verified to our satisfaction that the majority of major insurers definitely have lost substantial amounts of policyholder surplus during the past year. This impairs their ability to offer as much insurance to consumers, because of diminished financial capacity. Many insurers have been put into liquidation or rehabilitation by State regulators due to severely impaired financial condition.

Insurers acted foolishly in overcompeting for business in prior years in order to reap investment income. When investment yield fell at the same time that insurers were experiencing higher than anticipated claims awards, premiums were forced to adjust dramatically upward and underwriting criteria tightened.

The Insurance Report for 1985 prepared by the Division of Insurance compiles premium and loss figures for admitted insurers for calendar year 1984. It indicates that the experience of insurers in Alaska was uneven. Some insurers had profitable years while others were not so fortunate.

However, overall insurers had better pure loss ratios (claims vs. premiums) in Alaska than the national average. Although comparisons of premium and losses do not account for the expenses of operation, these are similar comparisons to other types of comparisons included in the appendix for national experience. Despite a better than average performance, the small volume of business and high cost of operation still makes Alaska a less than attractive place to insure risks. A significant factor to consider when reviewing the report is that the accumulation of coverages for premium and loss comparisons, tends to hide bad losses by a particular subcoverage by combining them with profitable subcoverages to show an average loss or gain. Thus, day care experience is comingled with many other lines making it impossible to examine it separately.

It appears that insurers are selecting out subgroups of coverages to improve profitability, to mesh with reinsurance coverage, or to concentrate their efforts in areas they feel more competent to underwrite.

The Task Force finds that in Alaska most coverages are available at some price either from the regulated or unregulated insurance market, for those insureds that have good claims experience and are high quality risks. However, excess policy limits are sometimes unavailable, and insurers who have been largely unprofitable have limited capacity to issue insurance policies even at adequate rates.

FINDINGS

- A. THE TASK FORCE CONCLUDES THAT EVERY ALASKAN IS DIRECTLY OR INDIRECTLY AFFECTED BY THE HIGHER COST OF INSURANCE WHICH IS BEING DEMANDED IN TODAY'S MARKETPLACE.
- B. THE TASK FORCE FOUND THAT THE BEST RISKS OF MOST CLASSES OF BUSINESS WERE INSURABLE AT LEAST FOR PRIMARY LIMITS IN VIRTUALLY ALL CASES IF THE INSURED WAS WILLING TO PAY THE HIGH COST. MUCH, BUT NOT ALL, OF THIS INSURANCE WAS OFFERED IN THE UNREGULATED SURPLUS LINES MARKET.
- C. WE FURTHER FOUND THAT HIGHER POLICY LIMITS WERE NOT READILY AVAILABLE IN MANY CASES.
- D. THE TASK FORCE FINDS THAT TORT REFORM WAS RAISED AS A SIGNIFICANT ISSUE BY MANY WITNESSES. TORT REFORM IS A BROAD CONCEPT WHICH HAS MANY SPECIFIC PARTS EACH OF WHICH REQUIRE EXHAUSTIVE STUDY AND IS FAR BEYOND THE SCOPE OF THE TASK FORCE TO COMMENT KNOWLEDGEABLY ABOUT. THE TASK FORCE ACKNOWLEDGES TWO PREVIOUS REPORTS, THE REPORT OF THE GOVERNOR'S MEDICAL MALPRACTICE INSURANCE COMMISSION (1975) AND THE BODILY INJURY REPARATIONS ADVISORY COMMITTEE (1979) BOTH OF WHICH ARE INCLUDED IN THE APPENDIX. THESE REPORTS BOTH CONTAIN COMMENTS ON TORT REFORMS.

E. THE TASK FORCE FINDS THAT THE INSURANCE CRISIS IS NATIONAL OR INTERNATIONAL IN SCOPE. THE PROBLEMS EXPERIENCED IN ALASKA ARE NO DIFFERENT THAN EXPERIENCED IN OTHER STATES.

THE TASK FORCE FINDS THAT MANY THINGS ARE CURRENTLY BEING DONE TO EASE THE INSURANCE CRISIS. THE FOLLOWING ARE AREAS WHERE THE STATE IS ACTIVELY WORKING TO RESOLVE THE PROBLEMS.

1. THE DIVISION OF RISK MANAGEMENT HAS BEEN WORKING WITH STATE AGENCIES ON REVISION OF STATE CONTRACT INSURANCE REQUIREMENTS.
2. THE DIVISION OF INSURANCE HAS ESTABLISHED A MARKET ACCESS PROGRAM TO ASSIST INDIVIDUALS IN LOCATING INSURANCE COVERAGE.
3. THE DIVISION OF INSURANCE HAS ESTABLISHED THE CADIS (COORDINATION OF ALASKA DAY CARE INSURANCE SEARCH) PROGRAM TO IDENTIFY POTENTIAL MARKETS AND SHARE INFORMATION WITH BOTH INSURANCE PRODUCERS AND DAY CARE OPERATORS.

THE TASK FORCE RECOMMENDS THAT THE DOCUMENTS COLLECTED DURING THE TASK FORCE RESEARCH BE READ BY ANYONE WHO INTENDS TO PROPOSE A SOLUTION TO THE COMPLEX PROBLEM WE ADDRESS AS THE INSURANCE CRISIS.

not really HOW INSURANCE IS REGULATED

INSURANCE IS A HIGHLY REGULATED INDUSTRY IN WHICH THE INDIVIDUAL STATES, NOT THE FEDERAL GOVERNMENT, HAVE COMPLETE JURISDICTION. IN ORDER TO REGULATE INSURANCE MORE UNIFORMLY AMONG THE STATES AND TO AVOID SERIOUS DUPLICATION OF EFFORTS, THE STATE REGULATORS CREATED THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

THROUGH THE NAIC, ACCOUNTING AND FINANCIAL REPORTING BY INSURERS HAS BEEN STANDARDIZED AMONG THE STATES. EVERY ADMITTED INSURER DOING BUSINESS IN ALASKA MUST FILE THE STANDARD NAIC FINANCIAL REPORTING STATEMENT WITH THE DIRECTOR OF INSURANCE. THE ANNUAL STATEMENT IS COMPREHENSIVE AND IS SPECIFICALLY DESIGNED TO REFLECT THE INFORMATION REQUIRED TO DETERMINE THE FINANCIAL HEALTH OF THE INSURER. THE DIRECTOR HAS THE AUTHORITY TO CONDUCT EXAMINATIONS OF INSURERS IN ORDER TO VERIFY THE TRUTHFULNESS OF THE FINANCIAL STATEMENTS. EACH COMPANY IS PERIODICALLY EXAMINED TO DETERMINE ITS SOLVENCY, BY NAIC EXAMINER TEAMS, MADE UP OF EXAMINERS FROM VARIOUS STATE INSURANCE DEPARTMENTS. ALASKA CONDUCTS SOME OF ITS EXAMINATIONS THROUGH NAIC EXAMINATION TEAMS.

THE NAIC ENTERS INFORMATION FROM INSURER FINANCIAL STATEMENTS INTO ITS COMPUTER WHICH IS DESIGNED TO COMPUTE SIGNIFICANT RATIOS AND COMPARISONS. COMPANIES WHOSE RATIOS ARE FOUND OUTSIDE THE NORMAL PARAMETERS ARE TARGETED FOR IMMEDIATE EXAMINATION. IN 1985, OVER 200 INSURERS FAILED SEVEN OR MORE OF THE ELEVEN RATIO TESTS.

THE NEED FOR IMMEDIATE EXAMINATION OF THESE COMPANIES HAS SEVERELY TAXED THE ABILITIES OF THE STATES' EXAMINER TEAMS TO CONDUCT TIMELY EXAMINATIONS OF THE MOST SERIOUSLY TROUBLED COMPANIES.

ALASKA ALSO DEPENDS HEAVILY ON SURPLUS LINES INSURERS WHO OPERATE IN A TOTALLY UNREGULATED SYSTEM. ALASKA STATUTES REQUIRE INSURANCE PRODUCERS TO ATTEMPT TO PLACE INSURANCE IN ADMITTED OR REGULATED INSURERS FIRST. IF COVERAGE IS UNAVAILABLE IN THE ADMITTED MARKETS, THEY MAY PLACE COVERAGE THROUGH A SURPLUS LINES BROKER IN THE UNREGULATED MARKET. ALASKA RELIES HEAVILY ON THE SURPLUS LINES MARKET FOR MARINE, AVIATION, PROFESSIONAL LIABILITY, EXCESS LIMITS AND OTHER NONSTANDARD CLASSIFICATIONS. NO RATE OR POLICY FORM RESTRAINTS APPLY TO SURPLUS LINES INSURERS.

ALL ADMITTED INSURERS DOING BUSINESS IN ALASKA ARE REQUIRED TO SUBMIT INSURANCE RATES AND POLICY FORMS TO THE DIRECTOR OF INSURANCE FOR APPROVAL PRIOR TO USE. ONLY A FEW EXCEPTIONS TO THESE FILING REQUIREMENTS EXIST. STAFF LIMITATIONS PRECLUDE THE DIVISION FROM CLOSELY SCRUTINIZING EVERY RATE AND FORM FILING PRESENTED; HOWEVER, THE DIVISION DOES A CURSORY REVIEW OF EACH FILING TO SELECT A LIMITED NUMBER FOR DETAILED EXAMINATION. RATES ARE REVIEWED TO DETERMINE THAT THEY ARE ADEQUATE BUT NOT EXCESSIVE BASED ON PROBABILITIES OF FUTURE EXPECTED LOSSES ACCORDING TO THE BEST ACTUARIAL INFORMATION AND ASSUMPTIONS AVAILABLE.

PUBLIC TESTIMONY

The Task Force heard testimony from a broad spectrum of Alaska's entrepreneurs. Represented in this group were day care facilities, architects, engineers, aircraft operators, commercial vehicle operators, bar owners, fuel oil distributors, commercial fishermen, school districts, municipalities, security services, nonprofits, Native corporations, school bus contractors, and State agencies. It is safe to speculate that, with the possible exception of private passenger automobile insurance and homeowners insurance, all property and liability insurance has been affected to some degree by the current insurance market situation.

Anyone who needs to purchase property and liability insurance will be affected by higher insurance cost this year. Additionally, the Task Force learned that some businesses faced higher rate increases than others. Liability insurance rates increased more than property rates and some types of liability coverages increased more than others.

THE TASK FORCE CONCLUDES THAT EVERY ALASKAN IS DIRECTLY OR INDIRECTLY AFFECTED BY THE HIGHER COST OF INSURANCE WHICH IS BEING DEMANDED IN TODAY'S MARKETPLACE.

Several witnesses testified that they were unable to obtain any insurance coverage whatsoever. Further examination by Task Force staff reveals that several different reasons for the "I can't get insurance" statements.

Some have been offered insurance at a price which is deemed to be so high as to preclude purchase. Others have been told by one or more agents that it isn't available. Task Force staff has successfully found markets for the majority of these people after canvassing the marketplace. Coverage was not always inexpensive but was available in most cases if enough time and effort were expended. In the few cases where insurance was not found, the particular risk was not insurable even though others in its same class of risk were insurable. Examples were individual claims history, condition of a particular fishing boat and inability or unwillingness to institute loss control measures. In only a very few cases was no coverage found for a class of risk. Pollution coverage and sexual abuse coverage for day care operations were not offered at any price.

Division of Insurance staff were successful in finding limited markets at some price for wooden fishing vessels, fuel distributors, day care operators, fireworks display operators, liquor liability and others when the particular policyholder did not have poor loss history or an unseaworthy vessel.

A related problem was nonavailability of required excess limits coverages. Although liquor liability is available for primary limits of \$300,000 per occurrence, higher limits were not always found. The same is true in other classes of insurance such as fuel delivery, day care, and professional liability. If entrepreneurs require high policy limits, they may not always be able to procure them.

One reason given for lack of higher limits was the inability to generate enough premium in the excess layers where losses are less frequent but more severe. Another reason was primary insurers lacked the internal capacity to retain the exposure and were unable to find reinsurers to share the risk.

THE TASK FORCE FOUND THAT THE BEST RISKS OF MOST CLASSES OF BUSINESS WERE INSURABLE AT LEAST FOR PRIMARY LIMITS IN VIRTUALLY ALL CASES IF THE INSURED WAS WILLING TO PAY THE HIGH COST. MUCH, BUT NOT ALL, OF THIS INSURANCE WAS OFFERED IN THE UNREGULATED SURPLUS LINES MARKET.

WE FURTHER FOUND THAT HIGHER POLICY LIMITS WERE NOT READILY AVAILABLE IN MANY CASES.

Many persons testified about what they felt was the underlying cause of the insurance crisis and their own personal crisis if insurance coverage was unavailable. Summary of the testimony of the vast majority of the witnesses leaves the Task Force with the impression that the witnesses were frustrated with the liability imposed upon them by the courts or by their insurers settling cases in which they did not feel they were liable.

Although witnesses expressed willingness to accept responsibility for what they interpret as their own negligence, almost everyone expressed resentment of the actual or potential negligence and related high awards assessed against them by the legal system. In short, they believe the theories of negligence and compensation imposed by the civil justice

system are out of synch with their own. The proposals of the Citizens Coalition for Tort Reform included in the appendix summarize the various specific suggestions made by the pro tort reform witnesses.

Two witnesses gave testimony in opposition to tort reform. The disparity in numbers of persons for and against tort reform relates to the nebulous make up of persons who would benefit from the no tort reform option. — ^{potential} 115
These are in most cases persons who have not yet been injured but who will in the future seek recovery through the civil justice system. Since they are presently unidentified, they did not testify. Clearly aligned with this group of future benefactors of the present system are the attorneys who have represented injured parties in the past and who presumably will be asked to obtain recovery for persons injured in the future. In essence, they testified on behalf of their future clients.

Paul Cossman's letter to the Task Force summarizes the testimony in opposition to tort reform and is included in the appendix.

THE TASK FORCE FINDS THAT TORT REFORM WAS RAISED AS A SIGNIFICANT ISSUE BY MANY WITNESSES. TORT REFORM IS A BROAD CONCEPT WHICH HAS MANY SPECIFIC PARTS EACH OF WHICH REQUIRE EXHAUSTIVE STUDY. IT IS FAR BEYOND THE SCOPE OF THE TASK FORCE TO COMMENT ON TORT REFORM AT THIS TIME. THE TASK FORCE ACKNOWLEDGES TWO PREVIOUS REPORTS, THE REPORT OF THE GOVERNOR'S MEDICAL MALPRACTICE INSURANCE COMMISSION (1975) AND THE BODILY INJURY REPARATIONS ADVISORY COMMITTEE (1979) BOTH OF WHICH ARE INCLUDED IN THE APPENDIX. THESE REPORTS BOTH CONTAIN COMMENTS ON TORT REFORMS.

DOT INSURANCE REQUIREMENTS

During one of the Task Force meetings, Department of Transportation requirements for contractor bonding and insurance were discussed.

Although the department has the ability to waive bonding requirements, they seldom, if ever, do so. Apparently, the decision has been made that contractors who are unable to obtain bonding do not necessarily have the financial capability of financing the job and successfully performing the contract performance. If DOT waives the bond requirement, the State could end up with no recourse in the case of contractor default. DOT did express some interest in bidding certain contracts for architects and engineers with and without professional liability insurance in order to better define the insurance cost of the job. Cost benefit comparisons could be made for the specific job to determine the merit of insurance. They also are considering waiving professional liability insurance on contracts where in-house expertise is available to monitor and approve the contract work for quality.

Although DOT could eliminate insurance and bonding problems for contractors dealing with the State by simply requiring insurance, they must also consider the increased liability and exposure to the State which is assumed by the process.

LOSS CONTROL

Although the Task Force heard from numerous individuals and groups on the availability and price of insurance and some commented on the high cost of resolving loss through the legal system, little testimony centered on elimination of or reduction in loss frequency. Any resolution of the crisis involving transfer of risk to insurers would be incomplete without fully exploring cost containment through loss prevention.

Loss control is an individual, industry and government function. One concern expressed to the Task Force in written testimony was that any resolution of the crisis must include continued and possibly increased state effort in policing labor standards, law enforcement and license qualifications. Insureds also have an obligation to control their own loss expense through prevention.

Documents submitted to the Task Force and testimony support the national and international scope of the insurance crisis. A report prepared by the State of New Jersey summarizes the problems reported by the majority of states. Other documents support the contention that European insurance markets have withdrawn or are about to withdraw from the U.S. market due to severe losses. Only a small portion of their book of business is concentrated in the U.S. but the majority of their losses have been sustained here.

THE TASK FORCE FINDS THAT THE INSURANCE CRISIS IS NATIONAL OR INTERNATIONAL IN SCOPE. THE PROBLEMS EXPERIENCED IN ALASKA ARE NO DIFFERENT THAN EXPERIENCED IN OTHER STATES.

The general consensus of the information sources surveyed by the Task Force was that nationally insurers began competing aggressively for premium dollars for investment purposes in 1979. High interest rates could provide profit to the extent that some underwriting loss could be offset. New insurers were formed to take advantage of high profits generated by small underwriting losses and high investment yield. As competition increased the law of supply and demand caused rates to drop further. As the competitive spiral decreased premium rates, inflation slowed and interest rates fell. Insurers found that they could not increase premiums in order to make up for lost interest income. To do so meant almost instant loss of new business to lower priced competitors.

At the same time that rates were at a seriously inadequate level, insurers began to experience increased losses.

Had rates remained at the 1979 level they would not have generated profits in many lines of insurance. Increased social pressure and liberal interpretation of policy language by the courts caused coverage for claims which insurers had intended to exclude. It caused average awards to increase and promoted the rare but often quoted multi-million dollar awards for seemingly minor or questionable negligence.

Reinsurers were the first to put the brakes on the cycle. Reinsurers typically receive a percentage of the premium and take a percentage of the risk of the primary insurer. Figures show that reinsurers were hardest hit in the loss ratio column. When they gave primary insurers the ultimatum across the board of more premium or no reinsurance, premiums increased.

Year-end 1984 insurance company results showed severe losses. More importantly the losses decreased policyholder's surplus, the ultimate measure of an insurers ability to write new insurance policies. With the substantial decrease in surplus, insurers were unable to write as much insurance in 1985 as they had in the previous year. Other insurers closed their doors because of insolvency or to pursue other more profitable ventures.

As a result of the insurers' folly in pursuit of investment profits and their unwillingness to increase rates in the face of aggressive competition during the past few years, we are experiencing two distinct problems today: (1) insurance industry capacity falls short of the national demand for insurance, and (2) insurance rates which have been depressed for six years are taking a quantum leap in 1985 in order to be adequate for current year losses. Profit, if any, will go to rebuilding surplus which has the effect of increasing insurance capacity.

HOW ALASKA FITS INTO THE NATIONAL SITUATION

Despite its geographic size, Alaska accounts for an almost insignificant portion of insurance premium in the U.S. marketplace. Even in the period of excess capacity and cut rate premiums, the Division of Insurance devoted substantial efforts toward attracting insurers to do business in Alaska. High costs relative to the small volume, lack of local servicing and the perception of Alaska in the lower 48 are constant obstacles to attracting new markets. Alaska is the last state market many insurers enter and the first to feel the company's consolidation of business efforts. Generally, insurers fared better in Alaska, on a pure loss ratio basis, than the national average.

The Division of Insurance believes its long-term efforts to encourage insurers to operate profitably has lessened the present insurance crisis to a large degree. Since Alaska business is largely insignificant to many insurers, any move to pressure them into areas they perceive to be unprofitable or potentially volatile may cause them to shift their underwriting to another part of the country. To the extent Alaska cultivates insurers and encourages their participation, capacity may be attracted here from other states. At least for the present time total insurance capacity does not exist in sufficient amount to satisfy the national need. The particular efforts and conditions in each state, therefore, affect the amount of insurance capacity dedicated by insurers to that state.

INSURANCE INDUSTRY RESPONSES

Insurers interviewed by the Task Force staff made recommendations that they considered would improve the availability of insurance in Alaska. The highest priority was related to reforms in the civil justice system that would give stability and predictability to liability claim settlements and judgments. Joint and several liability, caps on awards for wrongful death and pain and suffering, disclosure of collateral source recoveries and prejudgment interest, were high on the insurers' list. The industry was severely impacted by the recent announcement by the chairman of Lloyds of London that Lloyds would not insure casualty risks in the U.S. after this year because of their frustration with the U.S. legal system. Insurers have responded by asking for tort reform and by switching to a "claims made" form of liability policy. "Claims made" policies respond to losses reported during the policy period only as opposed to covering claims which occur during the policy period but are reported years later. The full impact of the new form will only be known after policies have been in effect for several years.

Insurers did not hesitate to point out the seriousness of their efforts to turn massive losses into profit in the short-term. Further losses would put insurers out of business. Participation in guarantee association programs for insolvent insurer bailout would exacerbate the problems for currently marginal insurers.

Insurers stated that they would devote their limited capacity to the best risks and coverages. Any line they felt had potential for unexpected claims or catastrophic loss would be avoided or priced to guarantee profitability. Being forced to unwillingly write coverage for classes of insured that have an unpredictable risk and/or the potential for catastrophic loss or to subsidize the rate, would be cause for the insurer to reevaluate their overall profit potential in that state and to readjust overall company strategy. Insurers are also holding back until they determine the cost and availability of their reinsurance and the exclusions it contains for certain types of risks.

DIVISION OF RISK MANAGEMENT RESPONSE

State insurance programs have also been adversely affected by the present insurance market situation. Public entities, including states and municipalities of all sizes, have been singled out by the insurance industry as difficult risks due to type and variety of exposures and deteriorating claims experience. Risk Management is well aware of the current market problems, and they have empathy for others caught in the same problem.

They see risk management or "management of risk" as a program requiring three elements of attention: (1) insurance, including various levels of self-insurance; (2) claims control to fairly and quickly adjust or adjudicate claims against the State; and (3) loss prevention or loss control programs designed to reduce the number and severity of claims. As we are

*as in what did
of any case*

forced to higher levels of self-insurance, loss prevention programs become paramount in control of costs. Risk Management is now providing agencies with useful claims reports and analysis on a quarterly basis. This should help locate and identify problem areas that can be corrected. Another important segment of loss control involves State contract insurance requirements. These are necessary to prevent the State from having to pay or defend claims caused by negligent acts of independent contractors unless the State by its own negligent acts is also responsible.

The Division of Risk Management is in complete agreement with Task Force recommendations concerning reassessment and possible revision of State contract insurance requirements.

Risk Management has been working with State agencies on revisions of insurance requirements for a number of months. They have addressed these issues both on an individual contract basis, and, where applicable, on a specific program basis. They are also in the process of revising several elements of Appendix B ("boiler plate" insurance requirements for many agency contracts) to help alleviate the problem where these insurance requirements are in general use.

Due to the great variety of State contracts, it is very difficult to adopt one program or even a series of programs that fit the needs of all contract agreements. They, therefore, look upon "boiler plate" requirements as "guides" and Risk Management will work with any of the State agencies to consider revisions when necessary.

Risk Management services should be looked upon as a resource available to all State agencies or contractors. They are willing and anxious to meet with agency contract officers or other personnel at any time to explain the State program and to understand or assist with agency insurance problems.

They believe it is in the agencies' best interests to remain involved in insurance decisions or deviations because the agencies attest better to the type of work involved, inherent exposures, possible statutory requirements, and the importance of the program or contract "to the best interests of the State."

To reiterate, they cannot emphasize too strongly that "boiler plate" insurance requirements are considered by Risk Management as "guides." While in many cases these requirements have been set for good and sufficient reasons, there are also many types of contracts depending on supervision, type of work, and other reasons that, as a practical matter, call for modification of such requirements. When these cases are called to Risk Management's attention, they have been recommending accordingly.

The present insurance crisis will probably remain with us for another two or three years, especially in the areas of professional or hazardous liability and property exposures. Recognizing this market situation, Risk

Management will continue to respond to the difficulties the private sector has in meeting State insurance requirements. So far, in most instances they have been able to agree on alternatives acceptable to both parties.

MARKET ACCESS PROGRAM

After the first Task Force meeting, many individuals have called the Division of Insurance for assistance in finding insurance coverage.

The division undertook on an experimental basis a market availability program to these displaced persons. In the majority of cases, diligent market search turned up coverage for these people. Although very time consuming and insufficient on a per policy basis, this experiment proved that few reasonable risks are unable to be insured by someone at some price. The division is working on several ideas which may increase the efficiency of this program in order to make it relatively cost effective.

CADIS

(Coordination of Alaska Day Care Insurance Search)

EVOLUTION AND CONCEPT

During February and March 1985, the division became aware of a growing problem for day care operators attempting to purchase or renew day care liability insurance. Numerous articles have been written on the subject in a variety of publications.

Since the time that the division became aware of the problem, we have attempted to identify potential markets and share the information with both insurance producers (insurance agents and brokers) and day care operators. We have also advised operators how to approach the market.

We understood from the beginning that this challenge could not be met with empty rhetoric. It has to be met with a program of active cooperation by all involved parties. We have used this opportunity to create and test a pilot program wherein we attempt to identify markets, identify their needs, and bring the buyer, intermediary and seller together. This approach is also useful in attracting new markets. It has, in fact, already attracted a market that was not generally available prior to the development of CADIS.

Division personnel have spent many hours talking to individual operators, speaking before groups, meeting with other State agencies and discussing the situation with insurers. From this has come an understanding of the problem and the seeds of how the challenge might be approached.

It became clear in talking with operators that, at the very least, underwriters must be suffering from a severe information deficiency. It was also discovered that much information was available from the permitting and licensing agencies. CADIS attempts to get the information flowing to

those needing it to make decisions. It also helps the operator to understand the insurers concerns and needs, and shows how the information gap can be bridged.

MECHANICS OF CADIS

The approach developed in cooperation with the Department of Health and Social Services and the Department of Education starts with the day care operator. Each licensed day care operator has been informed by the appropriate regulatory agency of the existence and availability of CADIS. The operators have been advised how they might participate in CADIS.

If a licensed operator wishes to participate in CADIS, the operator has been told that his or her insurance producer should be supplied with the following documents:

If the licensed day care operator is regulated by the Department of Health and Social Services, a copy of the evaluation report completed by the licensing worker of the Department of Health and Social Services.

If the licensed day care operator is regulated by the Department of Education, a copy of the application for pre-elementary certification, the pre-elementary certificate, and the written on-site review inspection evaluation of the preschool facility, if available (some preschools do not have this report).

In addition, the following must be included in all cases:

A copy of the fire and sanitation inspection report.

Pictures of the facility showing pertinent underwriting features:

1. The front of the facility with fence and fire hydrant, if available
2. General exterior layout
3. Inside of the building showing general layout
4. Kitchen area
5. Playground equipment
6. Any barriers or features designed to prevent children from reaching items that are hazardous to their health or safety
7. Stairs, if any

After the insurance producer receives this packet, the producer can contact this office and request identification of those companies currently accepting the particular kind of insurance under CADIS. The producer can then submit the packet to the companies with the appropriate application. We are asking the producers to advise us of the results as a means to monitor the success of the program.

There is no guarantee that coverage will be granted by the insurer, but such a package will be more attractive than that generally provided before this program was designed. We have already received favorable comments

from one insurer concerning the quality of submissions. It should be clearly understood that this is a purely voluntary program. It is not an assigned risk plan and should not be characterized as one. At this stage, we believe that the program can be endangered by misconception, so we are treading very cautiously. We believe that the program is working, even at this early stage.

EFFECT ON PARTIES

The effect of this effort of the various parties is, in itself, of value.

The licensed day care providers can receive assistance in locating coverage needed to maintain, license and operate their business.

Initially, the program will put them in touch with admitted companies through their agent or broker. This has the advantage of having the protection afforded by the Alaska Guaranty Association Act. These will be companies subject to rate and form review, which should reduce the potential for outlandish pricing.

The insurance producer has the advantage of being provided the most desirable of situations, an informed buyer with a complete submission package and the markets to approach with that package. This should result in substantial reductions of the time required to put together the materials needed when approaching an underwriter. The producer also has the attraction of using an admitted market with its known protections. That represents one less exposure to the producers surplus lines brokers bond.

The insurance company will receive submissions that will be unusual in quality resulting in less effort in putting together the information needed to underwrite properly this class of business. This approach will make the resulting portfolio of risk more attractive to the insurers/reinsurers. Hopefully this should stabilize the market somewhat. It will give them insureds that have a better understanding of the risk the insurer is taking and one who is willing to reduce the hazards that could result in loss. This will certainly be attractive to an insurer willing to look at this line of insurance.

WPAT NEXT

At this time, the program is limited to licensed day care operations. To some degree it can help preschools regulated by the Department of Education. We are exploring expansion of the program to operators not subject to licensure. We are also looking to the surplus lines market for a broader base of coverage availability. The program will undoubtedly be subject to fine tuning for some time.

LEGISLATION

Legislation has been submitted which will require insurers to give longer notice of cancellation to insureds and return unearned premium prior to the effective date of cancellation. This will allow additional time to find replacement coverage and provide funds to the insured to apply to the new policy.

ALTERNATIVES FOR INSURANCE

Within staff time and personnel limitations, the Division of Insurance has provided assistance to entities seeking alternatives to commercial insurance such as self-insurance, formation of captive insurers or pools and risk avoidance through loss control.

The Task Force believes that continuation of these ongoing responses is appropriate.

LICENSE AND CONTRACT REQUIREMENTS

We encourage all State agencies to review insurance criteria they impose on others as license requirements or contract requirements, to determine that they are reasonable and appropriate.

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Liability awards have increased at a much greater rate than the cost of living or inflation rate and at a greater rate than anticipated by insurers. The civil justice system has gradually expanded theories of liability so that more acts or failure to act are found to be negligent conduct. As insurers are asked to accept this transfer of negligence from individuals, they must anticipate the probable future expansion of legal theories in order to properly charge for the insurance product.

Insurers are also responding to expansion of legal theories with new policies and language which limit coverage for some exposures, in some cases limiting the time in which claims may be covered, and limiting the cost of defense and attorney fees. In effect, they are refusing to accept the transfer of certain types of risk that they feel are unpredictable or unreasonable at this time.

Individuals find that they are less able to transfer the cost of their own negligence to insurers. The punishment afforded by punitive damages is more likely to be assumed by the negligent person than by an insurer in the future.

Insurers having hit their financial low in 1985 have adjusted their practices and anticipate some profits in the future. This has caused insurance stocks to increase in value over prior year lows. As insurers build up their surplus through profitable underwriting, insurance capacity will increase.

THE TASK FORCE RECOMMENDS THAT THE DOCUMENTS COLLECTED DURING THE TASK
FORCE RESEARCH BE READ BY ANYONE WHO INTENDS TO PROPOSE A SOLUTION TO THE
COMPLEX PROBLEM WE ADDRESS AS THE INSURANCE CRISIS.

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RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

9/5/89
Date

HLC

DENTAL

EXAMINERS

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

BILL SHEFFIELD, GOVERNOR

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

PUBLIC NOTICE BOARD OF DENTAL EXAMINERS

NOTICE IS HEREBY GIVEN OF THE FORTHCOMING MEETING:

The Department of Commerce and Economic Development has announced that the Alaska Board of Dental Examiners will be holding a board meeting on December 8, 1984, in the Frontier Building, Penthouse Suite West, 3601 C Street, Anchorage, Alaska. The meeting will begin at 10:00 a.m. and end at 11:00 a.m.

Anyone wishing further information or agenda time should contact the Department of Commerce and Economic Development, Division of Occupational Licensing, Pouch D-LIC, Juneau, Alaska 99811, telephone (907) 465-2580.



Richard A. Lyon, Commissioner

Date November 23, 1984

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CELLANEQUS

ember 18-19—CPR class taught
a-Goldstream Volunteer Fire
nent members. Information:

...for City Briefs should be submitted
the day before the first day of pub-
Sept 15 1984
Jauhanks - Mike
nley, Kelly

Review team
...Superintendent Dr. Ken-
nley and Mike Kelly, general
r of Golden Valley Electric
ion, have joined 12 others in
on a review team to determin-
ffects on the borough of more
s stationed at Fort Wain-

Population Impact Review
...was appointed Thursday by
Bill Allen, Bill Walley and
Lew's, after the Army
ced that Alaska had been
to receive a light infantry di-
about 2,600 soldiers. The new
to be stationed at Fort Wain-
and Anchorage's Fort
n in the next two years, will
approximately 10,000 Army
Alaska.
ybach, chairman of the com-
was out of town Friday and
t be reached to find out when
mission would meet.

**g your car in
missions test**
...orough's Vehicle Emissions
Program (VEAP) will begin
oday, offering free emission
or vehicles to see how much
polluting.
e, voluntary inspections will
d through Oct. 6 at University
and Oct. 7 to 27 at the Bentley
rs will be tested from 9:30
6:30 p.m., Monday through
y.
has been operating in the
for about nine years, accord-
eather Stockard, borough en-
ntal services manager. But
r will may be the last year
e borough cancels plans to
mandatory program by July.

...rding to VEAP coordinator
erra, VEAP testers will check
missions, provide a computer
of the vehicle's "health" and
y minor carburetor adjust-
ed to reduce emissions.
tire check takes about 10 mi-
nd there is no charge for the
ear the borough tested about
icles through the program.



ACCIDENT VICTIM—Emergency medical personnel
move an accident victim from a military helicopter to-
ward a waiting ambulance outside the Fairbanks Memo-
rial Hospital Friday evening. A tour bus crashed Friday

afternoon near Dot Lake on the Alaska
miles southeast of Fairbanks, injurin

Dental licensing board must change test process

ANCHORAGE (AP)—The state's
dental licensing board will have to
change the way it evaluates appli-
cants who have professional experi-
ence, the attorney general's office
says.

Attorney General Norman Gorsuch
is reviewing the legality of the board's
examination process because of an
appeal by Michael Alpert, an experi-
enced dentist who failed the test last
year.

Other applicants have complained
that the board's testing procedure is
unfair and designed to reduce com-
petition with established dentists.

Currently, applicants with previous
experience must meet eight criteria,
including graduation from an accre-
dited school and an interview by the
licensing board.

But the board has turned the inter-
view into an examination, said Assis-

tant Attorney General Richard
Monkman.

"It is our firm opinion that inter-
view means interview and not oral ex-
amination," he said Friday.

Board Chairman Paul Buxton said
later the board will ask the Legisla-
ture the allow it to give experienced
applicants a practical exam.

"The interview process, as it is
now, is not workable to give adequate
protection to the public," he said.

The dentists who failed the creden-
tial exam did so because their pre-
sentations of three cases studies indi-
cated substandard work, Buxton said.

He again denied charges that the
dental board is trying to eliminate
potential competition from new den-
tists.

"That's not the truth; that's not our
purpose as a board," he said.

Monkman said he believes the
board is sincere in its expressed de-
sire to protect the public from bad de-
ntistry.

"They have been talking about a de-
cline in the quality of applicants," he
said.

Monkman said his office has no
plans to require the board to change
the clinical examination for new
graduates, but said he hopes the
board will review it voluntarily.

Of the 18 new dental graduates who
took the board's clinical exam in
June, only two passed.

Buxton said the board will consider
making some minor changes in the
clinical exam, such as allowing more
time for the laboratory portions.

In 1944, the War Refugee Board dis-
closed publicly the first detailed re-
port of Nazi atrocities at the Birkenau
and Oswiecim concentration camps.

WEATHER . . .

(Continued from page 1)
you can't really predict what it's
going to be like. It's up to the environ-
ment itself."

"It's going to be a really cold win-
ter," says a smiling Christine Wagn-
er, 46, a local taxi driver. "And it will
probably flood this spring. That's
what my dad said."

"I think it will be a relatively mild
winter," claims a pensive John Rosa,
42, a local trapper, miner and 25-year
Alaska resident. "We had a wet sum-
mer this year. It reminds me of 1967
when it was a relatively wet
summer."

"I'm thinking we're going to have a
mild winter," says Nola Moore, a re-
tired civil servant with 25 years' Ala-
ska residency. "The weather patterns
are changing, because the states are
having really harsh winters and so
ours are mild."

"I think it will be a very cold winter.
I don't expect anything different from
last winter," notes Anthony Fitz-
gerald, 32, a clothing salesman. "I'm
preparing myself, buying warm
socks and clothes. We all know it's
going to be cold."

Life-long resident Leslie Landt, an
engineer technician for the City of

Fairbank
snow this
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Hawaii."

"I think
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had a cold
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Obituaries

PAUL LEO REIMAN

Paul Leo Reiman, 53, an 18-year re-
sident of Alaska, died at his home in
Nenana Sept. 9.

Born in Bixby, Okla., Feb. 7, 1931,
Reiman was a heavy equipment
mechanic. He was an Army veteran
and served during the Korean con-
flict.

Reiman is survived by two
brothers, Daniel of Fairbanks and
Herman of Casper, Wyo.

Memorial services were held Fri-
day at 2 p.m. at the First Assembly of
God Church in Nenana.

Local arrangements are under the
direction of Northern Lights Mo tu-
ary.

AUTO . . .

(Continued from page 1)
the Labor Department in Washing-
ton, said the laws differed from state
to state on whether the workers would
be eligible for benefits.

Bieber said there were no ploys in-
volved—that members at those par-
ticular plants simply had not reached
local agreements and wanted to
strike, and that it was simply coinci-
dence that the plants making the most
popular cars were struck.

However, he and chief UAW barg-
ainer Donald Ephlin grinned when
Bieber said that, and both laughed
and shrugged when reporters pressed
them on the issue.

The str
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Pontiac
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nical Cel
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technolo
cars.

Job se
the main

Paul A. (R)*5,798 63.3

State House District 5, Seat A
20 of 20 precincts

Mike (D).....3,776 40.7
Merrill (R).....3,453 37.2
John C. (L).....2,040 22.0

State House District 5, Seat B
20 of 20 precincts

Chris (D)1,767 19.1
Flo H. (R)*3,573 38.6
Andre (L).....3,888 42.1

State House District 6
11 of 12 precincts

Jetto (D)2,113 93.4

BONDING PROPOSITION A
412 of 440 precincts
mortgage bonds \$700,000,000

.....122,254 73.2
.....44,706 26.7

BALLOT MEASURE NO. 1
ve annulment of regulations

.....76,782 48.0
.....83,072 51.0

BALLOT MEASURE NO. 2
length of regular legislative sessions

.....127,495 76.9
.....38,180 23.0

BALLOT MEASURE NO. 3
ng regulation of transportation

.....97,6 59.4
.....86,592 40.5

SUPREME COURT
412 of 440 precincts

the following Supreme Court judge be
ad as justice of the court for 10 years?
Allen T. Compton

.....106,424 69.7
.....46,204 30.2

COURT OF APPEALS
412 of 440 precincts

the following judges be retained as judges
of court of appeals for eight years?
Alexander O. Bryner

.....103,171 68.9
.....46,497 31.0

Robert Coals

.....101,305 68.3
.....46,886 31.6

James K. Singleton, Jr.

.....102,892 69.1
.....45,754 30.8

SUPERIOR COURT
234 of 249 precincts

the following judges be retained as judges
of court for six years?
D. Carlson

.....61,901 63.4
.....35,619 36.5

Charles K. Cranston

.....62,128 65.3
.....33,008 34.6

Roy H. Madsen

.....59,296 62.2
.....36,006 37.7

J. Justin Ripley

.....61,655 64.1
.....34,412 35.8

..... Douglas I. Sarrahely

113-vote lead over ...
to 9,783.

But 1,509 absentee votes, as well as an undisclosed number of questioned ballots, still have to be counted in the district, according

showed 5,309 votes and ...
044.

About 775 absentee ballots could be at stake in that race, according to election officials. De-
tees are acc while not con he didn't exp results.

Wasilla's status hinges on

By C.L. GILBERT
Daily News reporter

WASILLA — Residents here will have to wait until 3 p.m. Friday to find out if Tuesday's vote to change Wasilla into a first-class city continues to stand.

Voters approved the change by 32 votes Tuesday, but 62 absentee and 49 questioned ballots could alter the outcome. The current count shows 556 in favor of the change and 524 opposed.

"In a stable community, absentee ballots follow the trend of the other ballots," said City Clerk Erling Nelson. "In this situation, I

wouldn't even hazard a guess how out."

If Wasilla does shed its second-class status, first-class status will become effective days after the city council certifies transition results.

At that point, the city council will decide how to make the transition to a first-class city, according to Pat Poland, government specialist at the state Dept. of Community and Regional Affairs.

A first-class city has the power to tax with only council approval, mayor at-large, and has the power of

State dental board limits licensing

Continued from Page C-1

"It is an expressed state policy that emergencies are to be held to a minimum and are rarely found to exist," he said.

A written statement signed by Board Chairman Paul Buxton said the emergency suspension was necessary because "there is a great deal of confusion existing as to the proper interpretation" of the credentialing law.

The law refers only to an "interview." In practice, the board has required that applicants produce three case histories from their practice and review and defend their treatment.

Rather than eliminate the examination, the board temporarily suspended all credentialing to give itself time to get the law changed or to write appropriate regulations, Buxton said Wednesday.

"The situation as it stands is that there's no real check of any kind on these people that are applying for licensing by credentialing," he said. "There's a couple of phone calls made

There really isn't any kind of clearinghouse that if a guy's been doing bad stuff in one state it would alert other states to it.

"The only thing we had to go on was to take a look at the guy's work."

A private attorney representing a group of dentists who applied for credentialing interviews originally scheduled for this month said Wednesday that his clients "are being discriminated against solely because of the fear of additional competition.

"These people are competent in their fields," said attorney Nelson Cohen. "They are not the kind of people who have complaints against them. The (board's) motive cannot be that they are trying to protect the public from my clients."

The high percentage of license applicants routinely failed by the board has led to allegations that the board is using its examination power to keep profits up by keeping additional dentists out of Alaska, a charge Buxton has denied.

Kerttula weathers stiff challenge of Lacher

Continued from Page C-1

stations throughout the large, two-seat district.

These are the most expensive Senate seats in the state," he said.

His strategy was simply "to make issues the campaign," and attempt to cancel out "vicious" attacks that he said could mislead the district's thousands of new voters.

"When they don't know you, they don't give you a second chance," he said.

That was borne out by three telephone polls commissioned by the Kerttula campaign. Those polls showed Kerttula stronger among

of Lacher," he said. "If you're fresh off the boat he know anything about Kerttula he said.

According to Hellenthal, the showe Kerttula leading by 16 about two weeks ago — a lead that said was eroded by Lacher's campaign.

"He had a large enough cushion the negative," Hellenthal said. been up 10 points he might election."

The win for Kerttula, legislative career that began

Anch Daily News
Weds, 18 July 84
p. A-13

Test for dentists questioned

A couple of weeks ago *thirty* prospective dentists took the Alaska State Dental Examination. Well, that *could* have been just wonderful! More dentists practicing here would more than likely reduce the cost of dental treatment and assuredly it would mean less hassle trying to get a dental appointment.

But it didn't turn out that way. Twenty-six of these prospective dentists failed this examination. These statistics totally astound me. Twenty-six people deemed incompetent to practice in our state by the Alaska State Board of Dental Examiners! Why?

Is it high standards? If so, I've been wondering who makes sure the dentistry of the board members is kept up the standards that they demand of the applicants. If it's not high standards they are after, there has got to be another reason. I personally would like to know what it is. And I also firmly believe it is something that should be thoroughly checked into by the appropriate people. *

I have a really hard time believing that twenty-six people who have all gone to an accredited dental school and graduated could all be as incompetent as they were deemed. A lot of these people who took the examination have been practicing dentistry in other places for years.

As far as I can tell, the only people that could possibly be hurt in any way be more dentists practicing in our state are the existing practitioners. As far as the consumer is concerned, they could only benefit. It is my opinion that the cost of dental treatment would invariably drop; also there would be more dentists to choose from. Undoubtedly it would be easier to get a dental appointment. More dentists would also mean more jobs for dental assistants, dental hygienists, lab technicians, and other dental personnel.

The dentists may not make as much money as they have before, but I just can't believe that it would make that much of a difference. From the information I could obtain on failure rates in the past, they've always been bad. And getting worse. Something just does not seem right to me. The dental community in our state is beginning to look more and more to be like an elite country club.

— Olga Karlsen



ALASKA DENTAL SOCIETY NEWSLETTER

Volume 1

Number 7

July, 1984

FRACTURED THOUGHTS ON JUNE BOARDS

BY

James Cerney

For most of us few times of trauma are more permanently etched in our minds than when we took our Alaska State Boards. For twenty-six dentists, only very few hygienists, and the State Board of Dental Examiners, that trauma has resurfaced.

Last month, thirty dentists took the State Board and twenty-six failed. Of those thirty dentists, eighteen attempted to gain license by examination and twelve by credentialing. Two dentists passed the Board by examination and two passed by credentialing. I have been unable to obtain exact statistics on the dental hygiene examination, but I understand that about eighteen took the exam. Of these, I have heard that only about three failed to pass.

For the dental portion, the failure rate seems extremely high. A high failure rate might suggest that a large number of those seeking licensure are unqualified. A high failure rate could also suggest that a problem in credibility and possibly liability might exist for those concerned with the examination.

The question of credibility arises if the contents of the examination are not good indicators of



ADELBERT

knowledge or ability; if the grading of the examination is inconsistent and excessively strict; or if the administration and scheduling of the examination was poorly done and becomes then a frustration to the candidate not to mention members of the Alaska State Board of Dentistry.

The question of liability also arises if the high failure rate is not due to applicant lack of ability but is instead due to examination content or the grading method. In this instance, a liability could occur against the State Board of Dental Examiners. But if the high failure rate is because of the poor administration of the examination resulting in frustration, then the liability could be incurred against the Division of Occupational Licensing.

After hearing the stories of some Board candidates and from a telephone conversation with two Board members, I have gathered the following information. (I also talked with one Board proctor). In all fairness, I tried to contact the Division of Occupational Licensing. In the next issue I will do a follow-up story from interviewing some of the Board's candidates and the Division of Occupational Licensing.

Now for some fractured thoughts:

1. Four Board members and four proctors administered the exam. The Board members were: Art Hansen, Leslie Lubhoff, Paul Buxton and Jerry Zemlicka. The proctors were: George Hansen, Jerry Stranik, Bob Warren, and Marshall Dotson. In a telephone interview with Paul Buxton, President of the Board, I was told that it is true that both Zemlicka and he were new members of the Board but they had proctored the Board before. George Hansen and Bob Warren had also proctored the exam before. The experience of the Board was not a real problem.

2. The Director of Occupational Licensing, Harry Treager, was hospitalized during the time of the examination. Two of his staff from Juneau, Ed Mercer and Jane English, were in Anchorage to help administer the exam. Ed Mercer is the new officer who administered the examination for the Division of Occupational Licensing. Much of the criticism that has occurred has been in his direction. For example, a special orientation session prior to the examination (in the evening) was never held. In addition, he was more than one hour late in coming to the written examination. Then he neglected to obtain a projector for the slide portion of the written examination. And for one session of the exam, he turned the examination over to a person who was not connected with either the Board of Dental Examiners or the Division of Occupational Licensing. Both George Hansen and Paul Buxton

Continued on page 6

Continued from page 1

were quick to point out that though Ed Mercer, though he made an initial mistake that he was "quick to learn" and probably did well in his capacity. Art Hansen made a motion to the Board to demand Ed Mercer's resignation. No action was taken; I believe.

3. The Board of Dental Examiners themselves were quite upset about the situation. As there is a need to appoint people to the Board, Governor Sheffield has been very slow to appoint these people. The Governor has stated that this is a "low priority item". After appointment has been made, the legislators have been slow in confirmation. Next, the Board has been upset with the administration of the examination. Paul Buxton stated that the clinical portion of the examination went smoothly, but this was not until the second day. The action of the Division of Occupational Licensing made the first day disastrous. Next, one candidate that I talked to felt that there was very poor verbal and written communication between the Division of Occupational Licensure and the candidates. There seemed to be many unanswered letters between the candidates and the Division of Occupational Licensing. Information on the Board that is usually sent in a timely manner was very late in its arrival for last month's candidates.

4. I have my own concerns. I have seen our Board make tremendous advances toward credibility and true consumer protection over the past eight years. Now because of one poorly administered examination, much of the credibility the Board has fought for may be lost. With the above, if fingers are to be pointed, let it be to the Division of Occupational Licensing. Both the Board members and the candidates were frustrated by the Division's administration of the examination. This may be the true liability.

All may not be lost however. In the past Mr. Treager has given excellent response to the concerns of the dentists and made concessions. Mr. Treager's hospitalization, though untimely, was unfortunate. Because of the absence of his leadership, this may have triggered many of the problems.

5. Finally, I believe both the Division of Occupational Licensing and the Alaska State Board of Dental Examiners are concerned with your thoughts. Paul Buxton said he would appreciate all concerns addressed to him at: Dr. Paul Buxton, Box 1376, Soldotna, Alaska 99669. The Phone is 262-5454. Letters to the Division should be sent to: Mr. Harry Treager, State of Alaska, Division of Occupational Licensing, Pouch D, Juneau, Alaska 99811. The Phone is: 465-2587.

***** WHO IS ED SIMS?? *****

In my spare time, I am trying to round up advertisers for the Newsletter. First, a little about myself. My father was in the U.S. Army, and we had the good fortune to be stationed at Ft. Richardson in the sixties. After retiring in 1972, we moved back to Alaska. My interests

include bicycling, motorcycling, photography, drawing, and traveling to name a few.

I graduated from Dimond High School in 1976, and then from the University of Oregon in 1980. I am a proud alumnus of the University of the Pacific School of Dentistry class of 1983. After six months as an associate of Dr. John Miller in Anchorage, I am currently on my own. My office is at 406 W. Fireweed Lane in Anchorage. If you know of any individual or firm that I could contact about advertising in the Newsletter, please let me know at 277-7596. Or feel free to drop by Wednesday to Friday.

LETTERS TO THE EDITOR

Dear Jerry:

The privileges we enjoy should not be taken for granted. We have a rich heritage that did not evolve without sacrifice and a great deal of selfless dedication by our predecessors. Without vocal, appreciative, and supportive members, values get diluted, goals disintegrated and personal commitments are denigrated.

The April 1984 issue of the J.A.O.A. focuses the profession's attention on our heritage and the efforts and accomplishments of mainly average dentists who had the betterment of their profession foremost in mind.

The June 1984 Alaska Dental Society Newsletter relates our Executive Council's overwhelming concern with the state legislature. This is an attitude not universally shared by the entire Society. A very considerable amount of time and members' dollars are spent in playing the questionable game.

Is it important to "establish credibility" with the Department of Occupational Licensing? The Board and our professions did this before the Department was formed. It exists to take the paperwork off the Board. It does such menial tasks and requires no professional knowledge or judgement.

Likewise, what conflict exists between the Board of Dental Examiners and the Executive Council of our Society? Are they not common members of the Society?

The Newsletter also contained a financial report by the Society's treasurer, Dr. Hansen. It is disturbing to the point of being offensive to this member.

The membership should not condone the extravagances and ill-advised expenditures which today total \$19,400 over an already padded budget. Good management of our Society requires conservative use of our limited funds. It needs the consensus of the whole membership. Who gave them the power to spend in excess of the approved budget? Need they not justify it? Whose money is it? It is our money!!

Expenditures need to be: necessary; worthy of support of the Society; using more volunteer work; at the least cost; and of value to as many members as possible.

Without action we will lose members as well as their dollars.

By Dr. Robert A. Smithson

How to keep a dentist busy. See page number 8.

By Dr. Gerald Stranik

Galena Dental Clinic

P.O. Box 191
Galena, Alaska 99741
(907) 656-1381

July 12, 1984

Dr. Cerney,

As you can see from my letter to Dr. Buxton, the interview portion of the board was not well planned either. In fact, there were no clinical questions asked of me. The entire interview consisted of the board members passing my study models and X-rays (without a view box) around the table. This could have been accomplished without my presence - some interview! As a minimum, the board could have briefly gone over my application as a group just prior to the interview. Ideally, each member should have had a copy of my application sent to them to review beforehand and to bring to the interview with them. I certainly didn't get my \$200 worth.

I'm sure you have already heard of the "operative" vs. "optimal" controversy. While this did not affect me, it points out a problem. Letters sent from the board to applicants should be proof read by the secretary of the board.

The responsibility for the unreasonably high failure rate rests with the Board of Dental Examiners not with Mr. Mercer or the Division of Occupational Licensing since the board decides who shall be granted a dental license. The board, if it is meeting in good faith, should be able to transcend the difficulties you pointed out in your July ADS Newsletter article and issue a reasonable number of licenses. At this point the board should reconvene and go over the results of each applicant again with the purpose of giving each candidate the benefit of any doubt where the examination procedure was questionable.

Sincerely,

David K. Wright ms

David K. Wright, D.D.S.

*THIS IS A LETTER I SENT TO THE GOVERNOR - HEARD YOU MIGHT ALSO BE INTERESTED

DEAR GOVERNOR SHEFFIELD,

7-23-84

I AM VERY CONCERNED ABOUT THE EXAMINATIONS AND INTERVIEWS GIVEN BY THE ALASKA STATE BOARD OF DENTAL EXAMINERS ON JUNE 15, 1984 IN ANCHORAGE.

AS I UNDERSTAND IT THE PURPOSE OF STATE LICENSURE IS TO ASSURE THE RESIDENTS OF THE STATE QUALITY DENTAL CARE. I BELIEVE THE DENTAL BOARD HAS THE RESPONSIBILITY TO LICENSE AND

QUALIFIED COMPETENT DENTIST WHO APPLIES. FROM THE INFORMATION I HAVE IT IS MY BELIEF THAT THE DENTAL BOARD IS NOT ACTING IN THE BEST INTERESTS OF THE PEOPLE OF THE STATE OF ALASKA.

AS I DO NOT HAVE THE ABILITY OR AUTHORITY TO PERFORM A COMPLETE INVESTIGATION OF THE DENTAL BOARD PRACTICES I AM REQUESTING THAT YOU LOOK INTO THIS MATTER WITHOUT MISUSE OF STATE LICENSING

BY THE DENTAL BOARD. UNLESS I AM PROVIDED WITH SUFFICIENT EVIDENCE AND INFORMATION I WILL HAVE TO CONCLUDE THAT THE DENTAL BOARD IS TRYING TO RESTRICT COMPETITION AND DENY THE PEOPLE OF ALASKA ACCESS TO PROPERLY REGULATED DENTAL SERVICES.

PLEASE SEE THE ATTACHED SHEETS FOR THE INFORMATION WHICH HAS LED ME TO BELIEVE THERE ARE GRAVE PROBLEMS WITH THE METHODS OF LICENSING DENTISTS IN THE STATE OF ALASKA. THANK YOU VERY MUCH FOR YOUR TIME AND ATTENTION TO THIS MATTER. I LOOK FORWARD TO HEARING FROM YOU.

Sincerely,
William Kessler
PO Box 7014
KETCHIKAN
ALASKA 99901

1.) IN THE ALASKA STATE STATUTES WHICH PROVIDE FOR DENTAL LICENSURE BY CREDENTIAL THERE IS NO REQUIREMENT FOR THE CASE PRESENTATION WHICH THE DENTAL BOARD HAS INCLUDED AS PART OF ITS INTERVIEW. IT IS MY BELIEF THAT THE BOARD HAS TURNED THE INTERVIEW INTO AN EXAMINATION BY INCLUDING THE CASE PRESENTATIONS. IT IS MY FEELING THAT THE MAJORITY OF THE DECISION FOR GRANTING LICENSE BY CREDENTIAL IS BEING BASED ON THESE CASE PRESENTATIONS AND THAT THE BOARD IS LOOKING FOR PERFECTION RATHER THAN COMPETENCY. I AM OF THE IMPRESSION THAT THE REAL CREDENTIALS OF THE APPLICANT ARE NOT BEING CONSIDERED HIGHLY ENOUGH.

AS 08.36.230

ALASKA STATUTES

AS 08.36.244

competency as required by the board. If the dentist fails to register, the board may reinstate his license without examination upon payment of a penalty of \$25, payment of the delinquent registration fee under AS 08.36.230(10), presentation of proof of continued competency, and presentation of proof of active practice certified by the dental board having jurisdiction or, if there is no board with jurisdiction, by evidence satisfactory to the board. (Sec 10 art III ch 106 SLA 1965; am Sec 5 ch 121 SLA 1972; am ch 49 SLA 1980)

Sec. 08.36.234. Licensure by credentials. The board may provide for the licensing without examination of a dentist who

(1) is a graduate of a dental college approved by the Commission on Accreditation of the American Dental Association, or its successor agency;

(2) has been licensed to practice dentistry in another state, territory, or region with licensing requirements similar to or higher than those of this state at the time of licensure;

(3) has been engaged in continuous active practice averaging at least 20 hours per week for the five years immediately preceding the application;

(4) is not the subject of an unresolved complaint, review procedure, or disciplinary proceeding undertaken by a professional dental association;

(5) has not previously had a license to practice dentistry revoked;

(6) has not failed the clinical examination of this state;

(7) is personally interviewed by the board;

(8) pays all fees required under AS 08.36.200. (ch 49 SLA 1980)

Sec. 08.36.238. Exemption from license requirement. (a) A person enrolled as a full-time student in an accredited school of dentistry may perform procedures as part of a course of study without a license if

(1) the procedures are performed under the direct supervision of a member of the faculty who is licensed under AS 08.36, or under the direct supervision of a team of licensed faculty dentists, at least one of whom is licensed under AS 08.26; and

(2) the clinical program has received written approval from the board.

(b) A person practicing dentistry under (a) of this section is subject to all other provisions of this chapter and to other laws and regulations which apply to the practice of dentistry. (ch 49 SLA 1980)

Sec. 08.36.2 . Issuance of license; recordation; display. The board shall issue a license to each successful applicant who has paid the required fees. The holder of a license shall register it in the office of the clerk of the superior court in the judicial district of his place of residence. The licensee shall display the license in a conspicuous place where he practices. (Sec 11 art III ch 105 SLA 1965; am Sec 6 ch 121 SLA 1972)

Sec. 08.36.244. License to practice as specialist required. No licensed dentist may hold himself out to the public as being especially qualified in a branch of dentistry by announcing through the press, sign, card, letterhead or printed matter, or any means of public advertising, using such terms as "specialist," or inserting the name of the specialty, or using other phrases customarily used by qualified specialists that would imply to the public that he is so qualified, without first securing a specialist's license as provided in this chapter. (Sec 8 ch 155 SLA 1980)

2.) THE DENTISTS WHO WERE INTERVIEWED FOR LICENSURE BY CREDENTIAL WERE TOLD WHETHER OR NOT THEY WERE BEING GRANTED A LICENSE IMMEDIATELY FOLLOWING THE INTERVIEW PROCEDURE.

A.) I HAVE BEEN TOLD BY THE STATE DIVISION OF OCCUPATIONAL LICENSING THAT ONLY ONE BOARD MEMBER MAY HAVE SEEN ANY OF THE APPLICANTS' CREDENTIALS PRIOR TO THE DECISION TO GRANT OR DENY LICENSE. (SURELY IF ONE IS TO BE LICENSED BY CREDENTIAL ALL OF THE BOARD MEMBERS SHOULD THOROUGHLY REVIEW ALL CREDENTIALS BEFORE THE INTERVIEW) ONE OF THE APPLICANTS WAS TOLD BY THE DIVISION OF OCCUPATIONAL LICENSING THAT NONE OF THE BOARD MEMBERS HAD SEEN THE CREDENTIALS BEFORE MAKING THEIR DECISION.

B.) IF THE APPLICANTS WERE TOLD THE DECISION IMMEDIATELY - WHY HAS THE WRITTEN NOTIFICATION NOT ARRIVED ALMOST 6 WEEKS LATER? ALSO, WHY HAVE THE PATIENTS PERMANENT DENTAL RECORDS NOT BEEN RETURNED? THERE WERE ONLY 12 APPLICANTS FOR LICENSURE BY CREDENTIAL - HOW LONG CAN IT TAKE TO COPY THOSE FEW X-RAYS?

3.) I WAS TOLD THAT ONE MEMBER OF THE BOARD WHO WAS PRESENT, WITHDREW FROM THE DECISION PROCESS AT THE TIME OF THE INTERVIEWS. I WAS ALSO TOLD THAT NO MEMBERS OF THE BOARD FROM THE NON-DENTAL PUBLIC WERE PRESENT FOR THE INTERVIEWS. IF IT IS A REQUIREMENT FOR LICENSURE BY CREDENTIAL TO BE INTERVIEWED BY THE BOARD, SURELY THE APPLICANTS HAVE A RIGHT TO BETTER REPRESENTATION THAN THIS.

4.) THE BOARD DID NOT TELL THE APPLICANTS AHEAD OF TIME THAT THEIR PATIENT CASES WOULD BE RETAINED.

5.) THE BOARD HAD NO VIEWBOX FOR THE INSPECTION OF THE PANORAMAS BEING PRESENTED BY THE APPLICANTS FOR LICENSE BY CREDENTIAL.

6.) I HAVE BEEN TOLD THAT THE WRITTEN TEST GIVEN TO THE APPLICANTS FOR LICENSE BY CREDENTIAL WAS ADMINISTERED IN A PUBLIC HALLWAY - THIS DOES NOT SEEM APPROPRIATE.

7.) I WOULD SUGGEST A STATISTICAL COMPARISON:

APPLICATIONS FOR LICENSE BY CREDENTIAL IN THE STATE OF ALASKA

PHYSICIANS

WHO APPLY
?

GRANTED LICENSE
?

GRANTED LICENSE
?

DENTISTS

I BELIEVE YOU WILL FIND THE DENTAL STATISTICS EXTREMELY LOW IN THIS COMPARISON. THESE ARE TWO GROUPS OF DOCTORS WITH A GREAT DEAL OF RESPONSIBILITY TO THE PUBLIC, WHY SHOULD IT BE SO MUCH MORE DIFFICULT TO GET A DENTAL LICENSE THAN TO GET A MEDICAL ONE?

8.) ONLY 2 OUT OF 18 PASSED THE CLINICAL EXAM!

ONLY 2 OUT OF 12 WERE GRANTED LICENSE BY CREDENTIAL!

9.) I HAVE HEARD PEOPLE SAY — "JUST TAKE IT AGAIN", HOWEVER THE TIME PROBLEMS AND COST CONSIDERATIONS IN DOING THIS ARE PROHIBITIVE. ALSO WHO WOULD FEEL REASONABLE IN COUNTING ON GETTING A LICENSE EVEN IF YOU TOOK IT OVER WITH ODDS LIKE 1 OUT OF 9 (CLINICAL EXAM) AND 1 OUT OF 6 ("INTERVIEW").

SOME OF THE COST CONSIDERATIONS FOR APPLICANTS FOR LICENSE BY CREDENTIAL FOLLOW, APPLICANTS TAKING THE CLINICAL EXAMINATION GENERALLY SPEND MORE.

- 1.) COST OF GOLD FOR GOLD FOIL CASE PRESENTATION
- 2.) COST OF GOLD FOR GOLD INLAY CASE PRESENTATION
- 3.) LAB FEES
- 4.) TRAVEL EXPENSES TO & FROM ANCHORAGE.
- 5.) RENTAL CAR, TAXI, HOTEL, MEALS, ETC.
- 6.) \$200 APPLICATION FEE.
- 7.) WEEKDAY TIME AWAY FROM WORK

10.) I AM ENCLOSING A COPY OF THE RECENT ARTICLE IN THE ALASKA DENTAL SOCIETY NEWSLETTER. I BELIEVE THE PERSON WRITING THIS LETTER IS TRYING TO "PASS THE BUCK" TO THE DIVISION OF OCCUPATIONAL LICENSING. WHILE I UNDERSTAND THERE WERE SOME MECHANICAL PROBLEMS WHICH WERE THE RESPONSIBILITY OF THE DIVISION, IT IS THE DENTAL BOARD MEMBERS THEMSELVES WHO MAKE THE FINAL DECISIONS TO LICENSE OR NOT LICENSE A DENTIST AND I BELIEVE THEY ABUSED THIS RESPONSIBILITY.



Alaska Dental Society

3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4675

October 30, 1984

RECEIVED
NOV 14 1984

GOVERNOR'S

Alaska Board of Dental Examiners
Division of Occupational Licensing
Pouch D
Juneau, Alaska

Dear Board Members:

The Alaska Dental Society wishes to express its concern and support regarding the current situation involving the Board exam and the Board credentialing procedures.

It has come to our attention that due to an Attorney General's opinion the Board is giving licenses to several credentialing applicants based solely upon presentation of their completed applications and in spite of their having not passed the interview which you conducted during the June Board exams. The ADS feels that this is a very unfortunate situation. Without some review of case presentations the possibility exists that a license will be issued to someone who does not meet your minimum standards of proficiency. The possibility also exists that a specialist could be issued a license to do general dentistry without demonstrating any proficiency in that area.

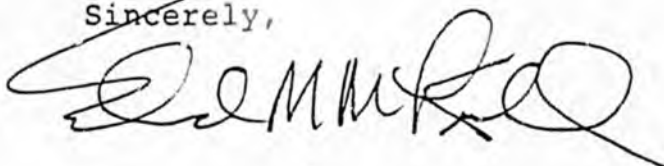
The Alaska Dental Society supports your determination of an emergency situation in deciding not to accept any credentialing applications and we hope that new regulations will be forthcoming to either eliminate licensure by credential entirely or to allow the board to interview and discuss case presentations with the applicants in a manner similar to what has been done for the last few years. Relevant to specialists, the ADS feels that the best solution would be to allow licensure by credential for the specialty only.

Another concern of the ADS regards the failure rate at the last Board examination. Many of the complaints that we have heard have to do with lack of communication and lack of enough information and instructions for the applicants. Hopefully this problem is a result of inexperience and the Board along with the Department of Occupational Licensing will be able to correct these problems before the next examination.

Many members of the ADS have also expressed the opinion that the Board exam would be more relevant if the testing criteria were updated. Some of the ideas that we think are worth considering are replacing the gold foil procedure with a composite procedure, replacing the inlay procedure with a crown procedure, and changing the requirement of three surfaces for restorations to two surfaces. Many applicants apparently have trouble finding patients with suitable teeth for the three surface restorations.

The Alaska Dental Society would be very willing to provide input in any manner that the Board thinks would be helpful in addressing these concerns. At our executive council meeting of September 28, 1984, we discussed the idea of lobbying for a fiscal note to allow the Board to hire an attorney to assist in developing new wording for the Dental Practice Act to address the above concerns and to assist with any other legal problems or questions that the Board may need to address. Please contact us if we can be of any service.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. M. McKrill', written in a cursive style.

Edward M. McKrill, DMD
President-elect

cc: Mr. Harry Treagar, Director
Division of Occupational Licensing

SUPPLEMENTAL FINDING OF EMERGENCY

The Department of Commerce and Economic Development, Board of Dental Examiners, hereby supplements its finding, filed October 17, 1984, that an emergency exists and that the emergency regulation, 12 AAC 28.450, which suspends credential licensing, is necessary for the immediate preservation of the public peace, health, safety and general welfare. A statement of additional facts constituting the emergency is

- 1) On September 15, 1984, the Board of Dental Examiners voted 5-0 to suspend credential licensing with an emergency regulation for at least 120 days during which the Board would reassess what to do with credential licensing.
- 2) Pursuant to that action, the division of occupational licensing in the Department of Commerce and Economic Development drafted a Finding of Emergency, Adoption Order, and an emergency regulation 12 AAC 28.450 suspending licensing of dentists by credentials under AS 08.36.234.
- 3) On October 2, after checking with the Attorney General's office on September 27, to verify that such an emergency regulation would be within the Board's authority, the division mailed the Finding of Emergency, Adoption Order, and the emergency regulation 12 AAC 28.450 to the Chair of the Board in Soldotna for review and signature.
- 4) The chair of the Board signed the Finding and Order on October 5 and mailed them back with the emergency regulation to the Division in Juneau where they were filed by the Lieutenant Governor on October 17, 1984.
- 5) The division delivered the emergency regulation and other documents to the Lieutenant Governor's office for filing in accordance with AS 44.62. The regulation was filed on October 17 by Attorney General Norman Gorsuch, in the Lieutenant Governor's absence, and became effective on that date under AS 44.62.180(3), to expire 120 days later on February 13, 1985 under AS 44.62.260(a).
- 6) Between October 16 and 24, the division mailed and published notices of the adoption of the emergency regulation as required by AS 44.62.250 and 190.
- 7) Before the October 17 effective date of the emergency regulation, the Board or division had before them complete active applications from 7 dentists for license by credentials. On October 24, the division notified most of these dentists of the suspension of credential licensing by emergency regulation and that they would be notified of any revisions to the Board's credential licensing policies and procedures.
- 8) Some of these 7 dentists, through their attorney, have alleged defects in the adoption of the emergency regulation 12 AAC 28.450 and have threatened litigation to challenge it and seek injunctive relief.
- 9) The Board met on November 9 to hear from many of the ⁷ dentists and other members of the public and the dental profession, as well as the Attorney General's office concerning credential licensing in general and its emergency adoption of 12 AAC 28.450. At that meeting the Board passed a motion 6-0 to
 - A) Maintain the emergency suspension;
 - B) Adopt this supplemental finding of emergency with more specificity;
 - C) Reaffirm the adoption of 12 AAC 28.450 as an emergency regulation suspending credential licensing;

- D) Clarify that 12 AAC 28.450 only applies to applications which were either not active or incomplete on its October 17 effective date; and
 - E) State the Board's intent to make 12 AAC 28.450 permanent until permanent regulations can be adopted or statutes reversed to assure the Board's ability to evaluate the clinical competence of credential applicants.
- 10) Alaska would be very nearly unique, if not totally unique among the 50 states, if the Board were to issue credential licenses without evaluation of clinical documentation and skills or reciprocity. Therefore, it would tend to attract clinically incompetent credential applicants who are looking for a state with easy licensing standards.
 - 11) There are not currently adequate tools in the credential licensing process to verify satisfactorily compliance with AS 08.36.234, in light of the Attorney General's office interpretation of that statute.
 - 12) No criteria has been established to determine which state licenses exams are "equivalent in scope, quality, and difficulty to those of this state".
 - 13) The Board is concerned that issuance of credential licenses without some means to evaluate dental skills of applicants for credential licensing will result in the inadvertent licensing of dangerously incompetent dentists.
 - 14) The inadvertent credential licensing of incompetent dentists would be extremely dangerous to the public health, safety and welfare because many of the errors or omissions an incompetent dentist could make would not be easily noticeable for years yet could result in very serious harm.
 - 15) If the Board allows the entrance of unqualified dentists, their negligence or incompetent dentistry could cause permanent loss of the opportunity for good dental health for the remainder of the patient's lifetime. It could likewise cause pain and suffering or even paralysis, deformity, or loss of life due to gross negligence or incompetence in anesthesia and analgesia techniques.
 - 16) If the Board has found that it is very difficult and time consuming to discipline incompetent dentists once they are licensed. In the meantime, many unsuspecting patients are subjected to the threats mentioned above.

REAFFIRMATION AND CLARIFICATION

Under authority of AS 08.36.070, the adoption of emergency regulation 12 AAC 28.450, effective October 17, 1984 is therefore reaffirmed and clarified as stated in paragraph 9 above.

This action is not expected to require an increased appropriation.

DATE: 11/9/84
Anchorage, AK

Paul S. Buxton DDS

Paul S. Buxton, D.D.S., Chair
Board of Dental Examiners
Department of Commerce and Economic
Development

Handwritten notes:
This is a copy of the original document.
The original document is in the file.
The original document is in the file.

FILING CERTIFICATION

I, _____, Lieutenant Governor for the
State of Alaska, certify that on _____, 19____,
at _____ m., I filed the attached regulations
according to the provisions of AS 44.62.

Lieutenant Governor

Effective _____.
Register _____.

Dental Credential Licensing Options

- 11/9 - POF, AAG

Longer Range: (After choosing immediate option)

- A
 - 1) Get legislature to delete "without examination" and change "interviewed" to "examined" in AS 08.36.234(7)
 - 2) Then adopt a regulation setting requirements of the personal examination.
 - B Adopt a permanent regulation closing off credential licensing, carefully building a record that demonstrates that the reason is not anticompetitive.
 - C Continue credential licensing but with only an interview, not an examination.
 - D ?
-

Immediate:

- 1) Do nothing and face likely court challenge.
- 2) Emergency repeal of emergency regulation with or without a second emergency suspension with a more specific finding of emergency.
- 3) Maintain emergency suspension but adopt supplemental finding of Emergency with more specific and also reaffirm why emergency suspension
- 4) ?

Possible Findings of FACT (Emergency)

- 1) On September 15, 1984, the Board of Dental Examiners voted 5-0 to suspend credential licensing with an emergency regulation for at least 120 days during which the Board would reassess what to do with credential licensing.
- 2) Pursuant to that action, the Division of Occupational Licensing in the Department of Commerce and Economic Development drafted a Finding of Emergency, Adoption Order, and an emergency regulation ¹²⁷ AAK28.450 suspending licensing of dentists by credentials under AS 08.36.234.
- 3) On October 2, after checking with the Attorney General's office on September 26 and 27, to verify that such an emergency regulations would be within the Board's authority, the Division mailed the Finding of Emergency, Adoption Order, and the emergency regulation 12AA^c 28.450 to the Chair of the Board ^(in Sitotna) for ^(review and signature) execution.
- 4) The Chair of the Board ^{signed} executed the Finding and Order on October 5 and mailed them back ^(with the emergency regulation) to the Division in Juneau where they were filed by the Lieutenant Governor on October 17, 1984.
- 5) The Division delivered the emergency regulation and other documents to the Lieutenant Governor's office for filing in accordance with AS 44.62. The regulation was filed on October 17 ^{by} with Attorney General Norman ^G Gorsuch in the Lieutenant Governor's absence and became effective on that date under AS 44.62.180(3), to expire 120 days later on February 13, 1985 under AS 44.62.260(a).
- 6) Between October 16 and 24, the Division mailed notices of the adoption of the emergency regulation as required by AS 44.62.250 and 190.
- 7) Between the September 15 vote of the Board to suspend credential licensing and the October 17 effective date, approximately 6 dentists applied for license by credentials. On October 24,

the Division notified these dentists ~~that because~~ of the suspension of credential licensing by emergency regulations, ~~their~~ ^{and that they would} be notified of ~~either~~ any revisions that come from ^{to the} ~~the~~ ^{but} ~~is~~ ^{eval} a credential licensing policy ~~procedures~~.

8) Some of these ⁶dentists, through their attorney, have alleged two general defects in the adoption of the emergency regulation 12AAC 28.450. First they have alleged that the ~~time~~^{time} ~~fine~~ gaps between the September 15 vote by the Board, the October 5 signing by the Chairman of the Finding of ~~Emergency~~^{Emergency} and ~~Adoption~~^{Adoption} Order, and ~~October~~^{the} 17 filing by the Lieutenant Governor do not comply with the ~~time~~^{ing} requirements of AS 44.62.250. Second, they allege that the finding of emergency does not set out facts which constitute an emergency as required by AS ⁴44.62.250. The Attorney General's office has expressed some concern about the second issue.

9) These two alleged defects in the emergency adoption of 12 AAC 28.450 are the basis for an immediately threatened lawsuit which would ask the Superior Court to void the emergency regulation and order the Board to accept and process applications for credential licensing under AS 08.36.234.

10) In order to avoid the delay, cost and burden of litigation, the Board ^{herefore} on further analysis ~~and an recognition of the potential~~^{has determined} to repeal emergency regulation 12 AAC 28.450 ~~which~~^{which} suspending credential licensing. This ^{re} appeal can only be effective immediately if it is done as an emergency order under AS 44.62.250. The Board finds that the immediate threat of litigation is a ^{immediate} threat to the general welfare of the public in that it would unduly consume public resources and delay the licensing of the 6 credential applicants.

IMPORTANT

LICENSURE BY CREDENTIALS

By Paul S. Buxton
Chairman of the Board
Alaska Dental Board

In response to a request for a short statement to the Alaska Dental Society concerning the credentialing process, I would like to make the following comments.

The Attorney General's (AG's) office has studied Alaska Statute section .08.36.234 and advised the Board that it was operating beyond what the legislature intended when writing the law. Board policy required the applicant to present three case presentations that included procedures required in the clinical exam. The presentation was supported by pre- and post x-rays and study models. This format of interview was formulated in 1980 following advice from the AG's office that it would be an appropriate approach to the interview.

After several meetings and conversations with representatives of the AG's office, we were told that they would not support the Board if we continued our interview as designed; we were put in the position of having to re-interview the June applicants taking into account only those items listed in section .08.36.234. There is no investigative check on the history of any of these applicants, their word is taken on the answers for #3, #4, #5.** There is no check on the quality of their dental skills or capabilities.

On September 15, the Board voted to suspend licensure by credentials for 120 days which is the maximum amount for an emergency situation. This suspension is being worked on by the Division of Occupational Licensing. A 120 day suspension does not handle the problem. Section .08.36.234 must either be revoked or reworded to include oral examination of case presentations, if we are going to have quality control check at the entry level. I urge the

Dental Society to work with the legislature so that both the interests of the general public and the standards of the profession are served.

Thank you.

**Editor's note: For those interested in obtaining copies of Section .08.36.234 of the Alaska Dental Practice Act, please write to or call the Central Office.

KERMIT THE FROG TO RECRUIT MILLIONS OF KIDS TO BE TOOTH S*L*E*U*T*H*s



America's favorite Muppet, Kermit the Frog, will recruit children of all ages to become Tooth S*L*E*U*T*H*s, detectives in search of clues to dental health, during National Children's Dental Health Month next February.

The annual ADA promotion will feature Kermit joining dentistry in encouraging youngsters to "Start Learning to End Unhealthy Tooth Habits."

Individual dentists and their state and local dental societies will devote the month of February to educating kids to the importance of sound dental health as a part of a lifetime commitment to overall good health.

"Thanks to Kermit, this all-important educational program should be a lot more fun both for children and the profession," said Robert H. Roach, the ADA's assistant executive director for communications.

Continued on page 7

State House District 14, Seat A
10 of 10 precincts

- Duncan, Charles E. (D).....1,682 18.1
- Pignalberi, Marco A. (R).....7,631 81.2

State House District 14, Seat B
10 of 10 precincts

- Furnace, Walt (R)*7,868 97.0

State House District 15, Seat A
11 of 11 precincts

- Cotten, Sam (D).....5,691 52.6
- Liska, John J (R)*5,092 47.1

State House District 15, Seat B
11 of 11 precincts

- Watson, Johnny (D)2,269 21.4
- Phillips, Randy (R)*8,260 78.2

mat-su valley, doughnut district

State Senate District E, Seat A
38 of 38 precincts

- Kertulla, Jalmar (D)*10,473 52.4
- Lacher, Barbara (R).....9,509 47.6

State Senate District E, Seat B
38 of 38 precincts

- Sassara, Charles (Chuck) (D)9,783 49.7
- Armstrong-De Vries, Edna (R)9,896 50.3

State House District 18, Seat A
17 of 19 precincts

- Hurley, Katherine T. (D).....5,309 51.1
- Doyle, Bob (R).....5,044 48.6

See Page C-3, ELECTION

City may turn over drug abuse progr

By TOM KIZZIA
Daily News reporter

The municipality may turn administration of a variety of drug and alcohol abuse programs over to the state next year, saving itself \$350,000 — but surrendering control over the type and quality of social programs available in Anchorage.

Anchorage officials see the move as a step toward consolidating the Department of Social Services with the Department of Health and Environmental Protection. They are not sure what the state's reaction to the proposal may be.

One state official said he did not want to see the municipal share drop as a result of any

transfer. The programs are now run by non-profit groups with state and municipal funds.

The decision over who should oversee the programs is one of many to be faced by the municipal assembly in the next few weeks as it takes up the 1985 operating and capital budgets for the city.

The transfer of drug and alcohol programs to state control would affect about \$4 million in state funds going to such local programs as the Salvation Army's Clitheroe alcoholism treatment center, Akeela House for drug abuse treatment, the Arch youth residential house for substance abuse treatment, and the city's methadone clinic.

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Dental board limits licensing

By SHEILA TOOMEY
Daily News reporter

The state board that licenses dentists has reacted to allegations of overly restrictive requirements by halting its licensing of out-of-state dentists who want to work in Alaska.

The Board of Dental Examiners at its September meeting voted to suspend for 120 days a state law that allows dentists licensed in other states to get an Alaska license after being interviewed and

approved by the board, officials said.

The process is known as license by credentialing and is limited to practicing dentists who are licensed and in good standing in another state.

Board members voted on Sept. 15 to suspend credentialing interviews after being warned on Sept. 14 that their practice of turning the interview into an oral examination was probably illegal, said Assistant Attorney General Richard Monkman.

The board invoked a law that permits enactment of emergency regulations when something poses "an immediate threat to the public peace, health or safety," said Assistant Attorney General Peter Froehlich.

Although boards have the right to adopt such regulations in genuine emergencies, "we have concerns about the adequacy of this finding of emergency," Froehlich said.

See Back Page, STATE



South Central District Dental Society

3400 SPENARD ROAD, SUITE 10
ANCHORAGE, ALASKA 99503

MINUTES OF BUSINESS/DINNER MEETING, September 27, 1984

Present Were:

Dr. William Barrickman	Dr. Larry Korn	Dr. John Stolpe	GUESTS
Dr. Jim Bishop	Dr. Phillip Locker	Dr. Gerald Stranik	
Dr. Jim Case	Dr. Stephen Maloney	Dr. Vernon Sture	Dr. James Cerney
Dr. Jil Clark	Dr. Robert Maurer	Dr. Robert Sutherlin	Fairbanks
Dr. Gerald Danielson	Dr. Bryson McBratney	Dr. Jerry Taintor	Dr. Mike McKrill
Dr. Richard Day	Dr. Gerry Morrow	Dr. Melville Warner	Juneau
Dr. Marshall Dotson	Dr. Jim Mushovic	Dr. Robert Warren	
Dr. David Edwards	Dr. Tony Paden	Dr. Tom Wells	Dr. Galen West
Dr. Ralph Feriani	Dr. Luther Paine	Dr. Edward Wilkinson	Sitka
Dr. William Gerace	Dr. Phillip Priebe	Dr. Dick Williams	
Dr. Richard Guthrie	Dr. Greg Remaklus	Dr. Kenneth Wynne	
Dr. Roger Haertel	Dr. Michael Sage	Dr. Rebecca Bell	
Dr. Joe Harmon	Dr. Robert Sharp	Dr. John Robinson	
Dr. Tom Hartman	Dr. Edwin Sims	Dr. Max Swenson	
Dr. Kerry Kennday	Dr. Robert Smithson		

- I. CALL TO ORDER BY PRESIDENT - Dr. Marshall Dotson
- II. MINUTES OF PREVIOUS MEETING - The minutes for May 24, were approved as published.
- III. TREASURER'S REPORT - The treasurer's report was approved as presented.
- IV. COMMITTEE/MEETING REPORTS

R-1 Alaska State Board of Dental Examiners - Dr. Robert Warren
On September 15, the Board voted to suspend awarding Alaska licensure "by credentials" for 120 days. This time frame will move the board through the next scheduled exam time and into the period where the Alaska State legislature has convened. Legislative changes regarding the credentialing process can then be studied. The AG's office has taken the position of recognizing the Board's right to impose this suspension, but, at the same time, do not support the action. Further discussions with the Division of Occupational Licensing and the Governor's office are ongoing.

R-2 Report from the Medical Care Advisory Committee (Medicaid in the state) meeting. Denise Knapp is dentistry's appointed representative on this committee. She reported that at their September 22nd meeting, the State Division of Public Assistance has said the Medicaid/General Relief Medical Program contract will be put out to bid around February of 1985. This (as in the past) is a 5-year contract.

RESOLUTION: It was the unanimous decision of the members present to recommend that all efforts be made to approve an IN-STATE fiscal intermediary for all claims processing.