

Approved

Stephen R. Cloud
Date 4-10-85

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Representative Stephen R. Cloud at
Chairperson

9:15 a.m./~~p.m.~~ on Friday, March 29, 1985 in room 522-S of the Capitol.

All members were present except:

- Representative Brown - Excused
 - Representative Fuller - Excused
 - Representative Sutter - Excused
- Committee staff present:

- Avis Swartzman - Revisor
- Russ Mills - Legislative Research Dept.
- Julian Efird - Legislative Research Dept.
- Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

- Don Strole - General Counsel, State Board of Healing Arts
- Richard Uhlig, D.O. - Secretary, State Board of Healing Arts
- David Waxman, M.D. - Member, State Board of Healing Arts
- Lynn Johnson - Kansas Trial Lawyers Association

The meeting of the Governmental Organization Committee was called to order at 9:15 a.m. by Representative Stephen R. Cloud, Chairman. The March 26 minutes were approved.

HB 2573, concerning the State Board of Healing Arts, was the first item on the agenda. The Chairman commented that this bill came as an outgrowth of a bill earlier in the session. He mentioned Representative Patterson's bill, HB 2282, which dealt with the Board of Examiners in Optometry. Representative Patterson had distributed to the Committee a list of boards and the percentages of lay persons serving on them. It was noted that the Board of Healing Arts had 13 members with only 1 lay person serving on the Board. HB 2573 makes two major changes. It increases from 13 to 15 the number of members on the Board. The two additional members would represent the general public. The second change is to increase from 3 to 5 names the professional society or association shall submit to the Governor and requires the Governor to select from this list. This is basically what the bill accomplishes.

The Chairman stated that, as a little more background information, an Attachment had been distributed. He went through the attachment and explained the various charts. (See Attachment A) He commented on the Judiciary Committee's medical malpractice hearings. The Chairman and Representative Walker serve on that committee.

In referring to the Frequency of Malpractice Suits Against Kansas Physicians, it was asked if these malpractice suits were filed or adjudicated suits. Jerry Slaughter, Kansas Medical Society, said they were filed suits. He feels that less suits go to trial than are filed.

Don Strole, General Counsel, State Board of Healing Arts, spoke before the committee and said that a non-governing entity does not have the power to delegate to the state as per the language contained in Section 1. It has been tried in other states and declared by the courts to be unconstitutional. There are also problems with adding more lay members to the Board. Mr. Strole said he didn't know if this would be helpful or not. It would certainly lend a different perspective, but the Board is quite large now. The Board is very technical in nature, and adding lay persons would not increase the technical ability.

The Chairman commented that increasing the Board from 13 to 15 was a concern of his also. Another option might be to keep the Board membership the same and increase the lay participation, which would reduce the number in the other fields already on the Board.

Mr. Strole distributed copies of a letter he had given to the Ways and Means Committee. He commented that the Board doesn't usually receive information about injuries giving rise to malpractice until long after the injuries have occurred. (See Attachment B)

SRE

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION,
room 522-S, Statehouse, at 9:15 a.m./~~p.m.~~ on Friday, March 29, 1985

It was commented that besides Governmental Organization, the Judiciary and Fletcher Bell are working on the malpractice area. Subpoena powers, the stabilization fund and attorney/client privileges were discussed. Mr. Strole commented that he didn't think it was good policy to use subpoena powers from one agency to another. Copies of letters and responses were discussed. Mr. Strole is going to provide the Chairman with one or two of the responses. There seems to be a differing opinion on whether there is cooperation with the Insurance Department or not.

Richard Uhlig, D.O., Board Secretary, spoke next. He told the committee he had polled every member of the Board except one and no member was against it, although they do not feel that it would be helpful. He brought up midwifery, stating that a lot of the general public favor this but it is not good medical practice. A person has to have a history of medicine to deal with a particular problem. This is only one example. There are very technical questions that deal with very emotional subjects. Dr. Uhlig feels that the Board balance is very delicate and a workable one of checks and balances. Board members put aside their individual differences and come up with good decisions. The attendance at meetings is very good and members are punctual. Their time is donated and is appreciated as their responsibilities to their patients and their other many commitments await them. This was basically Dr. Uhlig's feelings.

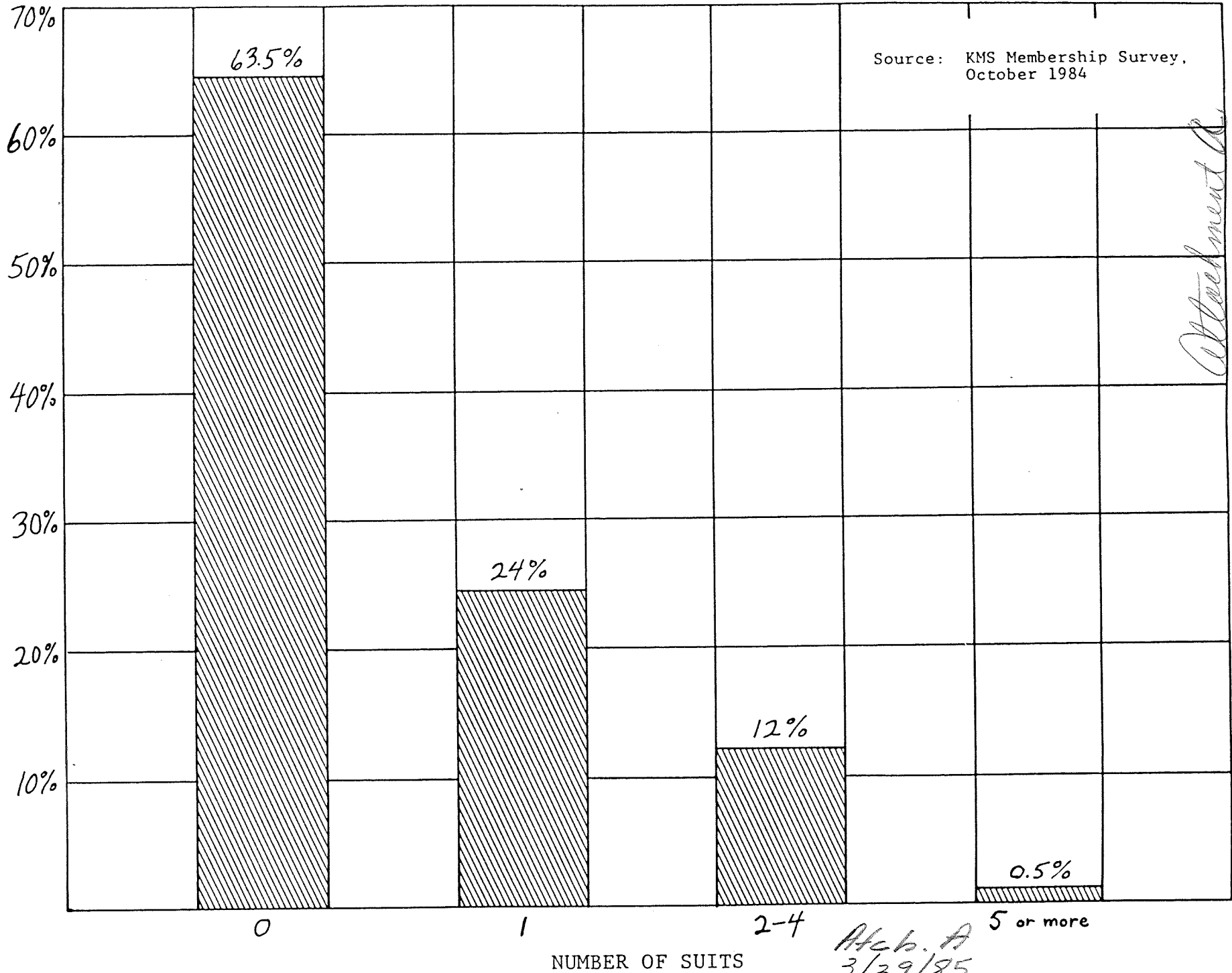
Dr. David Waxman spoke next. He is the newest appointee to the Board. When Dr. Waxman began private practice in Kansas City in 1951, the insurance coverage was \$5,000 a year. Now Dr. Waxman has \$1,000,000/\$3,000,000 coverage. Things have changed. Doctors are better trained and more knowledgeable, but there are so many more suits against them. He was happy when he was appointed to the Board but he isn't so sure about it now. Dr. Waxman had a few more thoughts to express but stated he was glad to defer them because of the time frame in which the committee had to work before the 10:00 a.m. session.

Lynn Johnson, Kansas Trial Lawyers Association, was present, representing himself. He has represented some of the people who have been injured as a result of medical malpractice. He commented that all responsible parties need to look at and explore all the avenues for resolving the medical malpractice issues. It is a problem affecting the delivery of health care. He knows it is true that the Board finds out about many of the problems long after the damage has been done. He was not present not to speak in favor of the bill as such, but to see if anything can be done to help the Board of Healing Arts in some way. Mr. Johnson mentioned some of the things that had been done in the State of Florida and stated that he would be glad to provide information on what other states are doing.

The Chairman thanked all the conferees for their appearance before the committee. He said the committee would meet Monday to continue with HB 2573 and to also continue with the Subcommittee 3 Report and action on SB 79.

The meeting adjourned at 10:00 a.m.

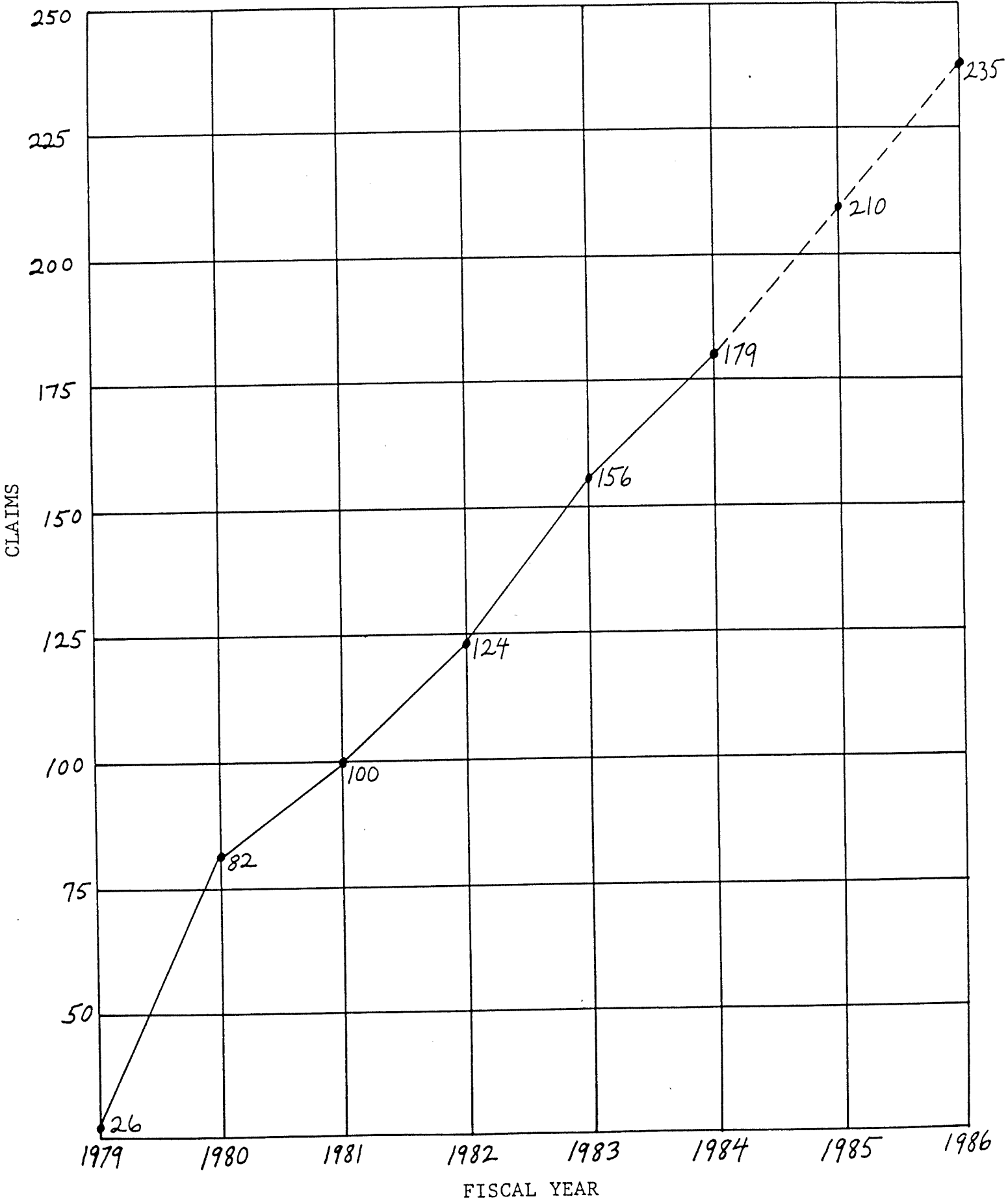
FREQUENCY OF MALPRACTICE SUITS
AGAINST KANSAS PHYSICIANS



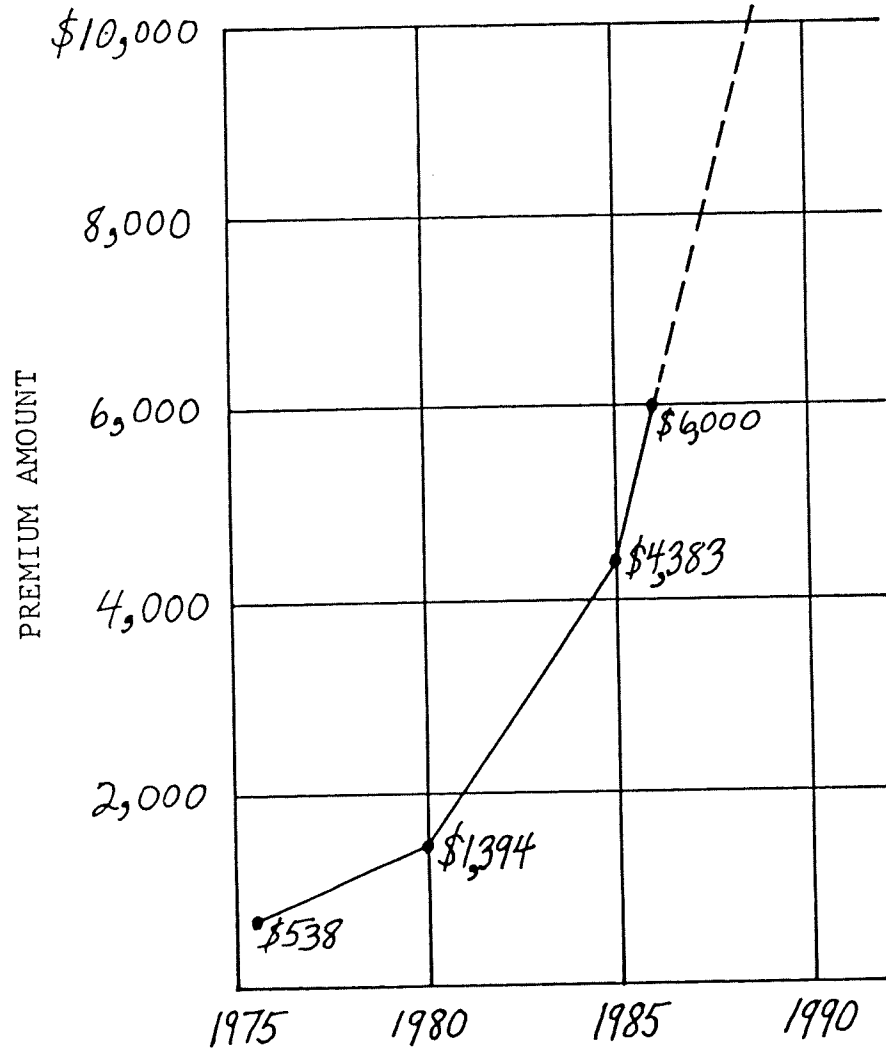
ATTACHMENT A

Attachment A

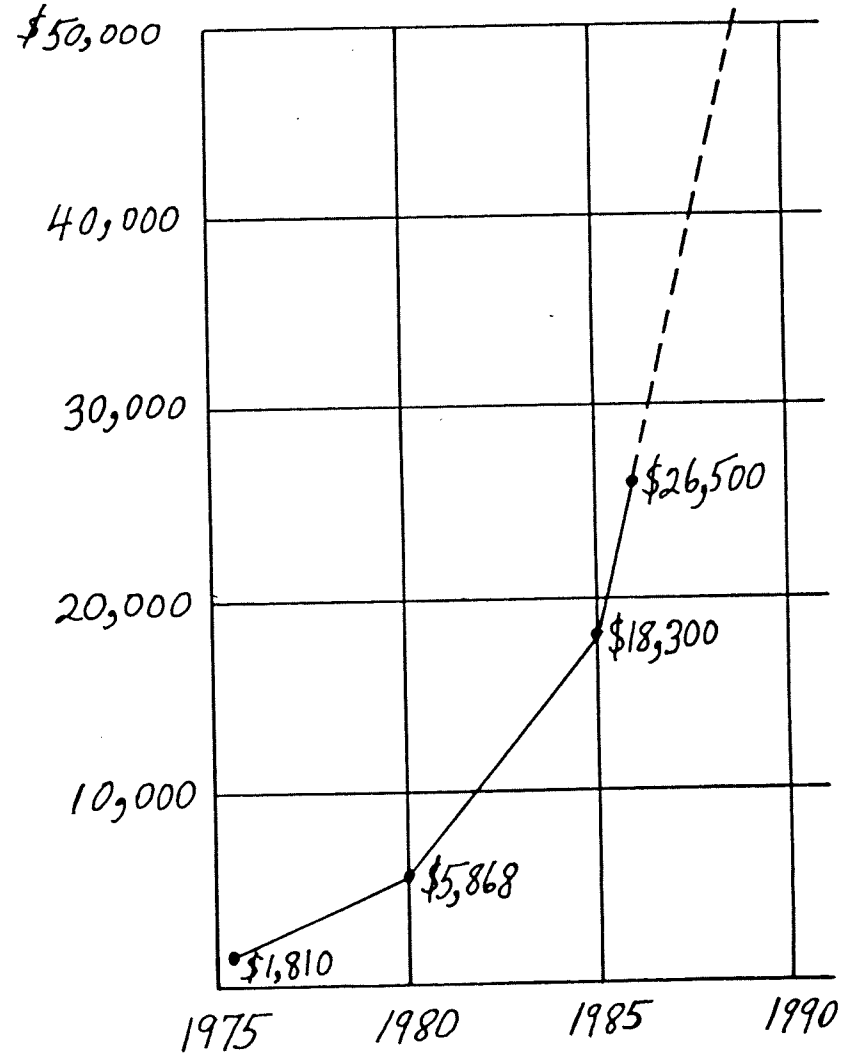
CLAIMS FILED AGAINST HCSF,
FY 1980 -- FY 1986



PHYSICIAN MALPRACTICE PREMIUMS FOR REQUIRED COVERAGE



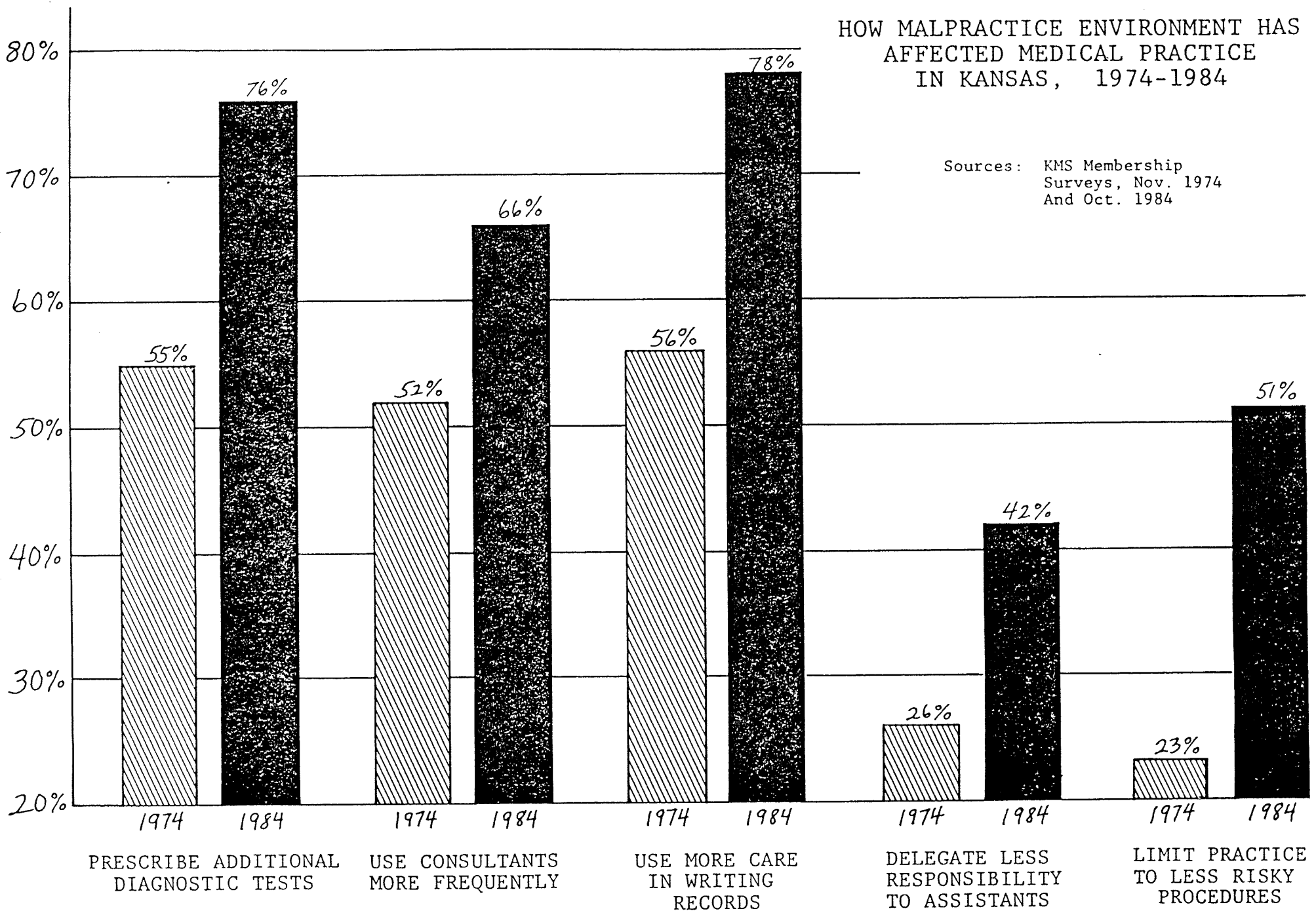
FAMILY PRACTICE AND
INTERNAL MEDICINE SPECIALTIES



SURGICAL SPECIALTIES
INCLUDING OBSTETRICS

HOW MALPRACTICE ENVIRONMENT HAS AFFECTED MEDICAL PRACTICE IN KANSAS, 1974-1984

Sources: KMS Membership Surveys, Nov. 1974 And Oct. 1984



BOARD OF HEALING ARTS



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 HAROLD J. SAUDER, D.P.M., INDEPENDENCE
 DAVID WAXMAN, M.D., KANSAS CITY
 REX A. WRIGHT, D.C., TOPEKA

March 18, 1985

Senator Dave Kerr
 Senator Michael Johnston
 Capitol Bldg., Room 143-N
 Topeka, KS 66612

RE: Making the Board more effective in
 dealing with malpractice

Dear Senators:

As you are aware, the Board receives criticism that if the Board were more effective and aggressive in dealing with malpractice, there would not be as much malpractice, and thus, malpractice premiums would be reduced. Although I believe that we have aggressively pursued malpractice, I do agree that we have not done enough to have any significant impact on malpractice premiums. Why? Because the vast majority of the time, we do not receive information about the injury giving rise to the malpractice until long after it has occurred, usually by receiving a malpractice petition (which normally is filed 2-4 years after the injury occurred). Also, once a malpractice case is pending our involvement becomes much more complicated and difficult. Is there a way to rectify this problem? I suggest the following possibility.

As you know, the 1983 legislature passed legislation the intent of which was to strengthen our ability to find out about malpractice. Two pieces of this legislation were statutes requiring hospitals to report to us when they revoked, suspended or restricted a doctor's privileges at the hospital, and a statute requiring any licensee to report to us a suspected violation of the Healing Arts Act. Unfortunately, these statutes have not worked out as well as anticipated. First, doctors have been very reluctant to report violations to us. In fact, it is my understanding that neither the Kansas Medical Society's Impaired Physician's Committee nor its Peer Review Committee is operating or taking action because of the reporting laws. I have as yet to hear any good argument for this fact, other than that they want to keep everything private or possibly they are afraid of being sued. Neither of these arguments have any merit because K.S.A. 65-2898 grants good faith immunity to anyone who reports to us and 65-2898a makes everything confidential unless we take formal disciplinary action. Thus, I can only conclude that doctors are simply unwilling to report anything if they know that such reporting may cause the violator to lose his license. Jerry Slaughter and I met last fall to discuss this problem. Since then, however, we have not received

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any information that these committees are being any more active.

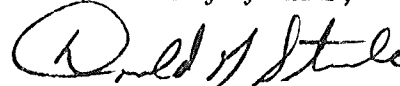
The hospitals generally do report to us when privileges have been restricted. However, this is usually several months after the incident has occurred and sometimes longer depending upon the bylaws and the appeal rights given to the doctor by them. Recently, I have also found that hospitals try to find ways to delay the process or at least try to restrict or revoke the privileges for reasons that do not deal with the issue of competence. The reason for this is that the hospitals are justifiably fearful of being sued for revoking the privileges, either as a violation of anti-trust laws or breach of contract. Given all of this, we usually are not able to take action against a doctor's license until long after the incident occurred, during which time the doctor, if incompetent, can continue to commit malpractice. For example, if we had known about Sifers when he had performed the first mastectomies, we may have been able to prevent many of the presently pending malpractice cases.

What is the solution? I suggest the following possibility. When a hospital's medical staff or even one of its members becomes aware of an injury which may be a result of a doctor's mistake or when they question a certain medical procedure, at that point the staff or the member should be required to report to us. We should then be given authority to investigate the incident or the procedure, and, if necessary, send our own review committee to the hospital to evaluate it. In this way we could determine early in the game whether a doctor is incompetent, and thus, prevent him or her from committing any further malpractice. Of course, our investigation and review would be strictly confidential unless we file formal proceedings. In addition, anyone who participates in the investigation or review should be given as much immunity as possible (which is probably the immunity granted by K.S.A. 65-2898, since no one should be immune from committing acts with malice).

As I have said repeatedly, the Board and certainly the attorneys for the Board will aggressively and vigorously pursue doctors who commit malpractice. But in order to be effective in this effort we must have the necessary information and we must obtain that information as early as possible.

I look forward to discussing this with you in more detail at your convenience.

Sincerely yours,



Donald G. Strole
General Counsel

DGS/sl

P.S. These are purely my reflections on improving the Board's activities, although I have discussed the issue briefly with the Secretary of the Board. I believe the Board would be supportive, but I cannot say this with certainty until I discuss the issue with them at our next meeting on 4/13.

BOARD OF HEALING ARTS



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March 12, 1985

Senator Dave Kerr, Chairman
 Senator Michael Johnston
 Subcommittee of Way & Means
 Capitol Building, Room 143-N
 Topeka, KS 66612

RE: Funding for Hearing Officer in FY-86

Dear Senators:

Recently several cases which I thought were resolved have turned much more complex and may well result in the necessity of holding several long involved hearings in FY-86. At the February 9 Board meeting these cases were discussed. One of the concerns of the Board was the length of such hearings and the problem this would create for board members who might have to sit on the hearing panel. Last Friday I discussed this problem in detail with Richard Uhlig, D.O., the Secretary of the Board. The two of us agreed that using a hearing officer for these hearings was preferable to having board members sit on hearing panels. Thus, we are requesting funds be added to the FY-86 budget to contract for a hearing officer.

In trying to determine the amount needed I performed the following (admittedly unscientific) calculations. One of the major cases on which we may go to hearing involves 23 separate malpractice actions. If we make the undoubtedly overly optimistic assumption that we could try a case a day, we would need a hearing officer for at least 25 days for this one hearing. (I added two days for the hearing officer's review of the record and the writing of a memorandum opinion on the case.) If we assume that we could contract with someone for \$50 an hour for 8 hours a day, we would arrive at \$10,000 for this hearing.

The other cases in total should not run any longer than this. Thus, I added another \$10,000 for them. This means that we have a total of \$20,000 which we are requesting be added to the FY-86 budget.

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As you can surmise, such calculations and final figures are quite speculative. If one hearing became incredibly complex we could use up the entire funds for that hearing, or if settlements on various issues are reached in a given hearing we may have a large amount left over. The \$20,000, however, is the most reasonable estimate at which I can arrive.

If you have any questions, please feel free to contact me at any time.

Very truly yours,



Donald G. Strole
General Counsel

DGS/sl