ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5793 HOUSE JUDICIARY

statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and the signature constitutes the member's adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection. A member may not attest to any portion of the report as to which the member is not qualified to give expert testimony.

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

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

(g) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report. If a panel member is called upon as a witness at trial or upon deposition, the member is entitled to payment of an expert witness fee, which may not exceed $150 per day. All expenses incurred by the panel shall be paid by the court. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(h) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings. (§ 33 ch 102 SLA 1976; am § 23 ch 177 SLA 1978)

NOTES TO DECISIONS

Chapter 102, SLA 1976, enacted in violation of Alas. Const., art. II, § 14. — Where the free conference committee recommended adoption of a version of ch. 102, SLA 1976, that differed in many respects from the version originally passed by the house; the free conference committee's bill was passed by the senate by a recorded vote; but in the house there was no roll call or recorded vote and the free conference committee bill was passed there by a simultaneous voice vote, this voice vote constituted "final passage" of ch. 102, SLA 1976, and thus violated the recorded vote requirement of Alas. Const., art. II, § 14. Plumley v. George E. Hale, M.D., Inc., Sup. Ct. Op. No. 1847 (File Nos. 4014, 4017), 594 P.2d 497 (1979).

But this holding is to be applied prospectively. — Although the supreme court held that ch. 102, SLA 1976, was enacted in violation of the recorded vote requirement of Alas. Const., art. II, § 14, the supreme court held that its holding in this case should be applied prospectively in light of its conclusions that its decision was one of first impression, that substantial reliance had followed from the legislature's alternative interpretation of law, that undue hardship would have resulted from retroactive application of its holding, and that the rationale of the holding did not compel retroactivity. Plumley v. George E. Hale, M.D., Inc., Sup. Ct. Op. No. 1847 (File Nos. 4014, 4017), 594 P.2d 497 (1979).

Therefore, this section was not invalidated. — Since neither ch. 102, SLA 1976, nor any other bill previously enacted into law by voice vote, will be overturned by its interpretation of Alas. Const., art. II, § 14, the supreme court did not invalidate this section. However, in order to effectuate the goals of fairness and intelligent advocacy, the supreme court held that this section would not be applicable in the malpractice actions consolidated for this appeal. Plumley v. George E. Hale, M.D., Inc., Sup. Ct. Op. No. 1847 (File Nos. 4014, 4017), 594 P.2d 497 (1979).

Collateral references. — Validity and construction of state statutory provision relating to limitations on amount of recovery in medical malpractice claim and submission of such claim to pretrial panel, 80 A.L.R.3d 583.

Sec. 09.55.540. Burden of proof. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider, the plaintiff has the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing;

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

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

(b) In malpractice actions there is no presumption of negligence on the part of the defendant. (§ 1 ch 49 SLA 1967; am § 34 ch 102 SLA 1976)

NOTES TO DECISIONS

The language of this section is so clear and unambiguous that the supreme court is foreclosed from broadening the standard contained therein through judicial construction. Poulin v. Zartman, Sup. Ct. Op. No. 1204 (File Nos. 2120, 2127), 542 P.2d 251 (1975), unmodified on rehearing, 548 P.2d 1299 (1976).

Optometrists were not included in this section prior to 1976. Steele v. United States, 463 F. Supp. 321 (D. Alaska 1978).

Requirements of surgeon's report. — It is incumbent upon a surgeon to describe accurately and fully in his report of an operation everything of consequence that he did and which his trained eye observed during an operation. Patrick v. Sedwick, Sup. Ct. Op. No. 206 (File No. 314), 391 P.2d 453 (1964).

To have maximum probative force, the report should be dictated immediately after the operation. Patrick v. Sedwick, Sup. Ct. Op. No. 206 (File No. 314), 391 P.2d 453 (1964).

Informing patient of hazards of operation. — There is good law in support of the argument that a doctor need not inform the patient of all the hazards involved in an operation; that doctors frequently tailor the extent of their preoperative warnings to the particular patient to avoid the unnecessary anxiety and apprehension which such appraisal might arouse in the mind of the patient. Patrick v. Sedwick, Sup. Ct. Op. No. 206 (File No. 314), 391 P.2d 453 (1964).

Absence of surgeon's personal recollection or of recorded facts not defense. — Under the circumstances of the instant case, the court would not permit the absence of a surgeon's personal recollection or of recorded facts to serve as a defense in an action for malpractice. Patrick v. Sedwick, Sup. Ct. Op. No. 206 (File No. 314), 391 P.2d 453 (1964).

Prima facie case of negligence. — See Patrick v. Sedwick, Sup. Ct. Op. No. 206 (File No. 314), 391 P.2d 453 (1964).

Failure of trial court to make finding of lack of informed consent was not clearly erroneous. Patrick v. Sedwick, Sup. Ct. Op. No. 206 (File No. 314), 391 P.2d 453 (1964).

"Similar communities" instruction did not convey a standard of conduct more lenient than a national standard instruction. Priest v. Lindig, Sup. Ct. Op. No. 1660 (File No. 3016), 583 P.2d 173 (1978), remanded on other grounds, Sup. Ct. Op. No. 1812, 591 P.2d 1299 (1979).

Cited in Baker v. Werner, Sup. Ct. Op. No. 2541 (File No. 5753), 648 P.2d 980 (1982).

Collateral references. — Qualification of medical expert witness, 33 Am. Jur. PDF2d, pp. 179-210.

Proximate cause, 13 ALR2d 11.

Aggravation of injuries as mitigating damages in action against physician or surgeon for malpractice, 50 ALR2d 1055.

Necessity of expert evidence to support an action for malpractice against a physician or surgeon, 81 ALR2d 597.

Competency of physician or surgeon of school of practice other than that to which defendant belongs to testify in malpractice case, 85 ALR2d 1022.

Standard of skill and care required of specialist, 21 ALR3d 953.

Competency of general practitioner to testify as expert witness in action against specialist for medical malpractice, 31 ALR3d 1163.

Competence of physician or surgeon from one locality to testify, in malpractice case, as to standard of care required of defendant practicing in another locality, 37 ALR3d 420.

Necessity and sufficiency of showing of medical witness' familiarity with particular medical or surgical technique involved in suit, 46 ALR3d 275.

Patient's failure to return, as directed, for examination or treatment as contributory negligence, 100 ALR3d 723.

Propriety, in medical malpractice case, of admitting testimony regarding physician's usual custom or habit in order to establish nonliability, 10 ALR4th 1243.

Standard of care owed to patient by medical specialist as determined by local "like community," state, national, or other standards, 18 ALR4th 603.

Sec. 09.55.546. Advance payments. In an action to recover damages under AS 09.55.530 — 09.55.560, no advance payment made by the defendant health care provider or the professional liability insurer of the defendant to or on behalf of the plaintiff is admissible as evidence or may be construed as an admission of liability for injuries or damages suffered by the plaintiff; however, a final award in favor of the plaintiff shall be reduced to the extent of any advance payment. The advance payment shall inure to the exclusive benefit of the defendant or the insurer making the payment. (§ 35 ch 102 SLA 1976)

Sec. 09.55.547. Pleading of damages. In a cause of action against a health care provider for malpractice, the complaint or any other pleadings may not contain an ad damnum clause or monetary amount claimed against the defendant health care provider, except as necessary for jurisdictional purposes. (§ 35 ch 102 SLA 1976)

Sec. 09.55.548. Awards, collateral source. (a) Damages shall be awarded in accordance with principles of the common law. The fact finder in a malpractice action shall render any award for damages by category of loss. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment shall include, if necessary, other provisions to assure that funds are available as periodic payments become due. Insurance from an authorized insurer as defined in AS 21.90.080 or from the Medical Indemnity Corporation of Alaska is sufficient assurance that funds will be available. Any part of the award which is paid on a periodic basis shall be adjusted annually according to changes in the consumer price index in the community where the claimant resides. In this subsection, future damages includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program which by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant which exceed amounts received by the claimant as compensation for the injuries from collateral sources, whether private, group or governmental, and whether contributory or noncontributory. Evidence of collateral sources, other than a federal program which must by law seek subrogation and the death benefit paid under life insurance, is admissible after the fact finder has rendered an award. The court may take into account the value of claimant's rights to coverage exhausted or depleted by payment of these collateral benefits by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future. (§ 35 ch 102 SLA 1976)

Submitted by Dr. Ross Bi

November 17, 1989

The information requested concerning statistics dealing with the expert advisory panel process and the medical malpractice suits follows:

Total number of claims processed since the inception of AS 09.55.536:
338 claims

Annual number of claims:

1977	12
1978	6
1979	15
1980	12
1981	16
1982	27
1983	32
1984	37
1985	55
1986	31
1987	37
1988	29
1989	29 to date
TOTAL	338 to date*

Avg. 26/yr.

Information concerning the decision of the expert advisory panel is not complete, since records have not been supplied by the court. Although the court sends notices of dismissals of cases, data concerning the status of the case at this point is unavailable, therefore a determination can't be made concerning fault or no fault on dismissed cases.

The following information might be helpful concerning the final results of some of the cases:
Dismissed cases: 27
Dropped cases: 10
Excused expert advisory panel members: 2[illegible]nels
Panel ruled fault and jury ruled against plaintiff: 1
Plaintiff ordered to pay settlement: 2

Expert Advisory Panel determination:
Defendant -- No Fault: 138 or 73% of the total cases
Defendant -- Fault: 40 or 21% of the total cases
No report available: 93

The number of judgements entered in favor of the plaintiff is unknown.

Submitted by Dr Ross

P.O. Box 210616
Auke Bay, AK 99821
November 21, 1989

Rav Schalow
Alaska State Medical Association
4107 Laurel Street
Anchorage, AK 99508

Dear Mr. Schalow,

This letter is in response to your requests for comments on HB336. Here are a few of my thoughts.

Increasing the number of members on the advisory panel will complicate the process unnecessarily. It will make it less likely to have reports in 30 to 60 days. Going to a five member panel may make this process so awkward that it will undermine the purpose of the panel and lead to stronger sentiments to disband it altogether.

Alaska is the only state listed in Exhibit "A" that has only physician members. In Section 1, paragraph a, line 16 to 19, the court is given the power to determine the professions or specialties to be represented on the expert advisory panel. Stipulating later in Section 1 that three out of five members not be health care providers unnecessarily restricts the courts ability to choose the most appropriate experts for the advisory panel. Why not let the court decide in each case whether there should be one or no non-health care provider on an individual panel?

The discovery issue is confusing, since I don't know how Section 2 originally read. Am I correctly interpreting the information presented when I conclude that as the law now stands, the panel can perform discovery but the respective parties cannot? Does this hinder the process, or would more information be available to the panel if discovery were allowed prior to and during the expert advisory panel report? Would allowing discovery delay the report? The discovery process certainly can be used to generate legal fees--is this more of what the lawyers amending this law are after?

If there are no serious problems with the law as it now stands, will changing it benefit the personal injury lawyers, the court, the injured parties being represented, or the physicians on the panel? Except to possibly allow an non-health care provider on the panel when the court might deem it appropriate, I cannot find any reason the law should be amended.

Sincerely,

Marcia A. Liberatore, M.D.

submitted by Dr. Ross

RODMAN WILSON, M.D.
FELLOW OF AMERICAN COLLEGE OF PHYSICIANS
INTERNAL MEDICINE

6234 TANAINA DRIVE, ANCHORAGE, ALASKA 99502, U.S.A.
(907) 243-5583

November 28, 1989

Representative Dave Donley, Chairman
Labor & Commerce Committee
Alaska House of Representatives
P.O.Box V
Juneau, AK 99811

Re: HB 336: "An Act relating to medical malpractice advisory panels."

Dear Representative Donley:

I am writing as a physician who served on the Governor's Commission on Medical Malpractice Insurance in 1975 that devised the three-person expert advisory panel system to assist the courts in adjudicating medical malpractice lawsuits. For 12 years after that I served as chairman of the Medico-Legal Committee of the Alaska State Medical Association. My committee's principal task was to recruit physicians, and occasionally other experts, for nomination to the court for service on panels and to assist panels administratively in doing their job. Thus I am in a position of knowledge concerning the origins of the panel system and how they have worked. Unfortunately there has not been a systematic, complete analysis of panel performance, although I have worked on this to some extent in past years.

HB 336 will emasculate or destroy the expert advisory panel system. This apparently is the purpose of the bill.

The prime reason for the panel, as it was created in AS 09.55.536, is to **explain the biology** of the case to the court-to explain the nature and natural march of disease as altered in most cases by medical intervention. The purpose is **not to apply the law** to cases or to answer the question as to whether medical malpractice occurred.

HB 336 would completely change this because only two at most of the panelists would be physicians. It is even possible that at some times none of the panelists would be physicians. How could a panel with a minority of members being "expert" in the biological issue at hand be "expert"? Who other than attorneys would presume to be qualified to be non-medical experts on the committee? The entire nature of the exercise would be altered and would be then, in my opinion, useless.

Submitted by DR. Ross

December 8, 1981

ALASKA'S MEDICAL PANEL REVIEW

OF

MALPRACTICE CASES

1978-1981

(draft - not completed or published)

Alaska's Medical Advisory Panel System

for

Malpractice Lawsuits

by

Rodman Wilson, M.D.
and
Martha MacDermaid, J.D.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

submitted by Dr. Ross

RODMAN WILSON, M.D.
FELLOW OF AMERICAN COLLEGE OF PHYSICIANS
INTERNAL MEDICINE
6234 TANAINA DRIVE, ANCHORAGE, ALASKA 99502, U.S.A.
(907) 243-5583

November 28, 1989

Representative Dave Donley, Chairman
Labor & Commerce Committee
Alaska House of Representatives
P.O.Box V
Juneau, AK 99811

Re: HB 336: "An Act relating to medical malpractice advisory panels."

Dear Representative Donley:

I am writing as a physician who served on the Governor's Commission on Medical Malpractice Insurance in 1975 that devised the three-person expert advisory panel system to assist the courts in adjudicating medical malpractice lawsuits. For 12 years after that I served as chairman of the Medico-Legal Committee of the Alaska State Medical Association. My committee's principal task was to recruit physicians, and occasionally other experts, for nomination to the court for service on panels and to assist panels administratively in doing their job. Thus I am in a position of knowledge concerning the origins of the panel system and how they have worked. Unfortunately there has not been a systematic, complete analysis of panel performance, although I have worked on this to some extent in past years.

HB 336 will emasculate or destroy the expert advisory panel system. This apparently is the purpose of the bill.

The prime reason for the panel, as it was created in AS 09.55.536, is to **explain the biology** of the case to the court-to explain the nature and natural march of disease as altered in most cases by medical intervention. The purpose is **not to apply the law** to cases or to answer the question as to whether medical malpractice occurred.

HB 336 would completely change this because only two at most of the panelists would be physicians. It is even possible that at some times none of the panelists would be physicians. How could a panel with a minority of members being "expert" in the biological issue at hand be "expert"? Who other than attorneys would presume to be qualified to be non-medical experts on the committee? The entire nature of the exercise would be altered and would be then, in my opinion, useless.

Further, under Sec. 2, the panel would no longer be able, among other things, to do two valuable functions of present panels, namely, physically examine patients (claimants) and adduce other expert opinion from current medical literature. Both of these facets of the present system are eminently pertinent

to the medical exegesis of the case and should not be so lightly discarded.

It has been very difficult to guage whether or not the panel system is socially constructive or not, i.e., whether lawsuits are handled in a way that is fairer, quicker, and operationally cheaper than the system without amicus curiae panels. It may well be that the panels are too ponderous and have outlived whatever usefulness they originally had. If so after thorough scrutiny, they should be abolished (not vitiated as in HB 336) but this, I submit, should be a part of elaborate tort reform that would replace a hoary system no longer serving the public well.

Respectfully,

Rodman Wilson

Rodman Wilson, M.D.

Submitted by DR Ross.

December 8, 1981

ALASKA'S MEDICAL PANEL REVIEW

OF

MALPRACTICE CASES

1978-1981

(draft - not completed or published)

Alaska's Medical Advisory Panel System

for

Malpractice Lawsuits

by

Rodman Wilson, M.D.
and
Martha MacDermaid, A 3, ?

The singular feature of Alaska's system for pre-trial review of legal actions alleging medical malpractice is that the three-person expert advisory panel is all medical. Although the statute (appendix) in 1976 which created the panels allows any person expert in the matter at hand to sit on a panel, in practice the courts have appointed only physicians or other medical professionals such as dentists, nurses, and optometrists.

The panel scrutinizes the medical records, interviews whomever it wants to interview, examines the patient if it wishes, answers eight cardinal statutory questions, expands on its answers if it desires, and within 30 days, or 60 if extension is requested and granted, reports to the court.

The key statutory question is number 4: "Did an injury arise from the medical care?" If the answer is yes, question number 7 is also salient: "Was the medical injury caused by unskillful care?"

Notice that neither of these crucial questions, nor any other, precisely asks the panel to determine whether or not "malpractice" occurred, a matter, as in most jurisdictions, having to do with proximity, standard of care, and the like. The distinction is important, for it allows the panelists to confine their opinion to medical rather than legal questions. Panelists are thus comfortable as a rule in their role as medical consultants to the court.

Other states have created screening panels of varying size and composition but usually including attorneys and lay persons. The closest parallel is the panel in Louisiana where three physicians, observed by an attorney, review cases. By and large they have been cumbersome, costly, and unconstitutional. Panels in Florida, Illinois, Missouri, Nevada, North Dakota, Pennsylvania, Rhode Island, and Tennessee have either been repealed or have fallen to court challenge. Panels persist

in 20 states including Alaska. Alaska's panel system was upheld by the Alaska Supreme Court, albeit obliquely. Plumby vs Hale pointed out that the final vote on the 1976 statute in the State Senate was by voice rather than roll call. The State Constitution calls for roll call votes on final adoption of statutes. The Alaska Supreme Court agreed that the vote was procedurally irregular but let the statute stand, throwing the complaining party a bone by allowing the pleader to proceed with two cases without expert advisory panels.

APPOINTMENT OF PANELS

Sixty-three medical malpractice lawsuits were filed in state courts in Alaska in the four-year period 1978-1981. ~~One case was subsequently transferred to federal court jurisdiction.~~ Most cases were filed in the Third Judicial District (3JD) in Anchorage where approximately one-half of the state's 460,000 people live. Most actions named more than one physician. One complaint listed 13 physicians. Ten physicians were named more than once. Dental cases invariably named only one dentist. One dentist was named twice. An action against an optometrist named his five colleagues and their corporation. Suits against physicians often named their associates, their clinic, and the hospital where the aggrieved had lain. An action solely against a hospital did occur. A total of 99 health professionals, including 78 physicians, and 33 institutions were named (Tables 1 and 2). Not included in the tables were many "John Doe's" and "XYZ Corporations."

Categories of allegations among 63 lawsuits are arrayed in Table 3. Faulty surgery or avoidable complications of surgery was claimed in 16 cases (25%); no two cases were alike. Mishandling of fracture was alleged in 14 cases (22%): fracture was missed according to the complaint in four instances (cervical vertebra, scapula, wrist, pelvis); angulation of the tibia after healing was specified three times. Faulty dentistry was the issue in 11 cases (17%): six involved oral or facial complaints

after extraction; four involved dissatisfaction with root-canal procedures. The accusation was faulty obstetrical or gynecologic care in eight lawsuits (13%): there were two claims of pregnancy after tubal ligation; two claims alleged damage from forceps delivery with death in one instance and cerebral palsy in another. Missed diagnosis, cancer twice and myocardial infarction twice, was specified in eight actions (13%). Six patients or their survivors (10%) were dissatisfied with management of medical problems; no two cases were alike.

Although the statute ordering expert advisory panels and at the same time creating a state-sponsored medical professional liability insurance company, initially mandatory for physicians but amended in 1977 to be optional, and working minor tort law alterations was enacted in June 1976, the first panel was not appointed until October 1978 — partly because of institutional inertias and partly because few complaints were brought in the wake of the new law while attorneys pondered its meaning and because of uncertainty as to whether physicians were insured or not. Most were not for a three-to-four-year period from 1975 to 1978.

In five instances among 62 cases in state courts panels were not appointed. In these five panels were not appointed because certain judges misunderstood the intent of the law, because the cases were dropped after the complaints were answered, or because, in one instance, a charge was defended successfully before a jury and an appeal on the issue of the statute of limitations before the medical issue was considered.

Nineteen judges appointed 57 expert advisory panels. In three cases lawsuits were dismissed before the panels convened. In a fourth case settlement out of court in an amount of $142,500 was made when a

newborn infant died from damage to the head during forceps delivery without using the panel.

Fifty-three panels completed their work by filing reports at the court. Forty-eight of these were available to the authors for review and the opinions as to fault or no fault are known in the five reports which were not in hand.

PROCESS

In 3JD the time line for lawsuits from filing to panel report is shown in the figure. The system is designed to complete this phase in 100 to 130 days.

Nominations for panel seats in 3JD cases were made by arrangement between the court and the Alaska State Medical Association (ASMA) or in a dental case the Alaska Dental Association (ADA). As a rule nine names were submitted together with suggestions as to appropriate specialty representation. Sometimes nine names could not be mustered when, for example, specialists, uninvolved in the case, in a small field like neurosurgery or otolaryngology were scarce.

Nominations were made by ASMA or ADA merely upon a reading of the complaint or occasionally in addition from having wind otherwise of the matter. For example, in a complaint about an infected compound fracture naming an orthopedic surgeon, the ASMA might submit the names of six orthopedic surgeons and three internists especially knowledgeable about infectious disease. None of the nine, of course, would have been

involved in the care of the patient. Or in a case against a dentist alleging mandibular nerve damage after molar extraction, the ADA and the ASMA together might suggest to the court the names of three dentists, three oral surgeons, and three neurologists.

Nominees usually, but not invariably, lived within the same judicial district in which the complaint had been entered, but sometimes out-of-city panelists were deliberately proposed, for example, physicians from Fairbanks to study a Kenai Peninsula case where physicians are few.

In 3JD the court allowed the ASMA or ADA 30 days to make nominations. In the 54 cases under study it took 2 to 41 days (median 14) for the ASMA to do this and from 2 to 30 days (median 10) for the ADA.

0762
0758
1617

The judge hearing the case then selected any three of the nine nominees, usually adhering to the specialty distribution proposed. In other judicial districts judges selected panels in their own manner, listening in some instances to counsel for each side or perhaps even to the judge's personal physician's recommendations. Unsolicited nominations were sometimes offered by the ASMA in judicial districts other than 3JD. In one case a First Judicial District judge allowed the plaintiff to name 2 persons and the defendant to name 1. The plaintiff chose a podiatrist and a non-physician professor of anatomy; the defendant chose a professor of orthopedic surgery. The case was dropped after the all Seattle panel agreed that there was no-fault in the manner in which the Alaska orthopedic surgeon handled Morton's neuroma of the foot (use 36).

There were an average of 385 physicians and 192 dentists in private practice in Alaska during the years 1978-1981. Nominations for panel

positions were made almost exclusively from these pools. Nurses and optometrists were sometimes proposed. In all 243 individuals were nominated from around the state, 95 once, 64 twice, 28 thrice, 27 four times, 15 five times, and 14 six or more times. Forty-two percent of the average physician-dentist pool thus were nominated at least once during the period.

Fifty-six panels were appointed, comprising 168 persons, all but four of whom were physicians or dentists. Make-up of the panels by specialty is shown in Table 4. Except in dental cases it was uncommon for panels to consist of individuals all practicing the same specialty but there were four panels entirely of obstetrician-gynecologists, three of orthopedic surgeons, two of internists, and one each solely of radiologists, otolaryngologists, or ophthalmologists. It was common for an internist to be on a panel involving a complication of surgery, and he was often chosen chairman (Table 5).

Thirty-three individuals were appointed twice, 14 thrice, 4 four times, 1 five times, and 2 six times. A few grumbled when designated again, but no one refused to serve unless he discovered that he had been involved in the care of the patient after all, was ill, or was on an extended holiday.

Modus Operandi of Panels

The statute compels production of all relative medical records and other materials for use by the medical panel. Copies of records were usually provided to the court by the plaintiff, often in triplicate, and were forwarded to the panel. Records, however, were frequently incomplete or copies illegible especially on margins. Laboratory reports were

sometimes copied overlain, only names and dates showing. Accordingly, panelists, having chosen a chairman (two typically fingering one) usually first individually inspected the original hospital chart if the case had occurred in their community, next studied x-rays and other materials, then met informally, sometimes by telephone, to decide how to proceed. This usually involved interviewing the defending physician or dentist, questioning nurses or other persons having first-hand knowledge of the matter, and arranging to examine or at least interview the injured person if still alive. If he had left the state, interviewing was sometimes done by a long-distance conference call.

A murky area has been in the matter of what records to keep and whether to allow representation at hearings and physician examinations. Justices in 3JD have generally been supportive of informality in these areas, leaving it to the panel chairman whether to suffer attorneys and whether to muzzle them or not.

Likewise the court has not insisted upon recorded or written testimony and proceedings so long as a list of the names of those interviewed and documents or other resources used was attached to the report. The statute, however, specifies that the panel "shall maintain a record of any testimony or oral statements of witnesses". Tape recordings of hearings were made by some panels, but as a rule these were not transcribed or submitted.

Physicians understandably felt most at ease when working approximately as they do when consulting, that is to say, investigating the case however they chose. A salient difference between a consultation and this modality, of course, is that it is a three-person consultation, an exercise not customarily practiced by physicians, but on the other hand

not that strange.

After delays for receipt and persual of further records, search of medical writings on the topic, re-interviewing and mulling, often leading to a request for the statutorially permitted 30-day extention of time, and sometimes after prodding from ASDE and ADA, panelists typically met in camera to discuss the case, to decide on their answers to the eight questions, and to draft, or delegate the chairman to draft, further paragraphs or pages of exegesis. When this had been reviewed, revised, and signed by each participant, it was delivered to the court, which promptly distributed it to all parties.[3]

Reports have varied in length from extremely brief answers to the fixed questions to lengthy elaborations running to eight to ten pages. Most have been two to three pages in length and have included a list of materials scrutinized, persons queried, and references consulted. Most reports have been direct and specific, covering each point in the complaint however trivial. Some have been very imaginative. One panel polled twelve general surgeons on the question of what each would do in a hypothetic case like the one before the panel. They used the results of the poll to support their opinion.

It took from 23 to 308 days for panels to complete their work from day of appointment to day of delivery of the report to the court. Average and median times in 1978-1979 was 121 and 104 days respectively, and in 1980-1981, 80 and 63 days respectively (Table 6). As physicians and dentists have become accustomed to the task, work has been done faster but still, as a rule, not quite within the 30-60 day period specified by the statute, and some panels have been extraordinarily slow in completing their chore.

Panel members are entitled by the law to payment for time spent and travel, but pay for time is the State's per diem rate[4] for members of boards and commissions. As panel work has been done an hour here, a quarter hour there, it has been a bother for doctors and dentists to compute bills, and since the State considers per diem as payment for an eight-hour day, or at least a four or five-hour day of duty, most physicians and dentists have not deigned to bill. The amounts authorized do not adequately compensate them for the many hours expended and the gravity of the task. Pay, however, has not been an issue of importance to doctors and dentists thus far. Even counting administrative court costs, the expert advisory panel system has been inexpensive to the public to say the least.

Findings of Panels and Outcomes of Cases

The study will now focus on the 54 instances in which the expert advisory panels finished their work. Outcomes both legal and medical have been traced for at least eighteen months in almost every case. Some dollar data are estimates rather than exact amounts but represent figures as close as the authors could obtain. Amounts of out-of-court settlements and personal legal expenses are, as a rule, private information and hard to get. Valves recorded are probably accurate to within 20 percent.

A. Cases in Which Panels Found Fault

Twelve expert advisory panels (22%) found that injury arose from unskillful care. Table 7 presents features of these 12 cases.

In five instances surgery was deemed to be faulty by reason of mistakes at surgery in three instances and because of postoperative complications in two. In Case 16 the panel thought that a surgeon had severed a trunk of the brachial plexus in performing a scalene anticus operation, but he was fully exonerated by a jury. On appeal, however, the case was remanded when later surgery else where showed that, indeed, the trunk had been severed. An out-of-court settlement in an amount of approximately $250,000 was made. In Case 44 a surgeon cut the femoral artery in the course of a herniorrhaphy on a woman. The vessel was subsequently repaired with a prosthesis at further surgery. There is presently no

evidence of vascular insufficiency in the limb. Final settlement has not been made. In Case 49 a general surgeon of great experience but scant formal training in plastic and reconstructive surgery performed prophylactic simple mastectomy and insertion of a prosthesis on the left after modified radical mastectomy for carcinoma of the right breast. Necrosis of the skin and permanent disfigurement occurred on the left. Originally the surgeon, the hospital, the credentials committee, and the chief of surgery who allowed him to do "plastic" surgery were all named, but the credentials committee and chief of surgery were subsequently dropped from the action. The panelists all agreed that there was some degree of fault on the part of the surgeon, but their report hedged. Jury trial ensued and awarded the plaintiff $220,000. This included a portion of the woman's costs and pre-judgment interest.[5] In Case 13 infection complicated replacement of a knee joint with an artificial device. Ankylosis ensued. The panel did not believe that the orthopedic surgeon was sufficiently trained and experienced to have undertaken the prosthetic procedure. Settlement in the amount of $85,000 was made. In Case 56 glaucoma occurred soon after cataract surgery. Vitreous material extruded through the iris into the anterior chamber. Although vision was not lost, the panel felt that the patient was at risk for future trouble in the eye. Settlement has not yet been made.

In three instances diagnosis was missed to the detriment of the patient in the opinion of panels. In Case 28 an optometrist failed to appreciate that a patient's complaint of sudden loss of vision was due to retinal detachment. Referral to an ophthalmologist was delayed for several days by which time a substantial amount of vision was irretrievably lost. A panel comprised of two ophthalmologists and one optometrist serving as chairman thought that while an optometrist cannot be considered competent

to diagnose retinal detachment, this one should have been alert enough even on a Friday afternoon to suspect from the complaint that something dire was happening and should have referred the patient on an emergency basis to an ophthalmologist. Settlement in an amount of $240,000 followed receipt of the panel report even though the attorney for the defendent protested that the case was still defensible on several grounds.

Case 9 was settled out-of-court for $110,000. The expert advisory panel thought that a family practitioner should have heeded a radiologist's suggestion that more x-rays be taken in a case of injury to the neck. Fracture of the cervical vertebra with partial loss of sensation and strength in the left side of the body occurred, but the patient ambulates satisfactorily with a cane.

In the third case of missed diagnosis the panel blamed an internist for death of a patient due to delay in diagnosing and removing carcinoma of the cecum. Settlement in an amount of $400,000 was entertained until another physician acting as a consultant to the defense reconstructed the case to demonstrate convincingly that death had occurred not from the carcinoma of the cecum but from a second primary adenocarcinoma of the lung. Physicians, in another state (and not named in the suit) caring for the patient at this time had missed this second tumor. When it was finally found, they pretended that it was metastatic spread from the carcinoma of the cecum. The liver was uninvolved. Final settlement was $225,000.

Panels found fault in the way physicians handled two non-surgical cases. A woman had mild viral pneumonia (Case 7) during pregnancy and suffered chest pain and anxiety when one after another of six physicians attended

her during several days of hospitalization including some days on the delivery ward even though she was not in labor. She recovered from the pneumonia and subsequently gave birth to a normal baby. The panel found fault with the handling of the patient, specifically blaming the physicians for inept communication with the woman, thus contributing to her anxiety. An out-of-court settlement in a small amount was made. A panel faulted a part-time jail physician for not consulting a previous physician before re-ordering an oral estrogen preparation (Case 37). The female prisoner claimed injurious, transient galactorrhea. The panel agreed, though precisely what significant injury had occurred, if any, was far from clear in the panel report. The case was settled for $7,000 by the insurance company on behalf of The State of Alaska which insured the jail physician.

Two dental cases (34,35) involving root canal procedures, both done by the same dentist, were poorly handled in the opinion of panels of dentists. Out-of-court settlement in an amount of approximately $15,000 was made in Case 34. Settlement in an unknown amount was reached in Case 35.

B. Cases in Which Panels Did Not Find Fault

Forty-two (78%) of expert advisory panels did not find that injury arose from medical care.[6] Table 8 displays selected features of these 42 actions.

In 25 ± cases the lawsuit was dropped, dismissed, or summarily dismissed soon after the panel report. In 2 ± instances the judge awarded partial costs to the defendant.

It appeared to the panels that many times there was simply confusion on the part of the plaintiff about the nature of his disorder and about the sequence of medical events. Often he did not seem to appreciate what was inevitable and unalterable or what the outcome would have been without medical intervention. Likewise there was misunderstanding about what disease and what was treatment, about decision points in treatment, and about what complications are common and not necessarily to be ascribed to shoddy care. Although lawsuit might well have been averted in many instances had the physician carefully explained these matters to the patient or to loved-ones, yet panelists did not find generally that the injuries claimed were produced by lack of proper explanation. An exception was Case 7 (Table 7 and text).

Fracture outcomes illustrate these points. Everyone wants a "straight", strong bone again no matter how complex the original break. If outcome is less than expected, disappointment ensues. The risks and complications of orthopedic restoration are not often understood and sometimes not fully explained to an injured person or if explained, not heard. Once a panel set out the details and sequence of decision points, perspective usually improved. Indeed there were no instances among this material where fracture treatment was found to be at fault except in Case 9 (Table 7 and text) where cervical fracture was missed.

The value of the all-medical panel in sifting through the intracacies of certain cases is illustrated by an instance of quick death from unrecognized bacteremic pneumococcal pneumonia (Case 32) in which the panel of internists made the fine but telling point, annotating it carefully, that mortality during the first three days of this disease is not altered by penicillin therapy. The case was thereupon dropped, but

the trial lawyer exacted a promise from the defendant that he would not countersue him for bringing the action.

In Case 54 action was brought against a family practitioner 11 years after the birth of a child with cerebral palsy. Prgenancy in 1970 had been uneventful until membranes ruptured at 36 weeks. The doctor ordered an intravenous drip of posterior pituitary extract three days later to stimulate labor. When varying fetal heart rate and meconium staining were noted, the physician came to the hospital and extracted a flaccid infant by low forceps technique. The child remains brain damaged. The panel was able to show from its accurate knowledge of the standards of practice in Anchorage in 1970 (before sophisticated fetal monitoring) that the family practitioner had not strayed from accepted practice of the day.

In another instance (Case 33) a panel succinctly explained that salpingitis and sterility were not necessarily produced by an intra-uterine device placed by a family practitioner but could have just as well been associated with two episodes of sexually transmitted infection.

Twice (Cases 18, 22) family practitioners were excused by panels from not recognizing acute myocardial infarction, eventually fatal, in emergency rooms in small communities. In one instance (Case 22) the patient was seen initally by a physician's assistant on behalf of the physician. He was quite unaware that myocardial infarction could occur in a 30-year-old women who was neither hypertensive, diabetic, or obese. She did smoke and was on birth control pills but these details were not known to the PA. The case was eventually dismissed. The other case (Case 18) went to trial. A family practitioner, a medical student, and a hospital

were blamed for allowing a man who earlier in the day had had chest pain leave an emergency room. In the ER he had been asymptomatic and the electrocardiogram was either normal or close to normal (later interpretations varied). He died a few hours afterwards on a flight to Seattle. The medical student was dropped from the case shortly before trial began. The jury exonerated the physician and the hospital.

In 16 ± of 38 instances suits progressed toward trial despite exonerating panel opinions. In one case (Case 2) two of three panel members were deposed.[9] A neurologist and an orthopedic surgeon reiterated their stance that a neursurgeon was not culpable for footdrop caused by damage at reoperation of an already compromised lumbar nerve. Nonetheless the neurosurgeon, on advice from his insurer, settled out-of-court for $50,000.

In the 15 ± other cases (table 8) 8 ± out-of-court settlements were reached ranging from $10,000 to $80,000 ± (average $40,000 ±, median $25,000 ±). Seven ± cases are pending but only 2+ are ever likely to reach a jury???

Suits against clinics and hospitals were generally settled or otherwise disposed of soon after the panel decided about the doctor. In no case has an action against a clinic or hospital progressed alone to trial.

C. Cases Without Expert Advisory Panel Action

Table 9 lists lawsuits in which medical advisory panels were either

not appointed for one reason or another or, if appointed, did not finish their work before the case was settled. In one important case (Case) in 1978 a judge misunderstood the intent of the statute and granted a motion by the plaintiff to proceed without a panel in a case of suicide by drug and alcohol. The defense was able to convince the jury that a family practitioner and a hospital were not responsible for the death and the jury decision was narrowly sustained on appeal. The cost of defending the doctors and the hospital was $150,000. In two instances (Cases) referred to earlier the plaintiff was excused from having panel scrutiny because of an irregularity in the way in which the legislature voted on the statute creating the panels. This ruling did not apply to other cases.

In several other cases panels were appointed but hardly began their work before the case was dropped, dismissed, or settled out-of-court. In ? instances panel reports have still not been received.

In another First Judicial District case a panel still had not been appointed one year after filing of the suit. The case went to trial without panel findings and found

Acceptance

(1) The courts in Alaska have generally been helpful in implementing the panel mechanism. In 3JD the presiding justice, the court administrator and his assistants, defense and trial attorneys, and representatives of ASMA met several times to work out orders and schedules for panel appointment and operation.

Although the statute allows attorneys "to object or make suggestions" concerning panelists, the presiding justice of 3JD has not permitted objections to be pre-emptory. Judges have almost invariably followed the recommendations of ASMA for specialty distribution.

The courts have let panels proceed informally and have left it to the panel chairmen whether to allow attorneys at hearings. The courts have ordered that reports be on time, but these dates have sometimes slipped anyway. Judges have distributed the opinions to all parties promptly but not before reading them, for in one instance (Case 15) a judge considered a panel report to be so brief and so poorly prepared that he sealed it, allowing the action to proceed without panel report.

(2) Attorneys understandably do not welcome onto their turf new players who can truncate their cherished jousting. To a man trial lawyers object to the expert advisory panel system. Defense attorneys by-and-large do too, though some see merit in the system, particularly in the authority of some of the more scholarly reports. Both trial and defense lawyers have commented on the speed and specificity with which physicians bore in upon what actually injured or bothered a plaintiff. They have also been surprised at how effectively doctors can locate records or other important material of which they were unaware. Panels thus have abetted discovery. On the other hand some panels have not looked beyond materials provided by the court.

To date there has not been much to suggest that otiose attorneys are using panels to work up a case for them to see if a quick, favorable opinion and three expert witnesses can be suddenly accrued. The court has the power under the law to assess costs if it determines that a

claim or a denial of liability is "patently frivolous". Moreover, some of the costs of defense are recoverable if there is summary dismissal of the case under Alaska Court Rule 82.[10]

(3) Insurance companies, returning to the field after the 1976 act, have been uneasy about the panels. There is no way that they can legitimately influence a panel.[11] Thus they feel a loss of control of the case. If a panel does not find fault, the carrier is in a good, though not unassailable, position. If the panel finds fault, capitulation is likely even if there remain possible defenses since at least two and usually three Alaska physicians have opined that their insured was unskillful[12] and can be led into court to say so to a jury.

Despite their misgivings, and perhaps heartened by the fact that there has never been an award or settlement in excess of $500,000 for medical malpractice in Alaska, insurance companies have watched the panel system with interest[13] and have from time to time even made helpful general suggestions, in particular warning that panels should not gratuitously enlarge a case.

(4) Physicians for their part have mixed feelings about the panels, though there feelings are more favorable than not. From a desperate time in 1975 when professional liability insurance was available to a few psychiatrists and to almost no one else in Alaska to the present when at least three companies, including the one created by the state in the 1976 law, underwrite coverage at rates slightly less than those in Northern California, some order and ease of mind has at least been restored. Some doctors choose to remain uninsured, feeling among other things that insurance invites claims. These, in particular, like the

panels for they give quick determinations without high legal fees or interferring advice from carrier attorneys. For insured doctors, pari passu, costs can also be less. This should eventually make insurance cheaper.

Physicians have been outstandingly tractable, though newcomers are unfamiliar with the system and occasionally seem not to take it seriously. No one has wanted to be on a panel because the task is difficult, even painful. More often than not in this sparsely populated state, a panelist is judging someone he knows and with whom he may even share cases. But no one has refused to serve.

(5) There has been no way to tell what the public thinks about the expert advisory panel system. It has had no publicity since enactment. Inasmuch as a majority of panel reports favor defendants, there are undoubtedly many disgruntled plaintiffs. But this hardly measures public sentiment. Legislators, surfeited with the issue in 1975-1977, have paid the matter no attention since.

Discussion

During the deliberations in 1975 of the Governor's Commission on Medical Malpractice Insurance physicians insisted that a major defect in malpractice actions was that the medical story was not laid out early and in proper

clinical perspective. Even at trial this is sometimes not done.

The expert advisory panel mechanism was fashioned from the Commission's recommendations to do this. The aim was to provide both parties soon after filing and while further costly discovery was stayed an explanation by three knowledgeable persons of the biology of the case and how the natural process in question had been altered by medical intervention. The eight statutory questions were to provide the matrix for the response. Further explanation was also invited.

A special feature of the law allows panel members the opportunity to examine physically the aggrieved person, if alive, to help determine for themselves the nature and extent of injury. Physicians have not availed themselves enough of this unusual privilege, perhaps because the situation is awkward. They have tended to depend entirely upon review of records and interviews.

Detailed questioning (medical history) is a powerful tool in the hands of physicians for determining "truth", just as interrogatories and cross-examination are for attorneys. Physicians, however, are more gullible than lawyers in accepting what a person says as fact, for in the usual doctor-patient relationship there is little incentive to exaggerate or deceive.

In the malpractice setting, however, a part of the game seems, at least to physicians, to be exaggeration or even mendacity. Doctors may fall prey to this by believing everything a plaintiff says. Perspicacious physicians on a panel, however, have been able to detect hyperbole and prevarication, recognizing it sometimes as behavioral sickness or neurosis.

Still they should seek more often to corroborate what the plaintiff avers by careful physical examination of their own.

It had been feared by many that bias would be so strong that panel reports would regularly whitewash defendants. Some attorneys continue to assert this. But the overriding afflatus of panel work has been professionalism rather than animus toward attorneys. Too much is at stake in terms of credibility as a specialist or simply as a physician to risk shading an opinion for the benefit of a colleague. The fact that three work in concert helps. Each keeps the others true.

Contrariwise there has been little to suggest conspiracy to hurt a physician. Not that there is not internecine strife among doctors; there is, but panels have not been a battleground for extraneous issues.

It should surprise no one that a large majority of panels, 78% in this experience, have, so to speak, found for defendants. Approximately 80% of malpractice claims across the nation prove to be without merit. The surprise rather may be that professionals have adjudged professionals unskillful 24% of the time. Doctors may prove to be harsher judges of their bretheren than juries. It has not always been easy to continue to practice in a community where one has declared a colleague at fault.

On the other hand physicians may measure the extent of an injury (question 5) less than a jury might, for they eschew quantifying unquantifiable things such as pain, suffering, and loss of consortium. Fortunately, the statute does not call upon the panel actually to rate impairment or disability and certainly not to transmute disability into gold.

Panel performance has been uneven in quality, some of it poor, some adequate, some brilliant. Although competent to do consultations, physicians are not accustomed to working by threes and not attuned in consultation work to answering interrogatories, even the disarmingly straightforward questions in the statute. But there is reason to believe that Alaskan physicians are learning how to do this chore. More thoroughgoing, balanced, well-documented reports are now flowing to court.

Problems remain: (1) Complaints are frequently vague and filled with errors of fact. It may not be of much importance legally at that stage of the action, but it does make it difficult at times to tell what the medical problem may be and therefore hard to advise the court what specialists should be impaneled.

(2) Copies of all the medical records are supposed to be delivered to the panel upon appointment. It has sometimes been difficult for the court to get these from plaintiff's attorney. Delay comes when the panel chairman has to commandeer records himself.

(3) Expansion of a case by a zealous panel, as mentioned above, may prove to be troublesome. Blame not posited by the plaintiff may be fixed. Rattlesnakes thus aroused may be hard to shoot.

(4) In this and other regards, can the substance of a lawsuit be amended after receiving a panel report? If so, does the panel reconvene to ponder the revised charge? When would such cycles terminate? What about discovery of important medical material after the report of the panel has been filed? These are questions of legal procedure which may require definition.

(5) Physicians up to now have been entirely cooperative. Will they maintain this attitude, particularly when the state is parsimonious in paying them for their labor? Most have not minded, indeed have not even billed. But is is a proper question to ask how long physicians will continue to do grave, unpleasant work for a fraction of what they customarily fetch for their time.[15]

(6) A more important question is will physicians tire? Will their work on panels deteriorate? Overall it has been far from perfect. The better trial attorneys virtually ignore overly terse, obscure, or fence-sitting[16] reports. If the load of malpractice actions increases, physicians in certain specialties like obstetrics-gynecology, neurosurgery, otolaryngology, and oral surgery will be overused. Practicing physicians concentrate enormous energy and attention upon their patients. Nothing else, except matters in their personal lives, can repeatedly command that much focus. There is also a problem with new physicians, perhaps attracted to Alaska in part by relatively low medical malpractice insurance rates. They did not know the wrenching days of the mid-1970's and have little or no familiarity with the panel mechanism. How well will they perform on a panel? Thus there is a possibility that the panel device will wither by default on the part of physicians.

In sum, then, what of the expert advisory panel system? Is it worthwhile? Is it socially constructive? It is too early to say. The courts and medical professionals are still learning how to use it. Attorneys and insurance companies are still learning how to live with it. More experience is needed.

In the final analysis the panel mechanism should be measured by whether it is fairer, quicker, and operationally cheaper than the previous

system. Perhaps the only way to determine this with scientific certainty would be to randomize or alternate cases prospectively over a four or five-year period, then compare the two groups. It is unlikely, however, that the court or the Legislature would allow such rationality. Someone would surely appeal his draw.

Summary

Expert advisory panels composed of three medical professionals found among 54 malpractice actions in Alaska that defendants had not caused injury by unskillful care in 42 cases (78%) and that they had in 12 instances (22%). Panel opinions appear to have led to early settlement of suits in many instances, but it is premature to conclude that the new system is fairer, quicker, and cheaper than traditional ways of handling medical malpractice lawsuits.

Acknowledgment

Many people gathered data for this study. We thank particularly the members of the Judiciary Committee of the Alaska State Medical Association. We also especially thank The Honorable Ralph A. Moody, Presiding Justice, Third Judicial District, Alaska for helping to make the medical panel

system work.

appendix: The statute 09 55 036

Footnotes

1. AS 09.55.536 does not absolutely require a panel "if the court decides that an expert advisory opinion is not necessary for a decision in the case." It was, however, clearly the recommendation of the Governor's Commission on Medical Malpractice Insurance in 1975 and clearly the intention of the Legislature which incorporated most of the Commission's recommendations into law in 1976 that a panel be seated in every case. The courts have now adopted this practice.

2. One United States Public Health Service physician and one state-employed physician were nominated but not selected. One USPHS optometrist was named to a panel and was chairman.

3. AS 09.55.536 allows concurring or dissenting reports. So far no dissenting report has been submitted. Two concurring opinions were offered.

4. Fifty-five dollars per day.

5. As allows awards to be increased by an amount of interest computed from the day to filing to the day of payment. The interest rate is

6. When the answer to question number 4 was "no", the remaining questions were left unanswered or were marked "N/A."

7. Alaska law, AS 09.55.510, allows "the circumstances at the time of the act complained of" to be considered in measuring the standard of care.

8. Panel reports are admissible.

9. Panelists may be called to court.

10. In addition at least one countersuit against an attorney for allegedly bringing action falsely is under way in Alaska.

11. Parties to a case and their counsel are enjoined by the statute from initiating communication out-of-court with an expert advisory panel.

12. The word "unskillful" was chosen with great care in drafting question 7, "Was the medical injury caused by unskillful care?" A physician above all all else is supposed to be skillful. If he is not, he is no more than a "man on the street." Lay persons have difficult in distinguishing skill from lack of skill, but physicians do not and tend to scorn ineptitude. This is the quintessential talent of the all-medical professional panel and largely explains why there has not been dissent amoung panelists.

13. Tacit approval of the panel design by one insurance company came when it began to appoint its own paid expert advisory panels of local doctors to interpret claims, even using the eight-qyestion format of the new law. This initially created confusion among physicians and others. The company is now more discreet and calls its physician-investigators something other than "expert advisory panels."

14. One panel did reconvene several months after submitting its report when a subsequent operation added information, but the panelists opinion about the case did not change.

15. A flat, worthwhile stipend (plus travel expenses, if any) however simple or convoluted the case, would be preferable to the present perdiem allowance. It would also be easier for the court pay clerk than piecing together as now snatches of time here and there into one perdiem unit. The matter f who pays for deposition subsequent to the panel report is also confusing, although the statute clearly specifies that a panelist will be paid up to $150 per day for appearance in court as an expert witness. Panelists feel harrassed when they are deposed at low fees to repeat what they have already said. Perhaps requiring the party deposing a panelist to pay the physician at his customary or an agreed upon fee would solve this problem.

16. Such as when the answer to question 4 is "no", but expository paragraphs say "maybe".

17. And constitutional (see page 1).

June 4, 1986

Closed Cases

No Fault Found by Expert Advisory Panel

Case	Description	Legal Outcome	Cost of Defense
1	Infected laminectomy	dropped	
2	Footdrop after disc surgery	settled $50,000	
3	Lacerated uterus at colposcopy	dismissed	
4	malaligned wrist fx	dismissed	
5	missed wrist fx	dismissed	1,500
8	post-op adhesions	dismissed	15-20,000
10	angulated leg fx	dismissed	
12d	facial paresis after extraction	dismissed	
15	angulated fx femur	dismissed	
18	missed myo infarction	exonerated by jury	91,717
20	pg after tubal ligation	dismissed	10,000
22	missed myo infarction	dropped	
23d	root canal	settled 11,000	
24	missed sickle cell anemia	dismissed	
25	unnecessary rib biopsy	dropped	
27	mgmt carcinoid	dropped	5-10,000 x 4 (?)
30	malfunctioning defibrillator	settled 45,000	83,666
31	tinnitus p ear surgery	dismissed	8,000
32	missed pneumonia	dropped	
33	IUD complications	dismissed	
36	Morton's neuroma foot	dropped	5,843
38	ankle fx surgery	exonerated by jury	45,000
39	non-union fx femur	dismissed	6,000
40	cast phlebitis	dropped	3,000
41	K-wire hand	dropped	
42	T & A sore throat	dropped	5,000 +
45d	numb face p extractions	settled 15,000	
47	missed Hodgkin's breast	dropped	
48	pg after ligation	settle 5,000	
54	cerebral palsy forceps	settled 1,300,000	
61	stillborn	settled 60,000	
64	cast phlebitis	dropped	
66	dissatisfied about gastroplasty	dropped	5,000
68d	multiple tooth extractions without written consent	settled 30,000	
70d	unsatisfactory orthodontics	dismissed	6-7,000
74	herniorraphy atrophy testis	jury award 50,000	
75	hung self at hospital	settled 780,000 (?)	
85	bladder torn at surgery	dropped	
90	missed pn child	dismissed	12,000

May 20, 1986

Closed Cases

No Expert Advisory Panel

Case	Description	Legal Outcome	Cost of Defense
11	ovary removed s consent	dismissed	
17	nerve damage p shoulder disloc	dropped	
19	hypoparathyroidism p surg	settled 35,000	<20,000
26	missed diverticulitis	settled 600,000	
43	fx ankle surgery	dismissed	
46d	numb face p extractions	dismissed	
50	severed tendons	not served	
51	forceps crushed head	settled 142,000	
55	Hodgkins staging surgery	dismissed	
57	hematoma p groin surgery	dismissed	
58	missed stress fx femur	dismissed	1,000
59	missed fx scapula	dismissed	6,394
62n	infection after Bl inj	not served	
63pa	delay in dx head inj	not served	
92	negligent rx craniotomy	not served	
94	Darvon suicide	exonerated by jury	150,000
95	alteration of records	statute of limitations	15,000
96	drowning resusitation child	jury award 1,175,000	
97	IV infiltration arm child	settled 250,000	

SETTLED 3.69 MILLION

MAC NEIL/LEHRER NEWSHOUR

Wednesday, February 28, 1990

WNET, New York, New York

SHOW #3678

ANCHORS	ROBERT MAC NEIL
	JAMES LEHRER
NEWS MAKER:	DANIEL ORTEGA, President, Nicaragua
CORRESPONDENT:	KWAME HOLMAN, NEWS MAKER (Interview with Defeated Pres. Ortega)
FOCUS - EXXON - FACING CHARGES:	ROBERT ADLER, Environmental Lawyer
	RICHARD SAMP, Washington Legal Foundation
FOCUS - NEGLIGENT TREATMENT: (Medical Malpractice Debate)	DR. DAVID AXELROD, New York Health Commissioner
	DR. HARVEY WACHSMAN, Malpractice Lawyer

TRANSCRIPT BY:

"STRICTLY BUSINESS"
P.O. BOX 12361
OVERLAND PARK, KANSAS 66212
913-649-6381

Funding for this program has been provided by this and by grants from American Telephone & Telegraph Company and the Corporation for Public Broadcasting.

A co-production of MacNeil-Lehrer Productions, WNET and WETA.

TRANSCRIPT CHARGES: $4.00 each copy ordered by mail (ADDITIONAL CHARGE FOR RUSH ORDERS). Be sure to indicate air date and subject or participants. All orders must be prepaid.

MR. ADLER: What worries me is that despite many years of civil enforcement of environmental laws we still have widespread non-compliance. Let me give you an example. According to the General Accounting Office, a recent study, four out of every ten industries who discharge toxic waste into the nation's sewer systems are violating their discharge permits despite civil compliance. Obviously, we don't have enough deterrence, and without this sort of action corporate America is not getting the message that it has to comply with environmental laws.

MR. LEHRER: Do you think this sends the new message though on those kinds of cases as well?

MR. ADLER: I think it does to all corporations who are responsible for complying with pollution laws if pursued aggressively.

MR. LEHRER: Your concern, Mr. Samp, is that it sends a double message, it may send a message to the bad guys, but it also sends the wrong message to the good guys as well?

MR. SAMP: Exactly, and it seems to me that, as I stated before, that this is not a reasonable environment in order to allow business to thrive in this country, that I would certainly agree that there are appropriate circumstances under which criminal law should be enforced. For example, it seems to me that any company that goes out in the middle night and takes drums full of toxic waste and dumps them in a park and does so knowingly and intentionally, that sort of corporation ought to be indicted. But we're not talking about that kind of case here. We're talking about a corporation which had no intention of spilling any oil, did so, perhaps through its own negligence, and now they're finding themselves in a criminal court.

MR. LEHRER: All right. Mr. Samp, Mr. Adler, thank you both for being with us.

MR. ADLER: Thank you.

MR. SAMP: Thank you.

FOCUS - NEGLIGENT TREATMENT

MR. MAC NEIL: Next tonight new facts and the new debate about medical malpractice. A major study released today found that thousands of hospital deaths and tens of thousands of injuries each year are the result of negligence but that relatively few victims ever file malpractice claims in courts. The study conducted by Harvard researchers examined one state, New York, that drew conclusions with implications for a malpractice insurance system nationally. The study was based on New York hospital patients in 1984. It found more than 27,000 patients were treated negligently in hospital, 6,630 deaths were due in part to negligence, but only one in eight of the patients injured by negligence actually sought compensation and filed malpractice claims. These figures fuel an already heated debate over what can be done to cut malpractice insurance costs and improve medical care. Pres. Bush spoke last week to doctors at Johns Hopkins University about the impact of malpractice lawsuits on medical care.

PRES. BUSH: (February 22) And I ask you today to avoid the understandable urge to practice defensive medicine, where doctors fearing litigation too often dictate treatment that is unnecessary, where the threat of lawsuits threatens the very research that is so desperately needed to save lives, and in return, we've got to restore common sense and fairness to America's medical malpractice system.

MR. MAC NEIL: Restoring common sense to the system is the subject of a proposal in this week's New England Journal of Medicine. The article calls for implementing a no fault malpractice insurance system. The no fault system would take cases out of courtrooms and set up expert panels to compensate victims. We turn now to reaction to today's study and a debate over the no fault solution proposal. Dr. David Axelrod is the New York State Commissioner of Health. He

commissioned the Harvard Report today and is one of the leading proponents of the no fault insurance solution. Harvey Wachsman is a physician and practicing lawyer. He is president of the American Board of Professional Liability Attorneys. He's on the faculty of Brooklyn Law School and the University of South Florida College of Medicine.
Dr. Axelrod, what is the surprising finding in your study, the large amount of negligence, or the small amount of claims?

DR. DAVID AXELROD, New York Health Commissioner: I think it was rather the small amount of claims. A previous study done at Stanford approximately 10 years ago identified roughly the same percentage of adverse events, that is injuries to patients that occurred that would lead us to have believed at least that the number would be approximately the same. There is a concern I have with the data that are being presented and that is that this is an extrapolation from the review of some 30,000 charts to over 2.7 million discharges in 1984. So to say that numbers of thousands of individuals who are identified as having died represents an extrapolation from 1,100 cases in which injury was identified in the Harvard study.

MR. MAC NEIL: I see. It's like a poll. In other words, you've taken a sample and you're saying that represents that reality?

DR. AXELROD: That is correct.

MR. MAC NEIL: Right, like a blood sample.

DR. AXELROD: Yes.

MR. MAC NEIL: Okay. Why do you believe there are so few malpractice claims arising out of so many cases of negligence?

DR. AXELROD: I think in many instances, the patient is not aware of the fact that any negligence has been committed. I think there are difficulties in accessing what is otherwise identified as an officious system with respect to the individual person. I don't think that the average person thinks that there is much chance of success. An individual who comes from a lower socii-economic background may not feel that he has the wherewithal or she has the wherewithal to purse a malpractice suit. There is no clear indication that our system is geared to one of social responsibility with respect to payment for medical injury and it leads more to an event that looks like entering a lottery with respect to a return with a medical malpractice suit.

MR. MAC NEIL: Do you share Pres. Bush's belief that fear of malpractice claims, that doctors hold of malpractice claims, is distorting the medical delivery system?

DR. AXELROD: Yes, I believe that there is a distortion which is occurring. I think it's occurring in a number of different areas. The most important of them may, in fact, be the unwillingness of physicians to participate in peer review of their own colleagues. That fear I think has removed an important element of maintaining the quality of healthcare within our institutions. Without full participation of physicians, it is not going to be possible to have a full review of what happens and the manifestation of quality that we would like to have. I do believe there is a cost impact associated with the practice of defensive medicine. I don't know what it is. It's been estimated to be 5 percent or 10 percent or 15 percent in various studies.

MR. MAC NEIL: How does that come about?

DR. AXELROD: Doctors because of their concern for their ultimate testimony in the event that they should be faced with a malpractice suit attempt to go to the nth degree with respect to the ruling out of diseases. There is an error of commission in many instances with respect to reaching the 99.9 percentile in terms of likelihood of a given disease by some very expensive tests. We have a broad armamentarium of diagnostic tests, valuative procedures that are available to the valuative

procedures that are available to the medical profession, and the physician may choose to utilize one or many of them or all of them in an effort to assure himself that he is not going to be subject to litigation by virtue of his failure to have done a single test.

MR. MAC NEIL: Okay. We'll come back in a moment.
Dr. Wachsman, do you dispute the findings of the survey?

DR. HARVEY WACHSMAN, Malpractice Lawyer: I think the survey's findings of enormous of amount of malpractice in this country is true. I think that there are numbers of physicians who are alcoholics, drug addicts, psychiatrically impaired. According to the AMA 7 to 9 percent, or thirty to forty thousand physicians in this country are impaired. Obviously, that would cause an enormous amount of malpractice which does cut across this country, and you extrapolate those numbers, that comes out to about 100,000 people a year die because of malpractice in hospitals alone. This was a study of hospitals, not even doctors' offices, and hundreds of thousands of people are injured. The reason for the great disparity between the numbers of lawsuits and the numbers of malpractice is clear. It's due to deception and fraud practiced by physicians and hospitals in this country, misleading patients, so that they do not know, and they are misrepresented to in a wholesale manner by physicians so that they cannot find out what exactly occurred. There's also changing of records, forgery that goes on on a national level, that's as significant as well.

MR. MAC NEIL: But for those patients who do find out and do know or suspect there's been malpractice, Dr. Axelrod said they don't claim because they think they're throwing themselves into a lottery.

DR. WACHSMAN: It's not so. First of all, those people who are significantly injured or, in fact, were injured, they win the cases because they're meritorious. In our office, we just heard before from Dr. Axelrod, there's very few wins by patients, not so. In our office, more than 90 percent of the patients who come to us, who we actually bring a lawsuit for, we win, and although we only take about 3 percent of those patients who actually call or contact our office in order to bring a suit.

MR. MAC NEIL: Do you agree with Dr. Axelrod and the President that doctors fearing malpractice are practicing defensive medicine and that that is raising the cost of healthcare?

DR. WACHSMAN: That's absolutely untrue. That's something that has been propagated by medicine and also obviously misled the President into thinking that there is so much defensive medicine going on. There is none essentially, because no test that does not help a patient or at least find the diagnosis or help elucidate the diagnosis for that patient in no way assists the physician in defending himself. And the truth of the matter is, that most malpractice is not due to the 99 percentile test but is due to three things, one, the physician not showing up, two, I'm talking about seeing the patient and evaluating him rather than over the phone or showing up some other time, two, is not taking a proper history, which takes time to evaluate a patient and 80 percent of diagnosis is made on history, and three, is not doing a proper, a physical examination. 70 percent of all malpractice cases across this country are due to a physician not showing up, not taking a proper history, examining, and if you look at that, I think any patient is entitled to those things and not due to some test that somehow he didn't do. Those cases we have wide experience, we've written three volumes in the area, it's not so.

MR. MAC NEIL: You say it's not so, but you wouldn't agree with the cartoon, with the sort of folk wisdom that's in the cartoon in the New Yorker recently where a doctor is saying to a patient, well, I think it's just a common cold, but let's run a full battery of tests just to be sure?

DR. WACHSMAN: No, because that's just not true. Again that's misrepresentation. There have been a lot of things in history, as you're aware of, that have occurred and knowledge that's pushed around and stated when, in fact, it's not true. The truth is that there is no great defensive medicine. The only defensive medicine that does exist, which I do agree with, is when a physician spends

more time with his patient, talks him and examines him over a longer period of time, and, therefore, can see less patients per hour and therefore, there's a cost to that physician because he can't make as much money. But it's certainly not due to tests.

MR. MAC NEIL: Two quite different points of view on this. Now, you are in favor of replacing the present system with a no fault system. Can you explain briefly how that would work and why it would improve things, in your view?

DR. AXELROD: I think the first difficulty is that you've been talking about the Harvard study dealing with medical malpractice. The Harvard study did not deal with medical malpractice. The Harvard study dealt with medical injury and the nature of that injury and the extent to which negligence was responsible for that injury. Only 1 percent of the cases that were reviewed by the Harvard study demonstrated negligence, so that what we have tried to do is to define our terms a little bit better. We are concerned with a social system which provides justice to those who are injured by virtue of their contact with the healthcare system. Our concern is that the medical care system is a hazardous one in terms of your entry into that system because of the nature of the interventions, and that there is a distinct possibility for injury. The no fault system which we are proposing would have a mechanism by which individuals would be paid on the basis of the nature of that injury if there was causality established, rather than fault assigned to a given physician. It would not be necessary for an individual to become a plaintiff within an adversarial system in order to be compensated for the injury which occurred.

MR. MAC NEIL: Well, who would decide whether they were at fault, the office or hospital --

DR. AXELROD: It would presumably be a panel of individuals who would be expert with respect to the nature of those injuries, it would work similar to worker's compensation where those who make decisions with respect to occupational health would make a judgment.

MR. MAC NEIL: Why would that be an improvement over the system now?

DR. AXELROD: Because as it currently stands, the Harvard study demonstrates that only 1 in 10, approximately 1 in 10 individuals, who have been injured as a result of negligence ever receive any kind of compensation. There is nothing to suggest that there is any equity, that it's an effective system with respect to compensation for medical injury. I think what we have to do is to separate what it is we're trying to do. Are we simply trying to provide a small number of individuals that has no relationship to the nature of the injury?

MR. MAC NEIL: In other words, big awards, millions of dollars?

DR. AXELROD: Big awards as opposed to providing everyone who suffers an injury that is significant with a level of compensation that is relevant to the nature of that injury.

MR. MAC NEIL: Why wouldn't that be an improvement on this system?

DR. WACHSMAN: I think first of all, all it does is grant immunity and that's what they're really interested in. The whole purpose of the study was not to see to it how they can compensate people better but to gain immunity. I can point to Virginia and New Zealand which has no fault. In New Zealand, since January 1, 1988, they have a brain damaged baby circumstance --

MR. MAC NEIL: No fault --

DR. WACHSMAN: -- no fault system, and they're going to compensate all these children, the total number of children in two years and two months that have been compensated is zero. In New Zealand, there's no fault system where a patient has to prove their case to an official of the government. That just doesn't occur, because they can't do it. One little comment that Dr. Axelrod mentioned in passing was the word "causation". The word "causation" means proximate cause under

the law. That is the most difficult thing for a malpractice lawyer who's capable to prove in any case. No patient will ever be able to prove it by themselves.

MR. MAC NEIL: In other words, this is just giving the doctors immunity because you'll never pay anybody because the doctors will never admit if they review themselves or a committee reviews them, they'll never admit that there was malpractice.

DR. AXELROD: But we've confused two very different things. We've confused physician discipline and deterrence with an equitable system for compensation for medical injury. Both Dr. Wachsman and I would agree that there needs to be a better disciplinary system. I do not believe that there is any data that would suggest that the existing malpractice system represents an effective deterrent. That was one of the elements of the Harvard study and I think that there is, if any presence of deterrence, it's very limited.

MR. MAC NEIL: But his point is that the system you're proposing would represent no deterrence at all.

DR. AXELROD: Oh, no, oh, no, hardly.

MR. MAC NEIL: I mean, he instances no compensation for birth damaged babies under the Virginia's no fault system and the inability of patients in New Zealand under their system to gain any admission of malpractice.

DR. AXELROD: Well, there's, I don't want to get into other systems, because I think that there are complexities about the New Zealand system which has been in place for 15 years that, in fact, has not had an effective deterrent system. The Virginia system has been in place for one year in which there has been any experience, and I don't know that that is an appropriate time frame in which to judge the effectiveness of the program. What I think you have to do is identify the fact that we have not been as good as we think we have been with respect to oversight of physicians. I think that there needs to be a whole new arena in which we evaluate the effectiveness of the oversight of government, the failures of the existing physician peer review process, the failures of the hospital review process, but I think that the most important thing of all that will challenge the effectiveness of any malpractice system, any no fault system even, will be the new information that is emerging. One of the major revolutions that has occurred is the availability of information with respect to outcome, with respect to procedures within institutions, procedures done by physicians. I am firmly convinced that it is the public, it is the advocacy of the public, it is the public requesting information that is going to change the medical practice in the most imaginative way possible.

MR. MAC NEIL: I'm sorry, gentlemen, but that is the end of our time. Thank you both for joining us.

RECAP

MR. LEHRER: Again, the major stories of this Wednesday, Nicaragua's Sandinista government declared a unilateral cease-fire in the war against the contras. On the Newshour, Pres. Ortega said if the contras refuse to disband, he will do what is needed to defend his nation. And after five previous attempts, NASA successfully launched the space shuttle Atlantis.
Good night, Robin.

MR. MAC NEIL: Good night, Jim.
That's the Newshour tonight and we will be back tomorrow night. I'm Robert MacNeil. Good night.

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 4, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 2/8/90

The LABOR & COMMERCE Committee considered: HB 337

HOUSE BILL NO. 337 [MALPRACTICE INSURANCE]
"An Act relating to malpractice insurance for health care providers."

RECOMMENDATIONS:
[ ] be replaced with CS HB 337 (L&C) [ ] the same title [ ] a new title
[ ] have attached amendment(s)
[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

Dave Donley

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
	X		
	✓		
		✓	

Dave Donley
Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CS HB 337
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An Act relating to malpractice insurance for health care providers
Sponsor: House Labor and Commerce Committee
Requestor: House Labor and Commerce Committee

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	50.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	50.0					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	50.0					
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Due to the substantial number of malpractice coverage filings that would be received and the time that would be required to adequately review them, the division would contract out for the review.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance
Phone: 465-2597
Date: 11/30/89

Approved by Commissioner: Larry Merculieff
Agency: Department of Commerce & Economic Development
Date: _____

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

5849D/120189b

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 337
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to malpractice insurance for health care providers
Sponsor: House Labor and Commerce Committee
Requestor: House Labor and Commerce Committee

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	50.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	50.0					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	50.0					
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Due to the substantial number of malpractice coverage filings that would be received and the time that would be required to adequately review them, the division would contract out for the review.

Prepared by: Joan Brown, Administrative Officer
Phone: 465-2597
Division: Insurance
Date: 11/30/89

Approved by Commissioner: Larry Merrulieff
Date: 1 Dec. 89
Agency: Department of Commerce & Economic Development

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

5849D/120189b

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Commerce & Econ. Dev.	Insurance	HB 337	Labor & Commerce Committee

SHORT TITLE OF BILL
Malpractice Insurance for Health Care Providers

DEPARTMENT POSITION
Neutral

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
	11/4/89		16 Jan 90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUPS AFFECTED BY BILL
Unknown	Hospitals and Physicians
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT: ☐ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

ANALYSIS OF BILL/PROGRAM EFFECTS

It appears that the intent of this legislation is for a physician to provide a hospital malpractice coverage for liability arising out of the physician's medical practice. As drafted, however, it does not limit the coverage requirement to the vicarious liability of the hospital. As a result, liability for the negligence of the hospital might be transferred to the physician.

As drafted, the required provision only applies to an insurance policy, not to the physician. An issue currently exists in which uninsured physicians practice at hospitals. This provision might increase the disincentives for carrying insurance.

It is probable that as written this legislation would result in a substantial premium increase for health care providers.

AMENDMENTS PROPOSED

mm1381t

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

81-008 (Rev. 3-88)

HB 337
Analysis of Bill/Program Effects:
(Continued)

The fiscal impact for the division would be moderate to substantial. The division would receive a number of filings providing the additional coverage which would require substantial time to establish an appropriate rate which would be neither inadequate nor excessive.

SG/mm1381t
080789c

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 16, 1990 FURTHER REFERRALS:

Date of Committee Action: _____ FINANCE

The JUDICIARY Committee considered: HB 337

HOUSE BILL NO. 337 MALPRACTICE INSURANCE

"An Act relating to malpractice insurance for health care providers."

RECOMMENDATIONS:
[ ] be replaced with _____ [ ] the same title [ ] a new title
[ ] have attached amendment(s)
[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact_____
[ ] zero fiscal note_____
[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s)_____
[ ] zero fn/analysis _____

SIGNING DO PASS:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

_____
Chairman's Signature

HOUSE COMMITTEE REPORT

4

2/16

(7)
Date Referred: May 4, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 2/8/90 Finance ?

The LABOR & COMMERCE Committee considered: HB 337

HOUSE BILL NO. 337 [MALPRACTICE INSURANCE]
"An Act relating to malpractice insurance for health care providers."

RECOMMENDATIONS:
[X] be replaced with CS HB 337 (L&C) [ ] the same title [X] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

FIN

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact C.E.D.
[ ] zero fiscal note
[ ] zero with analysis

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s)
[ ] zero fiscal note(s)
[ ] zero fn/analysis

SIGNING DO PASS:

Dave Donley DONLEY
GRUENBERG
FINKELSTEIN

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
COLLINS	X		
DREW	✓		
		X	

Dave Donley
Chairman's Signature

Judiciary

MICA Medical Indemnity Corporation of Alaska

ALEUT PLAZA
4000 OLD SEWARD HWY., SUITE 203
ANCHORAGE, ALASKA 99503
(907) 563-3414

February 13, 1990

Representative Dave Donley, Chairman
Labor and Commerce Committee
House of Representatives
State of Alaska
PO Box V
Juneau, Alaska 99811

Dear Chairman Donley:

I testified in front of the House Labor and Commerce Committee and was requested to submit my comments in writing. Please share this written testimony with the other committee members.

Chairman Donley and Committee members, I am Mary Pierce, Executive Director of MICA.

* CSHB334 - Requiring insurance of outstanding judgement.

We wanted to make a few brief informational comments on this bill. We, like all insurance companies, have underwriting requirements to write physicians. We do gather previous claims experience and our Underwriting Manager and the Underwriting Committee may not cover an applicant based upon that experience. In other words, we do not offer insurance coverage to all applicants. If this bill is passed we wanted the committee to know that physicians with an outstanding judgement may not be able to procure coverage and therefore not able to practice.

* CSHB336 - Medical Malpractice Advisory Panels.

We feel strongly that if current Medical Malpractice Advisory panels are to work they need to be comprised of experts, more importantly specialists who can understand the technical medical procedures and make assessments that offer the judge and both parties accurate medical conclusions.

We right now to obtain the appropriate physicians specialist on a panel. It does no good whatsoever to have a family practitioner on a panel where we have technical complications involving an orthopedic procedure. We feel that adding lay people to this panel would not make it any better. In fact, the time the panel would need to review a case would increase as the physicians would have to educate the lay people.

We ask you to not further dilute the credibility of the panel but in fact maintain it as an "expert" advisory panel membered with medical experts. We suggest that lay people have a place in the system and that is on the jury. If you must put a lay person on the panel to make sure the doctors play straight then please make them non-voting members on these highly technical issues.

Medical Indemnity Corporation of Alaska

* CSHB337 - Mandatory insurance requirements for hospitals.

Our comments here are similar to HB334. We do have underwriting requirements for hospitals. We are concerned since we are the only company offering coverage in the state to the rural hospitals that we may not chose to underwrite a hospital. We want the committee to understand that we are unwilling to compromise our standards because the strength and stability of those standards allow us to continue in business. We are not interested in becoming a substandard market or acquiring risks that may lead to our insolvency. It is our commitment to be here to write malpractice for the majority.

HB349 - Money from Medical Malpractice Revolving Loan Fund.

This fund was established to fund the operations of MICA. We have borrowed from it twice and have an outstanding balance of $2,402,286 on the first note and $800,000 on the second note. This fund has been important to us both in our original capitalization and also as surplus. This surplus is critical when being reviewed by reinsurers because it helps add stability to our small company. Needless to say, we are concerned about any depletion to the fund.

HB350 - Matching Fund.

We are certainly supportive of the concept of a matching fund. We do have some questions regarding this in legislation.

First of all, I believe I understand the intent of the formula but for the life of me, I can't get it to work. Perhaps someone can explain it to me.

We are also curious as to a definition of the term "rural" as it applies to the bill.

Finally, we have some concerns if we are to administer this fund.

1) The first is a potential restraint of trade problem that might occur by a physician with another carrier being denied access to the fund. It is at the very least a potential conflict of interest.

2) Secondly, if we do administer it we are concerned with the increase in administrative costs to us. Our question is therefore one of developing a budget and receiving compensation to administer the fund.

Again, we don't disagree in concept to the idea of a matching fund but do have questions regarding the mechanics.

Thank you for your time. I will be happy to answer any questions.

Sincerely,

Mary A. Pierce

Mary A. Pierce
Executive Director

HB 337

MICA Medical Indemnity Corporation of Alaska
ALEUT PLAZA
4000 OLD SEWARD HWY., SUITE 203
ANCHORAGE, ALASKA 99503
(907) 563-3414

February 14, 1990

Representative Max Gruenberg, Co-Chairman
Judiciary Committee
House of Representatives
State of Alaska
PO Box V
Juneau, Alaska 99811

Re: CSHB337

Dear Representative Gruenberg:

At a recent House Labor and Commerce Committee hearing you had requested information regarding additional premiums hospitals would have to pay if the committee substitute was passed requiring limits of liability of $1,000,000 per occurrence. This memorandum lists the hospitals we currently insure, their current limits and the additional premium required if applicable.

The Labor and Commerce Committee discussed adding an amendment to CSHB337 to allow self-insured hospitals meeting certain financial qualifications, to be exempted. I would also like to bring to your attention another group of hospitals that currently fall under the bill requirements for mandatory insurance.

Alaska Native Health Service hospitals and certain Tribal Contractor hospitals fall under the protection of the federal government. Until a couple of years ago we provided insurance to the Tribal Contractor facilities but the Federal Tort Claims Act of 1987 now provides for the U.S.A. to cover both the hospitals and physicians for malpractice. It seems to me you may want to write some exclusionary language for them also.

Medical Indemnity Corporation of Alaska

MICA Insured Hospital	Current Limits of Liability	Current Premium	Add'l Premium to increase to $1,000,000
Bartlett	1M/3M	448,682	
Seward General	500/1M	59,837	27,669
Sitka Comm.	500/1M	92,265	42,379
So. Peninsula	500/1M	133,541	47,617
St.Ann's Nursing	1M/2M	88,717	
Valdez Comm.	1M/3M	52,179	
Valley Hospital	500/1M	267,697	124,942
Wrangell Gen.	500/1M	39,556	14,540

I hope this answers your questions. Please feel free to contact me for additional information.

Very truly yours,

Mary A. Pierce

Mary A. Pierce
Executive Director

HB 337

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE P.O. BOX Y, JUNEAU 99811
(907) 465-3892

February 6, 1990

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed CS for HB 337 (L&C)
Work Order # 6-1322E, by Ford, dated 2/5/90

The proposed CS for HB 337 (L&C) requires all hospitals in the state to be insured under a malpractice insurance policy when the hospital:

a. receives public funding or
b. is requried to obtain a certificate of need under AS 18.07.031 or
c. acts under a certificate of need issued under AS 18.07.040 or 18.07.071.

Required insurance under the Act must provide minimum coverage of $500,000 for injury or death to one persone resulting from one incident and $1,000,000 for injury or death to more than one person resulting from one incident.

dd/gbs90
b/hb337-1

HB

348

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

December 21, 1989

Representative Peter Goll
Representative Max Gruenberg
Representative Dave Donley
3111 C Street
Anchorage, AK 99503

Re: HB 348 An Act relating to claims by victims of crime arising from criminal conduct.

Dear Representatives Goll, Gruenberg and Donley:

This bill provides that creditors may levy against exempt property of a debtor to enforce claims arising from criminal conduct of the debtor that results in a felony conviction. Although the purpose of the bill is to allow creditors of these debtors to reach exempt property, the first section of the bill grants these debtors most of the exemptions listed in AS 09.38.020 (omitting only the jewelry, pets and motor vehicle exemptions). This unduly complicates the exemption procedure for the creditors as well as the work of court clerks. Also the court system will need to change its forms and handbooks for creditors and debtors.

Section 2 of the bill requires creditors of these debtors to use the p ocedures of AS 09.38.075 on those items (jewelry, pets and motor vehicles) that are not made exempt by Section 1. This is inconsistent with the purpose of AS 09.38.065(c) that allows creditors simply to serve the debtor with a notice of levy stating the basis of the creditor's right to levy on exempt property without having to give the debtor notice and opportunity to apply for exemptions.

Although Section 2 of the bill requires the creditor to use the execution procedures of AS 09.38.075(a), Section 3 of the bill also requires creditors to follow the regular execution procedures.

The effect of AS 09.38.065(3) is to deny the debtor his exemption. By doing so, this section gives the creditor a relatively straightforward levy procedure to follow. However, this bill gives the debtor of criminal conduct claims most, but not all, of the statutory exemptions and makes it difficult, if not impossible, for the creditor to follow the existing levy procedures.

Sincerely,

Jan Strandberg
Staff Counsel

JS:gah

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 348
PUBLISH DATE: May 5, 1989

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to claims... arising from criminal conduct."
Sponsor: Repr. Donley
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Prosecution, Legal Services
Components: All, Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 09.38 to provide for a private right of action, for victims of a crime, against otherwise exempt property. Because the bill deals with claims between private parties there will not be a fiscal impact on the Department of Law.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: January 9, 1990

Richard L. Pegues /FOR/

Approved by Commissioner: Douglas B. Baily, Attorney General
Date: January 9, 1990
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 348

PUBLISH DATE: 5/5/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: Claims by victims of crime arising from criminal conduct
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel
Division: Income and Excise Audit
Phone: (907) 465-2320
Date: December 4, 1989

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue
Date: December 4, 1989

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

House Bill 348
Analysis
Prepared by:
Steven E. Kettel
Income and Excise Audit Division
December 4, 1989

Analysis:

Although this legislation is intended to provide direct benefit to victims (prsons) of a crime against their property, the amendment will strengthen the tate's ability to collect taxes which were fraudently understate or reported.

Fiscal Impact:

We do not anticipate that this legislation will markedly increase revenue collections. It will require no additional appropriation to this division.

STATE OF ALASKA
THE LEGISLATURE

POUCH V, STATE CAPITOL
JUNEAU, ALASKA 99811

HOUSE OF REPRESENTATIVES
Office of the Chief Clerk

TO Judiciary

REMARKS:

Please return HB 348
you have SS HB 348

FROM Kris DATE 1/24

LAA 25-H

HOUSE COMMITTEE REPORT

(7)
Date Referred: January 24, 1990 FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee considered: SSHB 348

SS HOUSE BILL NO. 348 REPEAL 25 CT HUNTING/FISHING/TRAPPING LIC

"An Act relating to claims that are made by victims of crimes and that arise from criminal conduct."

RECOMMENDATIONS:
[ ] be replaced with _____ [ ] the same title [ ] a new title

[ ] have attached amendment(s)

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact_____

[ ] zero fiscal note_____

[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s)_____

[ ] zero fn/analysis _____

SIGNING DO PASS:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

_____ _____
Chairman's Signature

HB

349

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

HB349

May 8, 1989

MEMORANDUM

TO: Representative Peter Goll

FROM: Patricia Young PY
Legislative Analyst

RE: Medical Malpractice Insurance Costs

Insurance Services Office, Inc. is a company which calculates advisory rates for liability insurance across the country. Although their rates are advisory rather than actual, it occurred to me that the single source perspective on what liability insurance should cost would be useful.

I requested advisory rates for all 50 states for physicians with liability coverage of $100,000 per occurrence/$300,000 annual aggregate and $200,000/ $600,000 in the following categories:

1. Family practitioners who perform no surgery (low risk)
2. Emergency room physicians who perform no major surgery (medium risk)
3. OB/GYNs who deliver infants (high risk)

I hope that the attached response is of some use to you.

Attachment

INSURANCE SERVICES OFFICE, INC.
160 WATER STREET NEW YORK N Y 10038 (212) 487 5000

April 29, 1989

Ms. Patricia A. Young
Legislature Analyst
Alaska State Legislature
House of Representatives
Research Agency
P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100

Dear Ms. Young:

Advisory Malpractice Rates

This is in response to your April 18 letter.

You had requested advisory rates for all 50 states for three physicians classes with liability coverage of $100,000/300,000 and $200,000/600,000. The three classes were Family Physicians, Emergency Medicine (no major surgery) and Surgery - OB/GYN. Your state legislators need this information to assist in a study of tort reform measures.

I've attached various exhibits which provide the information you requested. Please note the following:

1. Exhibit A provides the advisory rates for Emergency Medicine (no major surgery) and Family Physicians at limits of $100,000/300,000 for most states. The column marked "$200,000/600,000 ILF" provides increased limits factors. You can determine the advisory rates for $200,000/600,000 by multiplying the increased limit factor by the basic limit rate in each of the first two columns. Exhibit A-1 provides the same information for surgery OB/GYN classification.

2. Exhibit B provides basic limits rates ($100,000/300,000) for states that have more than one territory. It also includes states which have basic limits of $25,000/75,000 rather than $100,000/300,000. The increased limits factors for all states listed on Exhibit B can be found on Exhibit A.

3. Exhibit C lists the territories associated with territory codes on Exhibit B.

4. Keep in mind that all rates shown are advisory rates. Each company makes its own determination of the rates and premiums that apply. So,that advisory rates may not reflect actual premium levels in each state.

I trust this has answered your inquiry. Please call if you have any questions.

Sincerely,

John P. Salvato, CPCU
Assistant Manager
Industry Relations
(212) 487-5047

jps:zn

cc: J. Masek

EXHIBIT A

80102 Emergency Medicine - no major surgery
80420 Family Physicians or General Practitioners - no surgery

	100/300 B/L 80102	80420	200/600 ILF	80102	80420
ALABAMA	8,308	3,032	1.28		
ALASKA	11,879	4,336	1.34	15,917	5,810
ARIZONA	18,860	6,883	1.34		
ARKANSAS	3,709	1,354	1.34		
CALIFORNIA	21,858	7,978	1.34		
COLORADO	11,650	4,252	1.34		
CONNECTICUT	14,118	5,153	1.34		
DELAWARE	10,413	3,800	1.34		
DIST OF COL	11,242	4,103	1.28		
FLORIDA			1.34	See attached	
GEORGIA	7,893	2,881	1.34		
HAWAII	13,370	4,880	1.34		
IDAHO	13,417	4,897	1.34		
ILLINOIS	11,660 *	4256 *	1.34	* Loss Costs	
INDIANA	8,224	3,001	1.34		
IOWA	7,448	2,718	1.34		
KANSAS					
KENTUCKY	6,023 *	2,198 *	1.34	* Loss Costs	
# LOUISIANA				See attached 100/300 ILF 1.35 200/600 ILF 2	
MAINE	8,651	3,158	1.32		
MARYLAND	15,180	5,541	1.34		
MASSACHUSETTS	*	*	*	*Refer to Mass. Ins. Dept	
MICHIGAN	23,182	8,461	1.34		
MINNESOTA	8,254	3,012	1.34		
MISSISSIPPI	7,763	2,375	1.23		
MISSOURI	12,618	4,605	1.34		
MONTANA	9,208	3,361	1.34		
NEBRASKA	4,653	1,698	1.28		
NEVADA	25,846	9,433	1.34		
NEW HAMPSHIRE	4,804	1,569	1.34		
NEW JERSEY	26,596	9,706	1.34		
NEW MEXICO	11,798	4,306	1.34		
NEW YORK			1.13	See attached	
NORTH CAROLINA	4,322	1,578	1.34		
NORTH DAKOTA	7,817	2,853	1.34		
OHIO	13,841	5,051	1.34		
# OKLAHOMA				1/L refer to Co / See attached	
OREGON	11,874	4,334	1.34		
PENNSYLVANIA			1.34	See attached	
# PUERTO RICO				See attached 100/300 ILF 1.75 200/600 ILF 2.34	
RHODE ISLAND	5,121	1,707	1.33		
SOUTH CAROLINA	3,206	1,170	1.28		
SOUTH DAKOTA	7,073	2,582	1.34		
TENNESSEE	4,321	1,578	1.28		
TEXAS				Refer to Co	
UTAH	19,812	7,231	1.28		
VERMONT	2,877	880	1.34		
VIRGINIA	5,018	1,831	1.32		
WASHINGTON	10,884	3,974	1.34		
WEST VIRGINIA	10,947	3,995	1.28		
WISCONSIN	9,165	3,345	1.34		
WYOMING	11,077	4,042	1.34		

#25/75 B/L

EXHIBIT A-1

80153 Surgery OB/GYN

	100/300 B/L 80153	200/600 ILF	
ALABAMA	28,742	1.32	
ALASKA	92,517	1.37	44,548
ARIZONA	51,624	1.37	
ARKANSAS	10,154	1.37	
CALIFORNIA	59,830	1.37	
COLORADO	31,888	1.37	
CONNECTICUT	38,646	1.37	
DELAWARE	28,502	1.37	
DIST OF COL	30,773	1.37	
FLORIDA			See Attached
GEORGIA	21,604		
HAWAII	36,597		
IDAHO	36,727		
ILLINOIS	31,917*		* Loss costs
INDIANA	22,509		
IOWA	20,385		
KANSAS			Claims-made only See attached
KENTUCKY	16,485*		* Loss costs
# LOUISIANA			See attached 100/200 ILF 1.91 200/600 ILF 2.51
MAINE	22,101	1.35	
MARYLAND	41,553	1.37	
MASSACHUSETTS	*	*	*Refer to Mass. Ins. Dept.
MICHIGAN	63,457	1.37	
MINNESOTA	22,594	1.37	
MISSISSIPPI	15,543	1.28	
MISSOURI	34,539	1.37	
MONTANA	25,206	1.37	
NEBRASKA	12,737	1.32	
NEVADA	70,745	1.37	
NEW HAMPSHIRE	9,609	1.37	
NEW JERSEY	72,799	1.37	
NEW MEXICO	32,295	1.37	
NEW YORK		1.13	See attached
NORTH CAROLINA	11,831	1.37	
NORTH DAKOTA	21,398	1.37	
OHIO	37,885	1.37	
# OKLAHOMA			1/L Refer to Co. See attached
OREGON	32,505	1.37	
PENNSYLVANIA		1.37	See attached
# PUERTO RICO			See attached 100/300 ILF 1.86 200/600 ILF 2.55
RHODE ISLAND	8,535	1.36	
SOUTH CAROLINA	8,772	1.32	
SOUTH DAKOTA	19,360	1.37	
TENNESSEE	11,829	1.32	
TEXAS			Refer to Co.
UTAH	54,213	1.32	
VERMONT	5,762	1.37	
VIRGINIA	13,736	1.34	
WASHINGTON	29,805	1.37	
WEST VIRGINIA	29,964	1.32	
WISCONSIN	25,088	1.37	
WYOMING	30,320	1.37	

#25/75 B/L

EXHIBIT B

STATE	CLASSIFICATION CODE NO.			COMMENTS
	80102	80153	80420	
FL				
terr 001	32,860	89,944	11,992	
terr 002	27,732	75,908	10,121	
LA	1,446	2,892	482	25/75 B/L Rates
NY				
terr 011	18,878	53,257	7,304	
012	22,909	64,632	8,862	
013	22,909	64,632	8,862	
014/015	17,728	50,014	6,858	
016	20,026	56,498	7,747	
017	10,364	29,238	4,010	
OK	4,284	10,725	1,563	25/75 B/L Rates
PA				
terr 001	12,227	33,467	4,462	
002	6,334	17,339	2,312	
003	7,508	20,552	2,740	
PR	1,361	3,725	528	25/75 B/L Rates

EXHIBIT C

Territory Definitions

Florida

terr 001	Dade and Broward Counties
terr 002	Remainder of State

New York

terr 011	New York City
terr 012	Nassau County
terr 013	Suffolk County
terr 014, 015	Westchester and Orange Counties
terr 016	Rockland/Sullivan/Ulster Counties
terr 017	Delaware County and Remainder of State

Pennsylvania

terr 001	Delaware and Montgomery Counties and the city of Philadelphia
terr 002	Remainder of State
terr 003	Allegheny County

Mary C. Wing, M.D.
LEMETA MEDICAL CLINIC, INC.
#8 BONNIE STREET
FAIRBANKS, ALASKA 99701
TELEPHONE (907) 456-5711

HB349

March 21, 1990

To: House Judiciary Committe
Peter Goll Co-Chairman
Max Gruenberg Co-Chairman
Mike DAvis Vice-Chairman
Cliff DAvidson
Johnny Ellis
Terry Marlin
Mike Miller

We met with many of you during our February visit to Juneau. Here are our comments on the following bills:

HB334
This bill would require doctors to carry malpractice insurance after having a judgment entered against them. This is a poor way to guarantee financial responsibility. The malpractice insurance obtained under these circumstances would certainly not apply to the judgment already entered since the bill only requires malpractice coverage be carried until the judgment is satisfied. Please vote no.

HB349/350/355
These series of bills would provide financial relief to beleaguered rural physicians, particularly those who do obstetrics. Up to $500,000 would be available to subsidize malpractice premiums of eligible doctors. Funding would come from an increase in the premium tax, from the present 2%, to 2.7% and from a revolving account set up to capitalize MICA.

The practicality of this is that the state of Alaska would establish a system of subsidization of one category of physicians through additional indirect taxation on other physicians. The formula by which rural doctors would be eligible for premium subsidies is complicated and rules would require a doctor to reveal actual income reported to the IRS. This presupposes that town physicians aren't having problems like rural physicians. The stipulation of ten or less pregnancies makes no sense as one more delivery does not generate thousands of dollars. Please vote no.

HB336
The current system calls for an expert medical advisory panel. Members are physicians only and are able to examine the patient as well as the records. They answer medical questions only. The panel will no longer be expert if lay people are added. The lay members cannot be given seven to ten years of educational knowledge during the few weeks the panel meets. This will dilute the benefit of the panel. The current system works. Please vote no on the change.

HB337
This bill would force physicians to indemnify the hospital for any negligence it commits. It is an effort to transfer cost and liability from hospitals to physicians. Please vote no.

March 22,1990
Judiciary Committee continued:

Thank you for your consideration of these matters.

Sincerely yours,

Gary Johnson, M.D.

President
Fairbanks Medical Association

Mary C. Wing, M.D.

Vice-President
Fairbanks Medical Association

B

HOUSE COMMITTEE REPORT

3/8

(7)
Date Referred: May 6, 1989 FURTHER REFERRALS: JUDICIARY FINANCE

Date of Committee Action: 3/7/90

The LABOR & COMMERCE Committee considered: HB 349

HOUSE BILL NO. 349 [APPROP:ME) MALPRACTICE INS. MATCHING FUND]
"An Act making a special appropriation to the Alaska medical malpractice matching fund for medical malpractice insurance premiums; and providing for an effective date."

RECOMMENDATIONS:
[X] be replaced with CS HB 349 (L+C) [✓] the same title [ ] a new title
[ ] have attached amendment(s)
[✓] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

Finkelstein
Dawley
Greenberg
Bunch

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Lonnan		X	
Collins			
Bouchey		3/7/90	

Dawley
Chairman's Signature

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 8, 1990 FURTHER REFERRALS:

FINANCE

Date of Committee Action: _____

The JUDICIARY Committee considered: HB 349

HOUSE BILL NO. 349 APPROP:MED MALPRACTICE INS. MATCHING FUND

"An Act making a special appropriation to the Alaska medical malpractice matching fund for medical malpractice insurance premiums; and providing for an effective date."

RECOMMENDATIONS:

[ ] be replaced with _____ [ ] the same title [ ] a new title

[ ] have attached amendment(s)

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

[ ] zero fn/analysis _____

SIGNING DO PASS:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

_____
Chairman's Signature

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 6, 1989 FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: 3/7/90

The LABOR & COMMERCE Committee considered: HB 349

HOUSE BILL NO. 349 [APPROP:MED MALPRACTICE INS. MATCHING FUND]
"An Act making a special appropriation to the Alaska medical malpractice matching fund for medical malpractice insurance premiums; and providing for an effective date."

RECOMMENDATIONS:
[X] be replaced with CS HB 349 [✓] the same title [ ] a new title
[ ] have attached amendment(s)
[✓] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the Judiciary Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
		X	
	X		

David Donley
Chairman's Signature

6-1381E
Ford
2/27/90

Funding Information: General Fund $500,000
Other Funds -0-
$500,000

Original sponsor(s): REP. DONLEY, Gruenberg, Boyer

IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 349 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Alaska medical malpractice matching fund for medical malpractice insurance premiums; and providing for an effective date."

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

* Section 1. The sum of $500,000 is appropriated to the Alaska medical malpractice matching fund (AS 21.88.310), from unexpended and unobligated funds repaid to the medical malpractice liability revolving loan fund (AS 21.88.210), for the purpose of paying medical malpractice insurance premiums.

* Sec. 2. The unexpended and unobligated balance of the appropriation made by this Act lapses into the general fund July 1, 1993.

* Sec. 3. This Act takes effect on the effective date of the section of an act enacted by the Sixteenth Alaska State Legislature that establishes the Alaska medical malpractice matching fund (AS 21.88.310).

Introduced: 5/6/89
Referred: Labor & Commerce
Judiciary and Finance

6-1381A

Funding Information
General Fund $500,000
Other Funds -0-
$500,000

IN THE HOUSE BY DONLEY AND GRUENBERG

HOUSE BILL NO. 349

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Alaska medical malpractice matching fund for medical malpractice insurance premiums; and providing for an effective date."

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

* Section 1. The sum of $500,000 is appropriated to the Alaska medical malpractice matching fund (AS 21.88.310), from unexpended and unobligated funds repaid to the medical malpractice liability revolving loan fund (AS 21.88.210), for the purpose of paying medical malpractice insurance premiums.

* Sec. 2. The unexpended and unobligated balance of the appropriation made by this Act lapses into the general fund July 1, 1995.

* Sec. 3. This Act takes effect on the effective date of the section of an act enacted by the Sixteenth Alaska State Legislature that establishes the Alaska medical malpractice matching fund (AS 21.88.310).