

Approved April 1, 1986
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Chairman Joe Knopp at
Chairperson

3:30 ~~a.m.~~/p.m. on February 17, 1986 in room 313-S of the Capitol.

All members were present except:

Representative Fuller was excused

Committee staff present:

Mike Heim, Legislative Research Department
Mary Torrence, Revisor of Statutes Office

Jan Sims, Committee Secretary

Conferees appearing before the committee:

The Chairman announced that committee members had been handed statements from the Sedgwick County Health Care Cost Containment Round Table and DANI Associates, Inc. actuarial consultants and that same would be made a part of the record. (Attachments 1 and 2)

HB 2661 - An act concerning certain health care providers; relating to medical malpractice liability and insurance coverage therefor; concerning regulation of certain health care providers.

Final action of the committee continued beginning with:

New Sec. 13

Kathleen Sebelius explained the KTLA amendment at line 348 on the first page 10 of New. Sec. 13. After discussion Rep. Solbach moved to pass over this amendment. Seconded by Rep. Walker. Motion carried on a voice vote.

New Sec. 14

Rep. Teagarden moved to include the amendments proposed in (a) of New Sec. 14. Seconded by Rep. Vancrum. Rep. Douville questioned what tables were being referred to in those amendments to arrive at "current value" stating that a table could be written many different ways. Rep. O'Neal said these amendments confuse the issue on page 9 in that the court issues a judgment for the cost of the annuity. It should not then be required to reduce the judgment to present value. Rep. Solbach stated that those values are needed if people are going to use the pinhole provision of the cap. Motion carried on a voice vote.

Rep. Walker moved that the language at lines 362-365 be deleted. Seconded by Rep. Snowbarger. Motion carried on a voice vote.

New Sec. 16

Jerry Slaughter of the Kansas Medical Society suggested that a period be placed after the word "licensed" in line 382 and delete the rest of that sentence in order to accomplish the intent of that language. Rep. Solbach moved to adopt Mr. Slaughter's suggestion as an amendment. Seconded by Rep. O'Neal. Rep. Duncan said that action would take away the purpose of the section. Rep. Buehler reminded the committee of the trouble explained to the interim committee of people coming in and saying they were specialists when in fact they were not. Rep. Knopp said that the focus had been on whether the physician testifying was in active practice more than on whether he was practicing a particular specialty. Rep. Bideau made a substitute motion to change the word "same" to "his" in line 382 and add a period after the word "profession". Seconded by Rep. Wunsch. The substitute motion failed on a voice vote. Rep. Solbach's motion carried on a voice vote.

New Sec. 17

Wayne Stratton of the Kansas Medical Society told the committee that the proposed amendment at line 386 was agreed to by all parties. Rep. Duncan moved to include the amendment at line 386. Seconded by Rep. Snowbarger. Motion carried 9 votes to 8.

Rep. Duncan moved to delete sections (d) through (h) of New Sec. 17. Seconded by Rep. Snowbarger. Rep. Vancrum said those provisions were needed to operate as a hammer to induce settlements. He realizes that this language may result in no settlement offers being made, but feels that the language is needed. Rep. Shriver agreed and offered

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that perhaps the percentage could be lowered especially in light of the provisions of (h). Rep. Walker stated that the interim committee had worked this provision extensively and supported the percentage as it is. Rep. Bideau said pressure is needed to settle cases close to the limits of the fund much like a bad faith penalty in insurance policies operates. The Kansas Medical Society asked about the cases where liability is questionable. They stated that many plaintiffs would not have funds to pay attorney fees awarded under this provision. Eugene Ralston of the Kansas Trial Lawyers Association said they agree with the opposition to this language in cases with questionable liability. It places pressure on plaintiffs to succumb to the threat of the penalty in order to settle. Motion carried 11 votes to 8.

New Sec. 18

Rep. O'Neal moved that the amendment at line 443 be included. Seconded by Rep. Wunsch. Motion carried on a voice vote.

New Sec. 20

The Kansas Medical Society and Insurance Commissioner's Office explained that the amendment at line 507 was a cleanup provision. Rep. O'Neal moved that the language be included. Seconded by Rep. Wunsch. Motion carried on a voice vote.

New Sec. 21

Rep. Walker stated that the committee was concerned that attorney fees were granted pro forma in most cases and felt the amending language would make the court look at attorney fees more closely, especially in major cases. The Chairman said that adding "on the motion of either party or on motion of the court" would make it an evidentiary hearing to consider the eight items in section 21(a)(1)-(8). Rep. Solbach moved to add "on the motion of either party" at lines 516, 520 and 524. Seconded by Rep. Whiteman. Motion failed on voice vote.

Sec. 22

Rep. Solbach moved to adopt the amendment at line 567 with the correction of substituting "procured" for "procedured" in the second line of the amendment. Seconded by Rep. Walker. Motion carried on a voice vote.

Sec. 23

Rep. Vancrum offered Attachment A as an amendment to Sec. 23. Seconded by Rep. Bideau. Rep. Vancrum said we know there is a way to experience rate because it is presently done in the fund. Attachment A would require experience rating for the first \$200,000 of coverage of private insurance based on actual loss experience. Motion carried on a voice vote.

Ted Fay of the Insurance Department said that October 1, 1986 is an impossible deadline for the Department to comply with. Rep. Duncan moved that the regulations be made effective July 1, 1987. Seconded by Rep. Vancrum. Motion carried on a voice vote.

Rep. O'Neal moved for an amendment providing a floor of \$15,000 for cases which were settled for nuisance value before being considered as a part of claims history. Seconded by Rep. Wunsch. It was stated that this could be made a part of the regulations. Motion failed 7 votes to 9.

Sec. 24

Rep. Duncan moved that the amending language for (D) at line 715 be included. Seconded by Rep. Bideau. Motion carried on a voice vote.

Rep. Solbach moved that the amendment at line 57 be included. Seconded by Rep. Snowbarger. Motion carried on a voice vote.

Rep. O'Neal moved that the amendment to line 98 be adopted. Seconded by Rep. Wunsch. Motion carried on voice vote.

Rep. Vancrum moved to adopt the amendments on lines 101 and 103. Seconded by Rep. Snowbarger. Motion carried on a voice vote.

Rep. Solbach moved to adopt the insurance commissioner's language proposed on page 24. Seconded by Rep. Wagon. Motion failed on voice vote.

Rep. O'Neal moved to delete amendments at lines 124 et seq. and return to current law. Seconded by Rep. Shriver. Motion carried on a voice vote.

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Sec. 25

Rep. Vancrum moved to adopt the second paragraph of the amendment offered at line 174. Seconded by Rep. Bideau. Motion carried on a voice vote.

Rep. Shriver moved to add the proposed provision pertaining to appeal bonds on page 25. Seconded by Rep. Solbach. Motion carried on a voice vote.

Rep. Snowbarger moved to delete the language in brackets on lines 175-178. Seconded by Rep. Vancrum. Motion carried on a voice vote.

Rep. Vancrum offered Attachment B as an amendment at line 205. Seconded by Rep. Bideau. Motion carried on a voice vote.

Sec. 29

Rep. Cloud handed committee members a copy of HB 2753 which makes it a requirement of the Governor in making appointments to the Board of Healing Arts to appoint the member from lists submitted by the Kansas Medical Society, etc. and offered that provision as an amendment to HB 2661. Seconded by Rep. Walker. Rep. Shriver made a substitute motion to reinsert the stricken language at lines 275 through 290. Seconded by Rep. Solbach. Rep. Buehler said conferees had stated that Rep. Cloud's proposal would be unconstitutional. Staff responded that further research of rulings of the Kansas Supreme Court would support its constitutionality. Substitute motion carried 11 votes to 8.

Sec. 30

Rep. Bideau moved that "the spouse of a licensee" be inserted in the proposed amendment at line 320 to conform with the proposal of the Kansas Chiropractor's Association. Seconded by Rep. Solbach. Motion carried on a voice vote.

Sec. 32

The Kansas Medical Society proposed Attachment C be added to the bill at line 340 with the following change: on line 2 of page 3 of Attachment C "be confidential and shall not be disclosed" should be added after the word "shall". Rep. Solbach moved for the amendment of Attachment C as amended. Seconded by Rep. Buehler. Motion carried on a voice vote.

Sec. 33

Rep. Solbach moved that the word "annulled" be stricken where found in sections 30, 32 and 33. Seconded by Rep. Bideau. Motion carried on a voice vote.

Rep. Duncan moved to insert the word "limited" in line 349. Seconded by Rep. Snowbarger. Motion carried on a voice vote.

Sec. 34

Rep. Snowbarger moved to include the proposed amendment (cc) to Sec. 34 at line 551. Seconded by Rep. Solbach. Motion carried on a voice vote.

Rep. Adam moved to reconsider the amendment of (cc). Seconded by Rep. Whiteman. Motion carried on a voice vote. Rep. Duncan offered a friendly amendment to change "area" to "specialty". Rep. Snowbarger withdrew his amendment and moved to add "field of practice in the healing arts". Rep. Solbach seconded. Motion carried on a voice vote.

Rep. Snowbarger moved to adopt the amendments at lines 556 and 558. Seconded by Rep. Wunsch. Motion carried on a voice vote.

The K.B.A. note was withdrawn.

Sec. 35

Rep. Solbach moved that the amendments at line 619 amending sections (21) through (28) be adopted. Seconded by Rep. Teagarden. Upon discussion that these provisions were duplicative, Rep. Teagarden withdrew his second. Seconded by Rep. O'Neal. Motion carried on a voice vote.

Sec. 40

Rep. Teagarden moved to strike the language at lines 744 and 745 and to change the word "be" to "are" in line 746. Seconded by Rep. Wagnon. Motion carried on a voice vote.

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Sec. 42
Rep. Solbach made a motion for the concept of exempting screening panels when there has been an affidavit filed with the court showing that a qualified expert has reviewed the case and is prepared to testify that there was negligence and that negligence caused the injury in the instant case. Motion seconded by Rep. Whiteman. Ron Smith of the KBA said the KBA position is in the middle between the proposed language and Rep. Solbach's motion. Rep. Solbach moved to amend his motion to conform to the KBA position. Motion failed on a voice vote.

Rep. Buehler moved to adopt amendment (d) at line 815. Seconded by Rep. Harper. Motion failed 8 votes to 10.

Sec. 25
Rep. Solbach moved to include any economic loss in the provisions of the pinhole amendment. Seconded by Rep. Whiteman. Rep. Bideau said that would open up the pinhole even further and make it similar to a victims' reparations board. Motion failed on a voice vote.

Rep. Harper moved to adopt the balloon amendment pertaining to the pinhole. Seconded by Rep. Wunsch. Motion carried on a voice vote.

Rep. Shriver stated he is generally in support of HB 2661 but feels two things are needed, those being a sunset on the cap to send a message to the insurance industry that the cap is being placed in order to have a reduction in premiums to Kansas doctors and tie the Consumer Price Index to awards at a point three or four years down the road.

Rep. Solbach moved the \$1 million cap be subject to the Consumer Price Index beginning three years from now on an annual basis and after that to be based on the difference between the current CPI and the July, 1989 CPI. Motion seconded by Rep. Whiteman. Rep. Walker said that the \$1 million cap is a compromise as it is and should remain intact. Motion failed on a voice vote.

Rep. Shriver moved that a seven year sunset be placed on the pain and suffering cap and on the \$1 million cap with the condition that if the Legislature at that time sees some premium relief it could be extended. Seconded by Rep. Teagarden. Motion carried 9 votes to 8.

Rep. Walker moved that the language presented by the Insurance Department regarding ownership of annuities and the tax consequences thereof be adopted as an amendment. Seconded by Rep. Shriver. Motion carried on a voice vote.

Rep. Harper moved that the committee report HB 2661 favorably. Seconded by Rep. Walker. Motion carried on a voice vote.

The meeting adjourned at 7:10 P.M.

DANI Associates Inc.

Actuarial Consultants

Ashland Office Center • Evesham & Alpha Avenues • Voorhees, N.J 08043
(609) 795-5558

February 10, 1986

Mr. Robert D. Hayes
Supervisor
Professional Liability Section
Kansas Insurance Department
420 South West 9th
Topeka, Kansas 66612

Re: Actuarial Evaluation of Kansas House Bill No. 2661 on Fiscal Year 1986/87 Surcharges

Dear Bob:

Hopefully, the following information will prove adequate in answering questions raised in our conversation of February 6th.

It is our tentative opinion, based on our review of H.B. 2661 and using available data, that an 8 to 12 percent reduction in the 1986/76 surcharge would be deserved under the provisions of this bill relative to those of the Health Care Providers Insurance Availability Act (HCPIAA) as it is presently constituted. However, due to the general lack of comparable Kansas data in the detail required to cost this bill, please note that our estimate is necessarily the result of considerable actuarial judgment. In light of presently unquantifiable effects of the bill on inactive providers, on experience rated providers, and claimant recoveries, a more conservative savings range of 5 to 15 percent should be anticipated. Of course, ever finer evaluations of the cost saving aspects of the bill would be possible with the prospective amassing of actuarial data subject to its provisions.

Approximately an additional 5 percent savings (relative to existing provisions) would be realized annually as more claims would fall under the revised HCPIAA provisions, until a total savings in the range of 30 to 40 percent would be achieved in otherwise generated costs. The suggested total savings would equally describe the effect on the 1986/87 surcharge if an claims outstanding (as opposed to occurrence) implementation of the bill had been proposed.

In sharp contrast to H.B. 2661, earlier proposals we were asked to examine which provided for a \$500,000 indemnity cap and supplemental medical expense coverages would have produced only 1 to 3 percent (prospective) reductions in the 1986/87 surcharge and only 15 to 20 percent total (retrospective) reductions.

As a final item concerning the bill, we reiterate the following clarification of the difference between a \$1 million limitation placed on the sum of applicable primary coverage and Fund excess coverage, and a \$1 million statutory cap placed on claimant recoveries.

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Mr. R. D. Hayes
February 10, 1986
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One of the principal underlying objectives of recent proposed revisions to the HCPIAA has been to contain the total costs of the Kansas Medical Professional Liability system. Obviously, both approaches would serve to reduce the Fund's liabilities from their present levels. However, a statutory cap would additionally eliminate affordability and availability problems which potentially face health care providers who would otherwise require coverage in excess of that provided by the Fund. Thus, unlike a statutory cap, a limit on the Fund's liabilities simply shifts the burden of coverage and does not contain total costs.

These potential problems can be traced to:

- (1) the increased visibility of coverage layers in excess of the Fund;
- (2) the increase in the number of providers requiring these coverage layers; and
- (3) the replacement of the Fund's legislated group marketing approach with individual transactions in the commercial marketplace.

Since affordability and availability questions led to the creation of the Fund, new concerns of this type, presented by the limit approach, may ultimately necessitate further legislative action. The utilization of a statutory cap avoids this pitfall and addresses the cost containment objective of recent legislative proposals.

If you have any questions concerning this or earlier material we have furnished to you regarding proposed legislative changes to the HCPIAA, please do not hesitate to call.

Sincerely,



Anthony T. Valenti
President

ATV/vev
cc: Mr. C. M. Lederman

KANSAS HOUSE BILL NO. 2661
Suggested Amendments and/or Additions

Page 24, lines 123 - 125 inclusive :

"...rates shall be established as a flat dollar amount per health care provider classification in accordance with a system of surcharge classification rates to be promulgated by the Commissioner which shall be applicable to all health care providers with the exception of the University of Kansas Medical Center. As such, these rates shall reflect the anticipated needs of the fund by classification based upon reasonable and prudent actuarial principles, consistently applied. Surcharge rates shall also give due consideration to the average premium paid by all health care providers by rate classification based upon rating plans employed by insurers in the determination of basic..."

Page 24, lines 128 - 132 inclusive :

"...thereto. For self-insurers, other than the University of Kansas Medical Center, due consideration shall be given to the average annual amounts by rate classification which would have been paid by self-insurers for basic coverage as calculated in ac-..."

Page 24, line 141 :

"...of an assumed aggregate premium of \$600,000. In order to establish and monitor the system of surcharge classification rates, each licensed commercial insurer shall be required to file as of April 1st of each year a schedule of written and earned exposures by classification for the preceding year ending December 31st based upon the latest adopted statistical reporting plan of the Insurance Services Office (ISO). At the same time, each insurer shall be required to provide a schedule, in ISO statistical plan detail, of basic coverage rates approved for its use as of the preceding December 31st."



February 11, 1986

Kansas House Judiciary Committee
C/O Representative Joe Knopp, Chairman
State Capitol
Room 175 West
Topeka, KS 66612

Re: Statement Before The Kansas House Judiciary Committee on
House Bill 2661

Mr. Chairman, members of the committee, I am the Chairman of the Sedgwick County Health Care Cost Containment Round Table, and Manager of Employee Benefits for Beech Aircraft Corporation. I would like to thank you for this opportunity to testify in favor of House Bill 2661, with some reservations. The Round Table has studied the medical malpractice problem during the past twelve months. Our Round Table members applaud most of the tort reform recommendations found in HB2661. We are unanimous on this point: the skyrocketing cost of medical malpractice insurance premiums has reached a crisis situation which must be brought under control. A large portion of the cost of the malpractice crisis is being absorbed by every Kansan who pays for physician or hospital services, whether directly out of their pocket or indirectly through a health insurance plan. Employers who purchase health coverage on behalf of their employees are facing a new round of "pass-through" price escalations caused by the increased malpractice premiums. The price escalations will be compounded by Medicare's price limits which shield Medicare from its share of the increased costs. This is a problem affecting and paid for by all Kansans so any attempted legislative solution should be fair and reasonable to all Kansans.

With the right of Kansans to recover reasonable damages from negligent physician actions foremost in our considerations, our study concluded that the following tort reforms found in HB2661 are justifiable and fair, and will be effective in solving the medical malpractice crisis:

- limit noneconomic loss recovery to \$250,000
- limit total economic and noneconomic loss recovery to \$1,000,000
- require juries to itemize and categorize each type of loss recovery award.
- require the court to enter judgement, with respect to future economic loss, for an annuity contract (present value) payable over the term of the verdict.
- require attorney fee calculations to be based on the present value of the annuity contract for future economic loss.

*Attachment 2
House Judiciary
2-17-86*

The Round Table members believe that a \$1,000,000 total loss recovery limit is the absolute lowest amount that should be available to Kansans. Therefore, we strongly recommend that HB2661 be amended so that all applicable attorney fees and lawsuit expenses be separated and placed above the \$1,000,000 total loss recovery limit, thereby preventing attorney fees and expenses from reducing the full recovery amount available to negligently injured Kansans.

Futhermore, quid pro quo of placing limits on an injured party's loss recovery requires a limit on plaintiff attorney fees. The Round Table recommends HB2661 be amended to limit plaintiff attorney fees to \$200,000. Consideration should also be given to limiting defendant's attorney fees to \$200,000.

Finally, the Round Table recommends that the court be mandated to include in its instructions to the jury a statement that:

"medicine is by nature a risky practice, sometimes unpredictable. The law does not require of a physician perfection or prophetic insight. Immediate and therefore imperfect decisions are sometimes required. The difficulties and uncertainties in the practice of medicine are such that no practitioner can guarantee results. In short, it is quite possible for a physician to be unsuccessful in his or her care of a patient without being at fault".

We found that judges rarely agree to provide this basic instruction to the jury.

Thank you for your consideration.

Sincerely,



Don Snyder
Chairman, Sedgwick County Health
Care Cost Containment Round Table

The Sedgwick County Health Cost Containment Round Table represents manufacturers, businesses, labor unions, physicians, health insurance companies and hospitals regarding health care delivery in Sedgwick County. The Round Table has been effective during the past seven years in directing the cooperative efforts of its members toward alleviating serious health care cost problems without compromising quality of care or eroding the insurance coverage provided to employees of our community. A recent development of our effort is the establishment of a community-wide preferred provider association which will soon offer cost containment programs to employers in South Central Kansas. Health Care Plus, a past involvement of our Round Table, has been exceptionally successful in terms of market growth and acceptance by Kansans.

DS:me

HOUSE BILL No. 2573

By Committee on Federal and State Affairs

3-20

0017 AN ACT concerning the state board of healing arts; affecting the
0018 composition thereof; relating to the appointment of members
0019 thereto; amending K.S.A. 65-2813, 65-2814 and 65-2822 and
0020 K.S.A. 1984 Supp. 65-2812, and repealing the existing sec-
0021 tions.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 1984 Supp. 65-2812 is hereby amended to
0024 read as follows: 65-2812. (a) For the purpose of administering the
0025 provisions of this act, the governor shall appoint a state board of
0026 healing arts consisting of ~~13~~ 15 members. At least 30 days before
0027 the expiration of any term, other than ~~that those~~ of the ~~member~~
0028 *members* appointed ~~from to represent~~ the general public and of
0029 the registered podiatrist member of the board, the professional
0030 society or association shall submit to the governor a list of ~~three~~
0031 *five* or more names of persons of recognized ability who have the
0032 qualifications prescribed for board members for each member of
0033 the board who will be appointed from its branch of the healing
0034 arts. The governor shall consider the list of persons ~~in making the~~
0035 *and select a person therefrom for* appointment to the board. In
0036 case of a vacancy on the board, other than that of ~~the a~~ member
0037 appointed ~~from to represent~~ the general public ~~and or of~~ the
0038 registered podiatrist member of the board, prior to the expiration
0039 of a term of office, the governor shall appoint a qualified succes-
0040 sor to fill the unexpired term; ~~and~~. In making the appointment,
0041 the governor shall ~~give consideration to~~ *consider* the list of
0042 persons last submitted ~~to the governor and select a person~~
0043 *therefrom for appointment as the successor member.*

0044 (b) The provisions of the Kansas sunset law apply to the state
0045 board of healing arts appointed pursuant to this section and the

0046 board is subject to abolition under that law.

0047 Sec. 2. K.S.A. 65-2813 is hereby amended to read as follows:
0048 65-2813. Five ~~(5)~~ members of the board shall hold a degree of
0049 doctor of medicine from an accredited medical school and shall
0050 be residents of and have been actively engaged in the practice of
0051 medicine and surgery in the state of Kansas under license issued
0052 in this state, for a period of at least six ~~(6)~~ consecutive years
0053 immediately preceding their appointment; three ~~(3)~~ members
0054 shall hold a degree of doctor of osteopathy from an accredited
0055 school of osteopathic medicine and surgery and shall be resi-
0056 dents of and have been actively engaged in the practice of
0057 osteopathic medicine and surgery in the state of Kansas under
0058 license issued in this state, for a period of at least six ~~(6)~~ consec-
0059 utive years immediately preceding their appointment; ~~and~~ three
0060 ~~(3)~~ members shall hold a degree of doctor of chiropractic from an
0061 accredited school of chiropractic and shall be residents of and
0062 have been actively engaged in the practice of chiropractic in the
0063 state of Kansas under license issued in this state, for a period of at
0064 least six ~~(6)~~ consecutive years immediately preceding their ap-
0065 pointment; ~~and~~ one member shall be a registered podiatrist and
0066 shall be a resident of and have been actively engaged in the
0067 practice of podiatry in the state of Kansas under license issued in
0068 this state for a period of at least six ~~(6)~~ consecutive years imme-
0069 diately preceding appointment; ~~and one member~~ *three members*
0070 shall be ~~from appointed to represent~~ the general public of this
0071 state.

0072 Sec. 3. K.S.A. 65-2814 is hereby amended to read as follows:
0073 65-2814. Whenever a vacancy ~~shall occur~~ *occurs* in the member-
0074 ship of the board, the governor shall appoint a successor of like
0075 qualifications. All appointments made shall be for a term of four
0076 ~~(4)~~ years, but no member shall be appointed for more than three
0077 ~~(3)~~ successive four-year terms, except that any term served by a
0078 member as secretary shall not be considered in applying suc-
0079 cessive term limitations. ~~The term of the board member from the~~
0080 ~~general public, first appointed, and the term of the registered~~
0081 ~~podiatrist, first appointed, shall commence on July 1, 1975, in the~~
0082 ~~case of the member from the general public and July 1, 1976, in~~

0083 ~~the case of the registered podiatrist.~~ Each *member* shall serve
0084 until ~~his or her~~ a successor is appointed and qualified. Whenever
0085 a vacancy ~~shall occur~~ occurs in the membership of the board for
0086 any reason other than the expiration of a member's term of office,
0087 the governor shall appoint a successor of like qualifications to fill
0088 the unexpired term.

0089 Sec. 4. K.S.A. 65-2822 is hereby amended to read as follows:
0090 65-2822. ~~Seven~~ (7) *Eight* members shall constitute a quorum for
0091 the transaction of business.

0092 Sec. 5. K.S.A. 65-2813, 65-2814 and 65-2822 and K.S.A. 1984
0093 Supp. 65-2812 are hereby repealed.

0094 Sec. 6. This act shall take effect and be in force from and
0095 after its publication in the statute book.

HOUSE BILL No. 2661

By Special Committee on Medical Malpractice

Re Proposal No. 47

12-17

0017 AN ACT concerning certain health care providers; relating to
0018 medical malpractice liability and insurance coverage therefor;
0019 concerning regulation of certain health care providers;
0020 amending K.S.A. 7-121b, 65-430, 65-2809, 65-2812, 65-2813,
0021 65-2814, 65-2822, 65-2833, 65-2836, 65-2837, 65-2838, 65-
0022 2840a, 65-2898a, 65-28,121, 65-28,122, 65-4902, 65-4904 and
0023 65-4907 and K.S.A. 1985 Supp. 40-3003, 40-3401, 40-3403,
0024 40-3404 and 40-3408 and repealing the existing sections.

0025 *Be it enacted by the Legislature of the State of Kansas:*

0026 New Section 1. As used in sections 1 through 10:

0027 (a) "Department" means the department of health and envi-
0028 ronment.

0029 (b) "Health care provider" has the meaning provided by
0030 K.S.A. 40-3401 and amendments thereto.

0031 (c) "License," "licensee" and "licensing" include compara-
0032 ble terms which relate to regulation similar to licensure, such as
0033 certification or registration.

0034 (d) "Medical care facility" has the meaning provided by
0035 K.S.A. 65-425 and amendments thereto.

0036 (e) "Reportable incident" means an act by a health care
0037 provider which is or may be below the applicable standard of
0038 care.

0039 (f) "Risk manager" means the individual designated by a
0040 medical care facility to administer its internal risk management
0041 program and to receive reports of reportable incidents within the
0042 facility.

0043 (g) "Secretary" means the secretary of health and environ-
0044 ment.

New Section 1. Substantial increases in costs of professional liability insurance for health care providers have created a crisis of availability and affordability. This situation poses a serious threat to the continued availability and quality of health care in Kansas. In the interest of the public health and welfare, new measures are required to assure that affordable professional liability insurance will be available to Kansas health care providers, to assure that injured parties receive adequate compensation for their injuries, and to maintain the quality of health care in Kansas.

(Similar to sec. 9) (Ks. Med. Soc.)

0045 New Sec. 2. (a) Each medical care facility shall establish and
 0046 maintain an internal risk management program which shall con-
 0047 sist of:

0048 (1) A system for investigation and analysis of the frequency
 0049 and causes of reportable incidents within the facility;

0050 (2) measures to minimize the occurrence of reportable in-
 0051 cidents and the resulting injuries within the facility; and

0052 (3) a reporting system based upon the duty of all health care
 0053 providers staffing the facility and all agents and employees of the
 0054 facility directly involved in the delivery of health care services to
 0055 report reportable incidents to the chief of the medical staff, chief
 0056 administrative officer or risk manager of the facility.

0057 (b) Not less than 60 days before the time for renewal of its
 0058 license in 1987, each medical care facility shall submit to the
 0059 department its plan for establishing and implementing an inter-
 0060 nal risk management program. Failure to submit such a plan
 0061 shall result in denial of the renewal of the facility's license.

0062 (c) Upon review of a plan submitted pursuant to subsection
 0063 (b), the department shall determine whether the plan meets
 0064 criteria of this section. If the plan does not meet such criteria, the
 0065 department shall disapprove the plan and return it to the facility,
 0066 along with the reasons for disapproval. Within 60 days, the
 0067 facility shall submit to the department a revised plan which
 0068 meets the objections of the department. No medical care facility
 0069 shall be granted renewal of its license in 1988 unless its plan has
 0070 been approved by the department.

0071 New Sec. 3. (a) If a health care provider, or a medical care
 0072 facility agent or employee who is directly involved in the deliv-
 0073 ery of health care services, has knowledge that a health care
 0074 provider has committed an act which is or may be below the
 0075 applicable standard of care, such health care provider, agent or
 0076 employee shall report such knowledge as follows:

0077 (1) If the reportable incident did not occur in a medical care
 0078 facility, the report shall be made to the appropriate state or
 0079 county professional society or organization, which shall refer the
 0080 matter to a professional practices review committee duly consti-
 0081 tuted pursuant to the society's or organization's bylaws. The

requirements of the statute and any
 regulations adopted thereunder
 (Ks. Med. Soc.)

(d) A medical care facility shall not be
 liable for compliance with or the failure to
 comply with the provisions of this section,
 except as provided in section 27. (Ks. Med. Soc.)

K.B.A. note: Nurses are not providers but
 may be employees.

or which constitutes grounds for disciplinary
 action under section 34 (Ks. Med. Soc.)

0082 committee shall investigate all such reports and take appropriate
0083 action. The committee shall have the duty to report to the
0084 appropriate state licensing agency any finding by the committee
0085 that a health care provider acted below the applicable standard
0086 of care so that the agency may take appropriate disciplinary
0087 measures.

0088 (2) If the reportable incident occurred within a medical care
0089 facility, the report shall be made to the chief of the medical staff,
0090 chief administrative officer or risk manager of the facility. The
0091 chief of the medical staff, chief administrative officer or risk
0092 manager shall refer the report to the appropriate executive com-
0093 mittee or professional practices peer review committee which is
0094 duly constituted pursuant to the bylaws of the facility. The
0095 committee shall investigate all such reports and take appropriate
0096 action. In making its investigation, the committee may also
0097 consider treatment rendered by the health care provider outside
0098 the facility. The committee shall have the duty to report to the
0099 appropriate state licensing agency any finding by the committee
0100 that a health care provider acted below the applicable standard
0101 of care so that the agency may take appropriate disciplinary
0102 measures.

0103 (3) If the health care provider involved in the reportable
0104 incident is a medical care facility, the report shall be made to the
0105 chief of the medical staff, chief administrative officer or risk
0106 manager of the facility. The chief of the medical staff, chief
0107 administrative officer or risk manager shall refer the report to the
0108 appropriate executive committee which is duly constituted pur-
0109 suant to the bylaws of the facility. The executive committee shall
0110 investigate all such reports and take appropriate action. The
0111 committee shall have the duty to report to the department of
0112 health and environment any finding that the facility acted below
0113 the applicable standard of care so that appropriate disciplinary
0114 measures may be taken.

0115 (b) If a reportable incident is reported to a state agency which
0116 licenses health care providers, the agency may investigate the
0117 report or may refer the report to a review or executive committee
0118 to which the report could have been made under subsection (a)

, including recommendation of a restriction
of privileges at the appropriate health care
facility

(Ks. Med. Soc.)

0119 for investigation by such committee.

0120 (d) (c) Each review and executive committee referred to in sub-
0121 section (a) shall submit to the appropriate state licensing agency,
0122 at least once every three months, a report summarizing the
0123 reports received by the committee pursuant to this section. The
0124 report shall include the number of reportable incidents reported,
0125 whether an investigation was conducted and any action taken.

0126 (e) (d) If a state agency that licenses health care providers de-
0127 termines that a review or executive committee referred to in
0128 subsection (a) is not fulfilling its duties under this section, the
0129 agency, upon notice and an opportunity to be heard, may require
0130 all reports pursuant to this section to be made directly to the
0131 agency.

0132 New Sec. 4. (a) If a report to a state licensing agency pursu-
0133 ant to subsection (a)(1) or (2) of section 3 or any other report or
0134 complaint filed with such agency relates to a health care pro-
0135 vider's inability to practice the provider's profession with rea-
0136 sonable skill and safety due to physical or mental disabilities,
0137 including deterioration through the aging process, loss of motor
0138 skill or abuse of drugs or alcohol, the agency may refer the matter
0139 to an impaired provider committee of the appropriate state or
0140 county professional society or organization.

0141 (b) The state licensing agency shall have the authority to
0142 enter into an agreement with the impaired provider committee of
0143 the appropriate state or county professional society or organiza-
0144 tion to undertake those functions and responsibilities specified
0145 in the agreement and to provide for payment therefor from
0146 moneys appropriated to the agency for that purpose. Such func-
0147 tions and responsibilities may include any or all of the following:

- 0148 (1) Contracting with providers of treatment programs;
- 0149 (2) receiving and evaluating reports of suspected impairment
0150 from any source;
- 0151 (3) intervening in cases of verified impairment;
- 0152 (4) referring impaired providers to treatment programs;
- 0153 (5) monitoring the treatment and rehabilitation of impaired
0154 health care providers;
- 0155 (6) providing posttreatment monitoring and support of reha-

(c) When a report made under this section is investigated pursuant to the procedure set forth under this section, the reporting entity shall not be liable for any penalty for failure to report as set forth under sections 34, 36, 39, or 40, of this act.

(Ks. Med. Soc.)

(f) The provisions of this section shall not apply to a health care provider acting as a consultant or providing review at the request of any person or party.

(Ks. Med. Soc.)

0156 bilitated impaired health care providers; and
0157 (7) performing such other activities as agreed upon by the
0158 licensing agency and the impaired providers committee.

0159 (c) The provider committee shall develop procedures in
0160 consultation with the licensing agency for:

0161 (1) Periodic reporting of statistical information regarding im-
0162 paired provider program activity;

0163 (2) periodic disclosure and joint review of such information
0164 as the licensing agency considers appropriate regarding reports
0165 received, contacts or investigations made and the disposition of
0166 each report ~~except that the committee shall not disclose any~~
0167 personally identifiable information except as provided in sub-
0168 sections (c)(3) and (c)(4),

0169 (3) immediate reporting to the licensing agency of the name
0170 and results of any contact or investigation regarding any im-
0171 paired provider who is believed to constitute an imminent
0172 danger to the public or to self;

0173 (4) reporting to the licensing agency, in a timely fashion, any
0174 impaired provider who refuses to cooperate with the committee
0175 or refuses to submit to treatment, or whose impairment is not
0176 substantially alleviated through treatment, and who in the opin-
0177 ion of the committee exhibits professional incompetence;

0178 (5) informing each participant of the impaired provider com-
0179 mittee of the procedures, the responsibilities of participants and
0180 the possible consequences of noncompliance.

0181 (d) If the licensing agency has reasonable cause to believe
0182 that a health care provider is impaired, the licensing agency may
0183 cause an evaluation of such health care provider to be conducted
0184 by the provider committee ~~for the purpose of determining if~~
0185 there is an impairment. The provider committee ~~shall report the~~
0186 findings of its evaluation to the licensing agency.

0187 (e) An impaired health care provider may submit a written
0188 request to the licensing agency for a restriction of the provider's
0189 license. The agency may grant such request for restriction and
0190 shall have authority to attach conditions to the licensure of the
0191 provider to practice within specified limitations. Removal of a
0192 voluntary restriction on licensure to practice shall be subject to

(strike) (Ks. Med. Soc.)

or its designee (Ks. Med. Soc.)

or its designee

0193 the statutory procedure for reinstatement of license.

0194 (f) A report to the provider committee shall be deemed to be
0195 a report to the licensing agency for the purposes of any mandated
0196 reporting of provider impairment otherwise provided for by the
0197 law of this state.

0198 (g) An impaired provider who is participating in, or has
0199 successfully completed, a treatment program pursuant to this
0200 section shall not be excluded from any medical care facility staff
0201 solely because of such participation.

0202 (h) Notwithstanding any other provision of law, a state or
0203 county professional society or organization and the [impaired]
0204 [provider committee] members thereof shall not be liable to any
0205 person for any acts, omissions or recommendations made in good
0206 faith while acting within the scope of the responsibilities im-
0207 posed pursuant to this section.

0208 New Sec. 5. (a) The following reports and records made
0209 pursuant to section 3 or 4 shall be confidential and are not
0210 admissible in any civil or administrative action other than a
0211 disciplinary proceeding by the appropriate state licensing
0212 agency:

0213 (1) Reports and records of executive or review committees of
0214 medical care facilities or of a professional society or organization;

0215 (2) reports and records of the chief of the medical staff, chief
0216 administrative officer or risk manager of a medical care facility;
0217 and

0218 (3) reports and records of any state licensing agency or im-
0219 paired [provider's committee which pertain to impaired provid-
0220 ers]

0221 (b) No person in attendance at any meeting of an executive or
0222 review committee of a medical care facility or of a professional
0223 society or organization while such committee is engaged in the
0224 duties imposed by section 3 shall be compelled to testify in any
0225 civil, criminal or administrative action, other than a disciplinary
0226 proceeding by the appropriate licensing agency, as to any com-
0227 mittee discussions or proceedings.

0228 (c) No person in attendance at any meeting of an impaired
0229 provider committee shall be required to testify in any civil,

However, the medical care facility may consider any impairment in determining the extent of privileges granted to a health care provider.
(Ks. Med. Soc.)

(strike) (Ks. Med. Soc.)

(strike)
provider committee of a professional society or organization.
(Ks. Med. Soc.)

0230 criminal or administrative action, other than a disciplinary pro-
0231 ceeding by the appropriate state licensing agency, as to any
0232 committee discussions or proceedings.

0233 New Sec. 6. Any person or entity which, in good faith, re-
0234 ports or provides information or investigates any health care
0235 provider as authorized by section 3 or 4 shall not be liable in a
0236 civil action for damages or other relief arising from the reporting,
0237 providing of information or investigation except upon clear and
0238 convincing evidence that the report or information was com-
0239 pletely false, or that the investigation was based on false infor-
0240 mation, and that the falsity was actually known to the person
0241 making the report, providing the information or conducting the
0242 investigation at the time thereof. [No claim arising from the
0243 making of such report, providing of such information or conduct
0244 of such investigation shall proceed to trial unless the court first
0245 determines that a substantial probability exists that the person
0246 making the claim will prevail.]

(strike) (Rep. Snowbarger)

0247 New Sec. 7. (a) No person or entity shall be subject to lia-
0248 bility in a civil action for failure to report as required by section 3
0249 or 4.

K.B.A. note: No sanction against person required to report unless person is a provider.

0250 (b) The license of a person or entity licensed to practice as a
0251 health care provider may be revoked, suspended or limited, or
0252 the licensee subjected to public or private censure, by the
0253 appropriate state licensing agency if the licensee is found, upon
0254 notice and an opportunity to be heard in accordance with the
0255 Kansas administrative procedures act, to have willfully and
0256 knowingly failed to make any report as required by section 3 or 4.

(d) The original incident report and any statements taken or testimony provided in connection with the investigation or proceedings may be discovered, but are not admissible in themselves, in a civil proceedings upon a motion for good cause shown by any party and upon an in camera inspection by the court to determine the necessity for production and relevancy to the civil action. (K.T.L.A.)

0257 (c) Willful and knowing failure to make a report required by
0258 section 3 or 4 is a class C misdemeanor.

0259 New Sec. 8. [a] No employer shall discharge or otherwise
0260 discriminate against any employee for making any report pursu-
0261 ant to section 3 or 4.

0262 [b] Any employer who violates the provisions of subsection
0263 (a) shall be liable to the aggrieved employee for damages for any
0264 wages or other benefits lost due to the discharge or discrimina-
0265 tion plus a civil penalty in an amount not exceeding the amount
0266 of such damages. Such damages and civil penalty shall be re-

(strike) (Ks. Med. Soc.)

K.B.A. Note: Consider allowing employee attorney fees.

0267 coverable in an individual action brought by the aggrieved
0268 employee.]

0269 New Sec. 9. (a) The legislature of the state of Kansas recog-
0270 nizes the importance and necessity of providing and regulating
0271 certain aspects of health care delivery in order to protect the
0272 public's general health, safety and welfare. Implementation of
0273 risk management plans and reporting systems as required by
0274 sections 2, 3 and 4 effectuate this policy.

0275 (b) Health care providers and review, executive or impaired
0276 provider committees performing their duties under sections 2, 3
0277 and 4 for the purposes expressed in subsection (a) shall be agents
0278 of state agencies which license health care providers and all
0279 immunity of the state from federal and state antitrust laws shall
0280 be extended to such health care providers and committees when
0281 carrying out such duties.

0282 (c) Nothing in this section shall be construed to require
0283 health care providers or review, executive or impaired provider
0284 committees to be subject to or comply with any other law relating
0285 to or regulating state agencies, officers or employees.

0286 New Sec. 10. The provisions of sections 1 through 9 shall be
0287 supplemental to K.S.A. 65-28,121, 65-28,122 and 65-4909, and
0288 amendments thereto, and shall not be construed to repeal or
0289 modify those sections.

0290 New Sec. 11. As used in sections 11 through 15:

0291 (a) The words and phrases defined by K.S.A. 1985 Supp.
0292 60-3401 and amendments thereto shall have the meanings pro-
0293 vided by that section.

0294 (b) "Current economic loss" means costs of medical care and
0295 related benefits, lost wages and other economic losses incurred
0296 prior to the verdict.

0297 (c) "Future economic loss" means costs of medical care and
0298 related benefits, lost wages, loss of earning capacity or other
0299 economic losses to be incurred after the verdict.

0300 (d) "Medical care and related benefits" means all reasonable
0301 medical, surgical, hospitalization, physical rehabilitation and
0302 custodial services, including drugs, prosthetic devices and other
0303 similar materials reasonably necessary to provide medical ser-

If the aggrieved employee substantially pre-
vails on any of the allegations contained in
the pleadings in an action allowed by this
section, the court, in its discretion, may
allow the employee a reasonable attorney fee
as part of the costs. (K.B.A.)

and peer review pursuant to K.S.A. 65-4915 and
amendments thereto

and peer review pursuant to K.S.A. 65-4915 and
amendments thereto

and K.S.A. 65-4915 shall have the (Ks.Med.Soc.)

K.B.A. note: Suggests putting in a separate
bill because sure to be challenged.

reasonable expenses of necessary medical care,
hospitalization and treatment received, time
and income (K.T.L.A.)

(strike) (K.T.L.A.)

0304 vices required due to the negligent rendering of or failure to
0305 render professional services by the liable health care provider.]

0306 New Sec. 12. (a) In any medical malpractice liability action: | from all defendants

0307 (1) The total amount recoverable for all claims for nonecon- | in sum total

0308 omic loss shall not exceed \$250,000; and

0309 (2) the total amount recoverable for all claims shall not ex- | from all defendants

0310 ceed \$1,000,000. | in sum total

0311 (b) If a medical malpractice liability action is tried to a jury,
0312 the court shall not instruct the jury on the limitations imposed by
0313 this section.

0314 (c) In a medical malpractice liability action [after deduction | subject to apportionment of fault

0315 of amounts] pursuant to K.S.A. 60-258a and amendments thereto:

0316 (1) If the verdict results in an award for noneconomic loss
0317 which exceeds \$250,000, the court shall enter judgment for
0318 \$250,000 for all claims for noneconomic loss and shall apportion
0319 that amount among the claimants.

0320 (2) If the verdict results in an award for current economic loss
0321 which exceeds the difference between \$1,000,000 and the
0322 amount of the judgment entered for damages for noneconomic
0323 loss, the court shall enter judgment for an amount equal to such
0324 difference for all claims for current economic loss and shall
0325 apportion that amount among the claimants.

0326 (3) If the sum of the [judgments] entered for noneconomic loss
0327 and for current economic loss is \$1,000,000 or more, no judgment
0328 shall be entered for future economic loss. If the sum of such
0329 [judgments] is less than \$1,000,000 and the verdict results in an
0330 award for future economic loss which exceeds the difference
0331 between \$1,000,000 and the sum of such [judgments], the court
0332 shall enter judgment for an annuity contract which (A) Has a
0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

0332 shall enter judgment for an annuity contract which (A) Has a
0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

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0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

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0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

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0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

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0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

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0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

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0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

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0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

0332 shall enter judgment for an annuity contract which (A) Has a
0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

0332 shall enter judgment for an annuity contract which (A) Has a
0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

0332 shall enter judgment for an annuity contract which (A) Has a
0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

0332 shall enter judgment for an annuity contract which (A) Has a
0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

0332 shall enter judgment for an annuity contract which (A) Has a
0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

0332 shall enter judgment for an annuity contract which (A) Has a
0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

0332 shall enter judgment for an annuity contract which (A) Has a
0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

verdicts

the cost of

, the cost of such annuity not to exceed the difference between \$1,000,000 and the sum of the verdicts for noneconomic loss and current economic loss, or if there is more than one claimant, as apportioned among the claimants.

(4) The fund shall purchase the annuity provided for in this section upon approval of the court, and upon payment by the fund of the cost of such annuity, the judgment will be satisfied as to such annuity

0341 repeal or modify the limitation provided by K.S.A. 60-1903 and
0342 amendments thereto in wrongful death actions.

0343 New Sec. 13. (a) In every medical malpractice liability ac-
0344 tion in which the verdict awards compensatory damages, the
0345 verdict shall be itemized to reflect the amounts awarded for
0346 [economic loss and noneconomic loss. The amount awarded for
0347 economic loss shall be further itemized to show current eco-
0348 nomic losses and future economic losses]

0349 [(b) In every medical malpractice liability action in which the
0350 verdict awards damages for future economic losses, the verdict
0351 shall specify the period of time over which payment for such
0352 losses will be needed.]

0353 [New Sec. 14. (a) In any medical malpractice liability action
0354 in which the verdict awards damages for future economic loss,
0355 the verdict shall not reduce such damages to their present value
0356 and the jury shall be instructed to that effect. Except as provided
0357 by section 12, the court shall enter judgment, with respect to
0358 such damages, for an annuity contract which will provide for the
0359 payment of benefits over the period of time specified in the
0360 verdict in the amount awarded by the verdict for future economic
0361 loss.

0362 (b) In a medical malpractice liability action, that portion of
0363 the attorney fees which relates to an award for future economic
0364 loss shall be calculated on the present value of the annuity
0365 contract.

0366 (c) Benefits paid under an annuity contract awarded pursuant
0367 to this section or section 12 shall not be assignable or subject to
0368 levy, execution, attachment, garnishment or any other remedy or
0369 procedure for the recovery or collection of a debt, and this
0370 exemption cannot be waived.]

0371 New Sec. 15. The provisions of sections 11 through 14 shall
0372 apply only to medical malpractice liability actions which are
0373 based on causes of action accruing on or after July 1, 1986.

0374 [New Sec. 16. In any medical malpractice liability action, as
0375 defined in K.S.A. 1985 Supp. 60-3401 and amendments thereto,
0376 in which the standard of care given by a practitioner of the
0377 healing arts is at issue, no person shall qualify as an expert

aggravation of any preexisting ailment or condition and current and future loss, separately with respect to: (1) Pain, suffering, disabilities or disfigurement, and any accompanying mental anguish; (2) any other noneconomic loss; (3) the reasonable expenses of necessary medical care, hospitalization and treatment; (4) loss of time or income; and (5) any other economic loss (K.T.L.A.)

(strike) (K.T.L.A.)

(strike) (K.T.L.A.)

(strike) (K.T.L.A.)

0304 vices required due to the negligent rendering of or failure to
0305 render professional services by the liable health care provider.

0306 New Sec. 12. (a) In any medical malpractice liability action:

0307 (1) The total amount recoverable for all claims for nonecon-
0308 omic loss shall not exceed ~~[\$250,000]~~ and ~~_____~~ | \$350,000 (Solbach)

0309 (2) the total amount recoverable for all claims shall not ex-
0310 ceed \$1,000,000.

0311 (b) If a medical malpractice liability action is tried to a jury,
0312 the court shall ~~[not]~~ instruct the jury on the limitations imposed by ~~_____~~ | (strike) (K.T.L.A.)
0313 this section.

0314 (c) In a medical malpractice liability action, after deduction
0315 of amounts pursuant to K.S.A. 60-258a and amendments thereto:

0316 (1) If the verdict results in an award for noneconomic loss
0317 which exceeds ~~[\$250,000]~~ the court shall enter judgment for ~~_____~~ | \$350,000 (Solbach)
0318 ~~[\$250,000]~~ for all claims for noneconomic loss and shall apportion

0319 that amount among the claimants.

0320 (2) If the verdict results in an award for current economic loss
0321 which exceeds the difference between \$1,000,000 and the
0322 amount of the judgment entered for damages for noneconomic
0323 loss, the court shall enter judgment for an amount equal to such
0324 difference for all claims for current economic loss and shall
0325 apportion that amount among the claimants.

0326 (3) If the sum of the judgments entered for noneconomic loss
0327 and for current economic loss is \$1,000,000 or more, no judgment
0328 shall be entered for future economic loss. If the sum of such
0329 judgments is less than \$1,000,000 and the verdict results in an
0330 award for future economic loss which exceeds the difference
0331 between \$1,000,000 and the sum of such judgments, the court

0332 shall enter judgment ~~[for an annuity contract which: (A) Has a~~ ~~_____~~ | (strike) (K.T.L.A.)
0333 present value equal to such difference or, if there is more than

0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss] ~~_____~~

0340 [(d) The provisions of this section shall not be construed to ~~_____~~ | (strike) (K.T.L.A.)

K.T.L.A.: Eliminate
limits or raise them
and make them apply to
each provider.

(d) The limitations on the amount of damages
recoverable under this section shall be ad-
justed annually on July 1 by rule of the
supreme court in proportion to the average
of the net changes in the medical price index
and the consumer price index during the
preceding 12 months. (Solbach)

0341 repeal or modify the limitation provided by K.S.A. 60-1903 and
0342 amendments thereto in wrongful death actions.

0343 New Sec. 13. (a) In every medical malpractice liability ac-
0344 tion in which the verdict awards compensatory damages, the
0345 verdict shall be itemized to reflect the amounts awarded for
0346 economic loss and noneconomic loss. The amount awarded for
0347 economic loss shall be further itemized to show current eco-
0348 nomic losses and future economic losses.

0349 (b) In every medical malpractice liability action in which the
0350 verdict awards damages for future economic losses, the verdict
0351 shall specify the period of time over which payment for such
0352 losses will be needed.

0353 New Sec. 14. (a) In any medical malpractice liability action
0354 in which the verdict awards damages for future economic loss,
0355 the verdict shall not reduce such damages to their present value
0356 and the jury shall be instructed to that effect. Except as provided
0357 by section 12, the court shall enter judgment, with respect to
0358 such damages, for an annuity contract which will provide for the
0359 payment of benefits over the period of time specified in the
0360 verdict in the amount awarded by the verdict for future economic
0361 loss.

0362 [(b) In a medical malpractice liability action, that portion of
0363 the attorney fees which relates to an award for future economic
0364 loss shall be calculated on the present value of the annuity
0365 contract.]

0366 (c) Benefits paid under an annuity contract awarded pursuant
0367 to this section or section 12 shall not be assignable or subject to
0368 levy, execution, attachment, garnishment or any other remedy or
0369 procedure for the recovery or collection of a debt, and this
0370 exemption cannot be waived.

0371 New Sec. 15. The provisions of sections 11 through 14 shall
0372 apply only to medical malpractice liability actions which are
0373 based on causes of action accruing on or after July 1, 1986.

0374 New Sec. 16. In any medical malpractice liability action, as
0375 defined in K.S.A. 1985 Supp. 60-3401 and amendments thereto,
0376 in which the standard of care given by a practitioner of the
0377 healing arts is at issue, no person shall qualify as an expert

and the specific years in which payments will
be made (Ks. Med. Soc.)

The court shall reduce such damages to their
present value and, (Ins. Comm.)

has a present value equal to the present value
of such damages and which, to the greatest
extent possible, (Ins. Comm.)

In a medical malpractice action, postjudgment
interest on an award of damages for future
economic loss shall be calculated on the
present value of such damages.

(d)
(Ins. Comm.)

0378 witness on such issue unless at least 50% of such person's
 0379 professional time within the two-year period preceding the in-
 0380 cident giving rise to the action is devoted to actual clinical
 0381 practice in the same profession in which the defendant is li-
 0382 censed, and in the same specialty if the defendant is a specialist.

0383 New Sec. 17. (a) In any medical malpractice liability action,
 0384 as defined by K.S.A. 1985 Supp. 60-3401 and amendments
 0385 thereto, the court shall require a settlement conference to be
 0386 held not [more than 30 days after the close of discovery].

0387 (b) The settlement conference shall be conducted by the trial
 0388 judge or the trial judge's designee. The attorneys who will
 0389 conduct the trial, all parties and all persons with authority to
 0390 settle the claim shall attend the settlement conference unless
 0391 excused by the court for good cause.

0392 (c) Offers, admissions and statements made in conjunction
 0393 with or during the settlement conference shall not be admissible
 0394 at trial or in any subsequent action.

0395 [(d) Subject to the provisions of subsections (e), (f) and (g), in
 0396 addition to assessment of costs pursuant to K.S.A. 60-2002 and
 0397 amendments thereto:

0398 (1) If, during the settlement conference, a party against
 0399 whom a claim is asserted proposes an offer of settlement which is
 0400 rejected by the claimant and the final judgment against such
 0401 party is at least 25% less than such offer, the party against whom
 0402 the claim was asserted shall be entitled to recover reasonable
 0403 attorney fees incurred from the date of the offer.

0404 (2) If, during the settlement conference, a claimant proposes
 0405 an offer of settlement which is rejected by the party against
 0406 whom the claim is asserted and the final judgment against such
 0407 party is at least 25% greater than such offer, the claimant shall be
 0408 entitled to recover reasonable attorney fees incurred from the
 0409 date of the offer.

0410 (e) If both the party making a claim and the party against
 0411 whom such claim is asserted would otherwise be entitled to
 0412 recover reasonable attorney fees under subsection (d), neither
 0413 such party shall be entitled to recover such fees.

0414 (f) If attorney fees are awarded to a claimant pursuant to this

Douville note: Lines 381-2 may be too limiting.

less than 30 days before trial (Ks.Med.Soc.)

(strike) (K.T.L.A., Ks. Med. Soc.)

0415 section in an action in which the health care stabilization fund is
0416 a party, such fees, and any costs awarded pursuant to K.S.A.
0417 60-2002 and amendments thereto, shall not be assessed against
0418 the fund if the fund has demanded that the insurer or self-insurer
0419 providing basic coverage offer to pay the limit of such insurer's
0420 or self-insurer's liability and such insurer or self-insurer has
0421 failed to offer to pay such limits as of the date of the settlement
0422 conference. In such a case such fees and costs shall be assessed
0423 to such insurer.

0424 (g) In addition to those cases in which the health care stabili-
0425 zation fund is assessed attorney fees pursuant to subsection (d),
0426 in any action in which the fund is a party, if the fund makes an
0427 offer for more than 80% but less than 100% of the maximum
0428 amount for which it may be liable and the amount awarded by
0429 the jury to the claimant is at least 25% greater than the fund's
0430 offer, the claimant shall be entitled to recover reasonable attor-
0431 ney fees incurred from the date of the offer. Such fees, and any
0432 costs awarded pursuant to K.S.A. 60-2002 and amendments
0433 thereto, shall be assessed against the fund.

0434 (h) The court in its discretion may relieve any party of the
0435 penalty imposed by subsection (d), (f) or (g) if the witnesses,
0436 exhibits or evidence presented at trial were not reasonably
0437 available at the time of the settlement conference to the party
0438 against whom the penalty would otherwise be assessed.]

0439 New Sec. 18. (a) Any insurer providing professional liability
0440 insurance coverage to a health care provider, as defined by
0441 K.S.A. 40-3401 and amendments thereto, who is licensed in
0442 Kansas shall report to the appropriate state health care provider
0443 regulator agency and the state department of insurance /any
0444 written or oral claim or action for damages for medical malprac-
0445 tice. The report shall be filed no later than 30 days following the
0446 insurer's receipt of notice of the claim or action and shall contain:

0447 (1) The name, address, area of practice or specialty, policy
0448 coverage and policy number of the insured; and

0449 (2) the date of the occurrence giving rise to the claim, the
0450 date the occurrence was reported to the insurer, and the date
0451 legal action, if any, was initiated.

on forms promulgated by the commissioner of
insurance

(Ks. Med. Soc.)

0452 (b) Upon request of an agency to which a report is made
0453 under subsection (a), the insurer making the report shall provide
0454 to the agency no later than 30 days following receipt of the
0455 request or receipt of the information, whichever is later:

0456 (1) The names of all defendants involved in the claim; and

0457 (2) a summary of the occurrence, including the name of the
0458 institution at which the incident occurred, the final diagnosis for
0459 which treatment was sought or rendered, the patient's actual
0460 condition, the incident, treatment or diagnosis giving rise to the
0461 claim and a description of the principal injury giving rise to the
0462 claim.

0463 (c) Reports required to be filed pursuant to this section shall
0464 be confidential and shall not be admissible in any civil or
0465 criminal action or in any administrative proceeding other than a
0466 disciplinary proceeding of a health care provider involved in the
0467 reported occurrence.

0468 (d) Any insurer which fails to report any information as re-
0469 quired by this section shall be subject, after proper notice and an
0470 opportunity to be heard, to:

0471 (1) A civil fine assessed by the commissioner of insurance in
0472 an amount not exceeding \$1,000 for each day after the thirty-day
0473 period for reporting that the information is not reported; and

0474 (2) suspension, revocation, denial of renewal or cancellation
0475 of the insurer's certificate of authority to do business in this state
0476 or certificate of self-insurance.

0477 The commissioner of insurance shall remit promptly to the
0478 state treasurer any moneys collected from fines assessed pursu-
0479 ant to this subsection. Upon receipt thereof, the state treasurer
0480 shall deposit the entire amount in the state treasury and credit it
0481 to the state general fund.

0482 (e) Any insurer which, in good faith, reports or provides any
0483 information pursuant to this act shall not be liable in a civil
0484 action for damages or other relief arising from the reporting or
0485 providing of such information.

0486 (f) As used in this section, "insurer" means insurer or self-
0487 insurer, as defined by K.S.A. 40-3401 and amendments thereto,
0488 or joint underwriting association operating pursuant to K.S.A.

0489 40-3413 and amendments thereto.

0490 New Sec. 19. (a) The state board of healing arts, in addition
0491 to any other penalty prescribed under the Kansas healing arts act,
0492 may assess a civil fine, after proper notice and an opportunity to
0493 be heard, against a licensee for a violation of the Kansas healing
0494 arts act in an amount not to exceed \$5,000 for the first violation,
0495 \$10,000 for the second violation and \$15,000 for the third viola-
0496 tion and for each subsequent violation. All fines assessed and
0497 collected under this section shall be remitted promptly to the
0498 state treasurer. Upon receipt thereof, the state treasurer shall
0499 deposit the entire amount in the state treasury and credit it to the
0500 state general fund.

0501 (b) This section shall be part of and supplemental to the
0502 Kansas healing arts act.

0503 New Sec. 20. Any [resident or nonresident inactive health
0504 care provider who does not qualify for fund coverage under
0505 K.S.A. 40-3403 and amendments thereto shall submit to the
0506 commissioner of insurance satisfactory proof of equivalent pro-
0507 fessional liability insurance coverage]

0508 Sec. 21. K.S.A. 7-121b is hereby amended to read as follows:

0509 7-121b. (a) Whenever a civil action is commenced by filing a
0510 petition or whenever a pleading shall state states a claim in a
0511 district court for damages for personal injuries or death arising
0512 out of the rendering of or the failure to render professional
0513 services by any health care provider, compensation for reason-
0514 able attorneys' attorney fees to be paid by each litigant in the
0515 action shall be approved by the judge [after an evidentiary
0516 hearing and] prior to final disposition of the case by the district
0517 court. Compensation for reasonable attorneys' attorney fees for
0518 services performed in an appeal of a judgment in any such action
0519 to the court of appeals shall be approved [after an evidentiary
0520 hearing] by the chief judge or by the presiding judge of the panel
0521 hearing the case. Compensation for reasonable attorneys' attor-
0522 ney fees for services performed in an appeal of a judgment in any
0523 such action to the supreme court shall be approved [after an
0524 evidentiary hearing] by the departmental justice for the depart-
0525 ment in which the appeal originated. In approving determining

health care provider whose fund coverage has been terminated under subsection (g) of K.S.A. 40-3403 and amendments thereto shall, as a condition of licensure, submit to the commissioner of insurance satisfactory proof of professional liability insurance coverage equivalent to that provided by the fund (Ks. Med. Soc.)

strike or add:
on motion of either party (K.T.L.A., Ks. Med. Soc.)

0526 *the reasonableness of such compensation, the judge or justice*
0527 *shall examine the same and make such determination consider-*
0528 *ing the nature and difficulty of the issues involved in the case*
0529 *and the time reasonably necessary to prepare and present the*
0530 *same; consider the following:*

0531 (1) *The time and labor required, the novelty and difficulty of*
0532 *the questions involved and the skill requisite to perform the*
0533 *legal service properly.*

0534 (2) *The likelihood, if apparent to the client, that the accept-*
0535 *ance of the particular employment will preclude other employ-*
0536 *ment by the attorney.*

0537 (3) *The fee customarily charged in the locality for similar*
0538 *legal services.*

0539 (4) *The amount involved and the results obtained.*

0540 (5) *The time limitations imposed by the client or by the*
0541 *circumstances.*

0542 (6) *The nature and length of the professional relationship*
0543 *with the client.*

0544 (7) *The experience, reputation and ability of the attorney or*
0545 *attorneys performing the services.*

0546 (8) *Whether the fee is fixed or contingent.*

0547 (b) As used in this section: ~~(a)~~ (1) "Health care provider"
0548 means a person licensed to practice any branch of the healing
0549 arts, a person who holds a temporary permit to practice any
0550 branch of the healing arts, a person engaged in a postgraduate
0551 training program approved by the state board of healing arts, a
0552 licensed medical care facility, a health maintenance organiza-
0553 tion, a licensed dentist, a licensed professional nurse, a licensed
0554 practical nurse, a licensed optometrist, a registered podiatrist, a
0555 registered pharmacist, a professional corporation organized pur-
0556 suant to the professional corporation law of Kansas by persons
0557 who are authorized by such law to form such a corporation and
0558 who are health care providers as defined by this subsection, a
0559 registered physical therapist or an officer, employee or agent
0560 thereof acting in the course and scope of his or her such person's
0561 employment or agency; and ~~(b)~~ (2) "professional services" means
0562 those services which require licensure, registration or certifica-

0563 tion by agencies of the state for the performance thereof.

0564 Sec. 22. K.S.A. 1985 Supp. 40-3003 is hereby amended to
 0565 read as follows: 40-3003. (a) This act shall apply to direct life
 0566 insurance policies, health insurance policies, *annuity contracts*
 0567 *awarded pursuant to section 12 or 14* and contracts supplemen-
 0568 tal to life and health insurance policies issued by persons autho-
 0569 rized to transact insurance in this state at any time.

0570 (b) This act shall not apply to:

0571 (1) Any such ~~policies or contracts~~, or any part of such policies
 0572 ~~or contracts~~, *policy or contract or part thereof* under which the
 0573 risk is borne by the policyholder;

0574 (2) any such policy or contract or part thereof assumed by the
 0575 impaired insurer under a contract of reinsurance, other than
 0576 reinsurance for which assumption certificates have been issued;

0577 (3) any such policy or contract issued by persons transacting
 0578 business pursuant to the provisions of K.S.A. 40-202 and amend-
 0579 ments thereto; and

0580 (4) any annuity ~~contracts except contract~~, *except: (A) With*
 0581 *respect to contractual obligations of impaired insurers for which*
 0582 *the association has become liable prior to July 1, 1985; and (B) an*
 0583 *annuity contract awarded pursuant to section 12 or 14.*

0584 Sec. 23. K.S.A. 1985 Supp. 40-3401 is hereby amended to
 0585 read as follows: 40-3401. As used in this act the following terms
 0586 shall have the meanings respectively ascribed to them herein:

0587 (a) "Applicant" means any health care provider;

0588 (b) "Basic coverage" means a policy of professional liability
 0589 insurance required to be maintained by each health care pro-
 0590 vider pursuant to the provisions of subsection (a) or (b) of K.S.A.
 0591 40-3402 and amendments thereto;

0592 (c) "Commissioner" means the commissioner of insurance;

0593 (d) "Fiscal year" means the year commencing on the effec-
 0594 tive date of this act and each year, commencing on the first day of
 0595 that month, thereafter;

0596 (e) "Fund" means the health care stabilization fund estab-
 0597 lished pursuant to subsection (a) of K.S.A. 40-3403 and amend-
 0598 ments thereto;

0599 (f) "Health care provider" means a person licensed to prac-

, annuity contracts for future economic loss
 procured pursuant to a settlement agreement
 in a medical malpractice liability action,
 (Ks. Med. Soc.)

procured

0600 tice any branch of the healing arts by the state board of healing
0601 arts, a person who holds a temporary permit to practice any
0602 branch of the healing arts issued by the state board of healing
0603 arts, a person engaged in a postgraduate training program ap-
0604 proved by the state board of healing arts, a medical care facility
0605 licensed by the department of health and environment, a health
0606 maintenance organization issued a certificate of authority by the
0607 commissioner of insurance, an optometrist licensed by the board
0608 of examiners in optometry, a podiatrist registered by the state
0609 board of healing arts, a pharmacist registered by the state board
0610 of pharmacy, a licensed professional nurse who is licensed by
0611 the board of nursing and certified as a nurse anesthetist by the
0612 American association of nurse anesthetists, a professional corpo-
0613 ration organized pursuant to the professional corporation law of
0614 Kansas by persons who are authorized by such law to form such a
0615 corporation and who are health care providers as defined by this
0616 subsection, *a partnership of persons who are health care pro-*
0617 *viders under this subsection*, a Kansas not-for-profit corporation
0618 organized for the purpose of rendering professional services by
0619 persons who are health care providers as defined by this sub-
0620 section (~~F~~), a dentist certified by the state board of healing arts to
0621 administer anesthetics under K.S.A. 65-2899 and amendments
0622 thereto, a physical therapist registered by the state board of
0623 healing arts, or a mental health center or mental health clinic
0624 licensed by the secretary of social and rehabilitation services,
0625 except that health care provider does not include (1) any state
0626 institution for the mentally retarded or (2) any state psychiatric
0627 hospital.

0628 (g) "Inactive health care provider" means a person or other
0629 entity who purchased basic coverage or qualified as a self-in-
0630 surer on or subsequent to the effective date of this act but who, at
0631 the time a claim is made for personal injury or death arising out
0632 of the rendering of or the failure to render professional services
0633 by such health care provider, does not have basic coverage or
0634 self-insurance in effect solely because such person *or entity* is no
0635 longer engaged in rendering professional service as a health care
0636 provider.

0637 (h) "Insurer" means any corporation, association, reciprocal
0638 exchange, inter-insurer and any other legal entity authorized to
0639 write bodily injury or property damage liability insurance in this
0640 state, including workmen's compensation and automobile liability
0641 insurance, pursuant to the provisions of the acts contained in
0642 article 9, 11, 12 or 16 of chapter 40 of Kansas Statutes Annotated.

0643 (i) "Plan" means the operating and administrative rules and
0644 procedures developed by insurers and rating organizations or the
0645 commissioner to make professional liability insurance available
0646 to health care providers.

0647 (j) "Professional liability insurance" means insurance pro-
0648 viding coverage for legal liability arising out of the performance
0649 of professional services rendered or which should have been
0650 rendered by a health care provider.

0651 (k) "Rating organization" means a corporation, an unincor-
0652 porated association, a partnership or an individual licensed pur-
0653 suant to K.S.A. 40-930 or 40-1114, or both sections, and amend-
0654 ments to those sections to make rates for professional liability
0655 insurance.

0656 (l) "Self-insurer" means a health care provider who has
0657 qualified as a self-insurer pursuant to K.S.A. 40-3414 and
0658 amendments thereto or the university of Kansas medical center
0659 for persons who are engaged, under the supervision of the
0660 clinical faculty member of the university of Kansas school of
0661 medicine, in a postgraduate training program approved by the
0662 state board of healing arts and operated by the university of
0663 Kansas medical center.

0664 (m) "Medical care facility" means the same when used in the
0665 health care provider insurance availability act as the meaning
0666 ascribed to that term in K.S.A. 65-425 and amendments thereto,
0667 except that as used in the health care provider insurance availa-
0668 bility act such term, as it relates to insurance coverage under the
0669 health care provider insurance availability act, also includes any
0670 director, trustee, officer or administrator of a medical care facil-
0671 ity.

0672 (n) "Mental health center" means a mental health center
0673 licensed by the secretary of social and rehabilitation services

0674 under K.S.A. 75-3307b and amendments thereto, except that as
0675 used in the health care provider insurance availability act such
0676 term, as it relates to insurance coverage under the health care
0677 provider insurance availability act, also includes any director,
0678 trustee, officer or administrator of a mental health center;

0679 (o) "Mental health clinic" means a mental health clinic li-
0680 censed by the secretary of social and rehabilitation services
0681 under K.S.A. 75-3307b and amendments thereto, except that as
0682 used in the health care provider insurance availability act such
0683 term, as it relates to insurance coverage under the health care
0684 provider insurance availability act, also includes any director,
0685 trustee, officer or administrator of a mental health clinic;

0686 (p) "State institution for the mentally retarded" means Nor-
0687 ton state hospital, Winfield state hospital and training center,
0688 Parsons state hospital and training center and the Kansas neuro-
0689 logical institute;

0690 (q) "State psychiatric hospital" means Larned state hospital,
0691 Osawatomie state hospital, Rainbow mental health facility and
0692 Topeka state hospital.

0693 Sec. 24. K.S.A. 1985 Supp. 40-3403 is hereby amended to
0694 read as follows: 40-3403. (a) For the purpose of paying damages
0695 for personal injury or death arising out of the rendering of or the
0696 failure to render professional services by a health care provider,
0697 self-insurer or inactive health care provider subsequent to the
0698 time that such health care provider or self-insurer has qualified
0699 for coverage under the provisions of this act, there is hereby
0700 established the health care stabilization fund. The fund shall be
0701 held in trust in a segregated fund in the state treasury. The
0702 commissioner shall administer the fund or contract for the ad-
0703 ministration of the fund with an insurance company authorized
0704 to do business in this state.

0705 (b) (1) There is hereby created a board of governors. The
0706 board of governors shall provide:

0707 (A) Provide technical assistance with respect to administra-
0708 tion of the fund;

0709 (B) provide such expertise as the commissioner may reason-
0710 ably request with respect to evaluation of claims or potential

See Attachment (Vancrum)

New Sec. __. (a) On or before October 1, 1986, the commissioner shall establish by rules and regulations an experience rating system for determining rates to be charged for basic coverage and surcharges assessed for coverage by the fund. In adopting such system, the commissioner shall provide for differences between different health care professions, different branches of the healing arts and different specialties with those professions or branches but shall otherwise determine appropriate means for determining premiums and surcharges based upon the actual loss experience of each health care provider with respect to professional liability actions.

(b) As used in this section, the terms defined by K.S.A. 40-3401 and amendments thereto shall have the meanings provided by that statute.

Sec. __. On and after January 1, 1987, K.S.A. 1985 Supp. 40-3402 is hereby amended to read as follows: 40-3402. (a) A policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than \$200,000 per occurrence, subject to not less than a \$600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each resident health care provider as a condition to rendering professional service as a health care provider in this state, unless such health care provider is a self-insurer or is a person

who is engaged under the supervision of the clinical faculty member of the university of Kansas school of medicine, in a postgraduate training program approved by the state board of healing arts and operated by the university of Kansas medical center and is insured pursuant to K.S.A. 40-3414, and amendments thereto. Such policy shall provide as a minimum coverage for claims made during the term of the policy which were incurred during the term of such policy or during the prior term of a similar policy.

(1) Each insurer providing basic coverage shall within 30 days after the premium for the basic coverage is received by the insurer or within 30 days from the effective date of this act, whichever is later, notify the commissioner that such coverage is or will be in effect. Such notification shall be on a form approved by the commissioner and shall include information identifying the professional liability policy issued or to be issued, the name and address of all health care providers covered by the policy, the amount of the annual premium, the inception and expiration dates of the coverage and such other information as the commissioner shall require. A copy of the notice required by this subsection shall be furnished the named insured.

(2) In the event of termination of basic coverage by cancellation, nonrenewal, expiration or otherwise by either the insurer or named insured, notice of such termination shall be furnished by the insurer to the commissioner, the state agency which licenses, registers or certifies the named insured and the

named insured. Such notice shall be provided no less than 30 days prior to the effective date of any termination initiated by the insurer or within 10 days after the date coverage is terminated at the request of the named insured and shall include the name and address of the health care provider or providers for whom basic coverage is terminated and the date basic coverage will cease to be in effect. No basic coverage shall be terminated by cancellation or failure to renew by the insurer unless such insurer provides a notice of termination as required by this subsection.

(3) Any professional liability insurance policy issued, delivered or in effect in this state on and after the effective date of this act shall contain or be endorsed to provide basic coverage as required by subsection (a) ~~of this section~~. Notwithstanding any omitted or inconsistent language, any contract of professional liability insurance shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this act. The liability of an insurer for claims made prior to July 1, 1984, shall not exceed those limits of insurance provided by such policy prior to July 1, 1984.

(b) Unless a nonresident health care provider is a self-insurer, such provider shall not render professional service as a health care provider in this state unless such provider maintains coverage in effect as prescribed by subsection (a) ~~of this section~~, except such coverage may be provided by a nonadmitted insurer who has filed the form required in paragraph

~~{1}-of-subsection-(b)-of-this-section~~ subsection (a)(1).

(1) Every insurance company authorized to transact business in this state, that is authorized to issue professional liability insurance in any jurisdiction, shall file with the commissioner, as a condition of its continued transaction of business within this state, a form prescribed by the commissioner declaring that its professional liability insurance policies, wherever issued, shall be deemed to provide at least the insurance required by this subsection when the insured is rendering professional services as a nonresident health care provider in this state. Any nonadmitted insurer may file such a form.

(2) Every nonresident health care provider who is required to maintain basic coverage pursuant to this subsection shall pay the surcharge levied by the commissioner pursuant to subsection (a) of K.S.A. 40-3404 and amendments thereto directly to the commissioner and shall furnish to the commissioner the information required in ~~paragraph-(1)-of-subsection-(a)-of-this-section~~ subsection (a)(1).

(c) Every health care provider that is a self-insurer or the university of Kansas medical center for persons who are engaged under the supervision of the clinical faculty member of the university of Kansas school of medicine in a postgraduate training center approved by the state board of healing arts and operated by the university of Kansas medical center shall pay the surcharge levied by the commissioner pursuant to subsection (a) of K.S.A. 40-3404 and amendments thereto directly to the

commissioner and shall furnish to the commissioner the information required in ~~paragraph (1) of subsection (a) of this section~~ subsection (a)(1).

(d) Any insurer providing basic coverage shall determine rates charged for such coverage in strict accordance with the experience rating system established by the commissioner pursuant to section .

0711 claims;

0712 (C) provide advice, information and testimony to the appro-
0713 priate licensing or disciplinary authority regarding the qualifi-
0714 cations of a health care provider;

0715 [(D) approve the rating schedule formulated by the commis-
0716 sioner to impose the higher surcharge required by subsection
0717 (c)(2) of K.S.A. 40-3404 and amendments thereto.]

0718 (2) The board shall consist of 13 persons appointed by the
0719 commissioner of insurance, as follows: (A) The commissioner of
0720 insurance, or the designee of the commissioner, who shall act as
0721 chairperson; (B) one member appointed from the public at large
0722 who is not affiliated with any health care provider; (C) three
0723 members licensed to practice medicine and surgery in Kansas
0724 who are doctors of medicine; (D) three members who are repre-
0725 sentatives of Kansas hospitals; (E) two members licensed to
0726 practice medicine and surgery in Kansas who are doctors of
0727 osteopathic medicine; (F) one member licensed to practice
0728 chiropractic in Kansas; and (G) two members of other categories
0729 of health care providers. Meetings shall be called by the chair-
0730 person or by a written notice signed by three members of the
0731 board. The board, in addition to other duties imposed by this act,
0732 shall study and evaluate the operation of the fund and make such
0733 recommendations to the legislature as may be appropriate to
0734 ensure the viability of the fund.

0735 (3) The board shall be attached to the insurance department
0736 and shall be within the insurance department as a part thereof.
0737 All budgeting, purchasing and related management functions of
0738 the board shall be administered under the direction and super-
0739 vision of the commissioner of insurance. All vouchers for ex-
0740 penditures of the board shall be approved by the commissioner
0741 of insurance or a person designated by the commissioner.

0742 (c) Subject to subsections (d), (e) and (g) (f) and (i), the fund
0743 shall be liable to pay: (1) Any amount due from a judgment or
0744 settlement which is in excess of the basic coverage liability of all
0745 liable resident health care providers or resident self-insurers for
0746 any such injury or death arising out of the rendering of or the
0747 failure to render professional services within or without this

(strike) (Ks. Med. Soc., Ins. Comm.)

(D) approve the rating system promulgated by
the commissioner pursuant to section ___ prior
to the establishment of such system.
(Vancrum)

0010 state; (2) any amount due from a judgment or settlement which is
0011 in excess of the basic coverage liability of all liable nonresident
0012 health care providers or nonresident self-insurers for any such
0013 injury or death arising out of the rendering of or the failure to
0014 render professional services within this state, *but in no event*
0015 *shall the fund be obligated for claims against nonresident health*
0016 *care providers or nonresident self-insurers who have not com-*
0017 *plied with this act or for claims against nonresident health care*
0018 *providers or nonresident self-insurers that arose outside of this*
0019 *state; (3) any amount due from a judgment or settlement against a*
0020 *resident inactive health care provider for any such injury or*
0021 *death arising out of the rendering of or failure to render profes-*
0022 *sional services prior to July 1, 1986; (4) any amount due from a*
0023 *judgment or settlement against a nonresident inactive health*
0024 *care provider for any injury or death arising out of the rendering*
0025 *of or failure to render professional services within this state-*
0026 *prior to July 1, 1986, but in no event shall the fund be obligated*
0027 *for claims against: (A) Nonresident inactive health care providers*
0028 *who have not complied with this act; or (B) nonresident inactive*
0029 *health care providers for claims that arose outside of this state,*
0030 *unless such health care provider was a resident health care*
0031 *provider or resident self-insurer at the time such act occurred; (5)*
0032 *any amount due for a judgment or settlement against a resident*
0033 *or nonresident inactive health care provider for any injury or*
0034 *death arising out of the rendering or failure to render profes-*
0035 *sional services within this state on or after July 1, 1986, if such*
0036 *inactive health care provider has paid into the fund either of the*
0037 *following or a combination thereof for at least three consecutive*
0038 *years: (i) The applicable annual premium surcharge, or (ii) an*
0039 *amount equal to the annual premium surcharge paid by a health*
0040 *care provider in the rate classification which was applicable to*
0041 *such inactive health care provider for the most recent year*
0042 *professional services were rendered; (6) reasonable and neces-*
0043 *sary expenses for attorney fees incurred in defending the fund*
0044 *against claims; (6) (7) any amounts expended for reinsurance*
0045 *obtained to protect the best interests of the fund purchased by*
0046 *the commissioner, which purchase shall be subject to the provi-*

0047 sions of K.S.A. 75-3738 to 75-3744, inclusive through 75-3744,
 0048 and amendments thereto, but shall not be subject to the provi-
 0049 sions of K.S.A. 75-4101 and amendments thereto; ~~(7)~~ (8) reason-
 0050 able and necessary actuarial expenses incurred in administering
 0051 the act, which expenditures shall not be subject to the provisions
 0052 of K.S.A. 75-3738 to 75-3744, inclusive through 75-3744, and
 0053 amendments thereto; ~~(8)~~ (9) annually to the plan or plans, any
 0054 amount due pursuant to subsection (a)(3) of K.S.A. 40-3413; and
 0055 amendments thereto; ~~and~~ ~~(9)~~ (10) reasonable and necessary ex-
 0056 penses incurred by the insurance department and the board of
 0057 governors in the administration of the fund.

0058 (d) All amounts for which the fund is liable pursuant to
 0059 paragraphs (1), (2), (3) ~~or~~, (4) or 5 of subsection (c) of this section
 0060 shall be paid promptly and in full if less than \$300,000; or if,
 0061 except that, in any case arising out of a cause of action which
 0062 accrued before July 1, 1986, if the amount for which the fund is
 0063 liable is \$300,000 or more, it shall be paid by installment pay-
 0064 ments of \$300,000 or 10% of the amount of the judgment includ-
 0065 ing interest thereon, whichever is greater, per fiscal year, the
 0066 first installment to be paid within 60 days after the fund becomes
 0067 liable and each subsequent installment to be paid annually on
 0068 the same date of the year the first installment was paid, until the
 0069 claim has been paid in full; and any attorney's attorney fees
 0070 payable from such installment shall be similarly prorated.

0071 (e) In no event shall the fund be liable to pay in excess of
 0072 \$3,000,000 pursuant to any one judgment or settlement against
 0073 any one health care provider relating to any injury or death
 0074 arising out of the rendering of or the failure to render profes-
 0075 sional services ~~from~~ on and after July 1, 1984, and before July 1,
 0076 1986, subject to an aggregate limitation for all judgments or
 0077 settlements arising from all claims made in any one fiscal year in
 0078 the amount of \$6,000,000 for each provider.

0079 (f) In no event shall the fund be liable to pay in excess of
 0080 \$1,000,000 pursuant to any one judgment or settlement against
 0081 any one health care provider relating to any injury or death
 0082 arising out of the rendering of or the failure to render profes-
 0083 sional services on and after July 1, 1986, subject to an aggregate

(strike)

; and (11) reasonable and necessary expenses
 for the development and promotion of risk
 management education programs
 (Ks. Med. Soc.)

0084 limitation for all judgments or settlements arising from all claims
0085 made in any one fiscal year in the amount of \$3,000,000 for each
0086 provider.

0087 (g) A health care provider shall be deemed to have qualified
0088 for coverage under the fund: (1) On and after the effective date of
0089 this act if basic coverage is then in effect; (2) subsequent to the
0090 effective date of this act, at such time as basic coverage becomes
0091 effective; or (3) upon qualifying as a self-insurer pursuant to
0092 K.S.A. 40-3414 and amendments thereto.

0093 (g) (h) A health care provider who is qualified for coverage
0094 under the fund shall have no vicarious liability or responsibility
0095 for any injury or death arising out of the rendering of or the
0096 failure to render professional services inside or outside this
0097 state by any other health care provider who is also qualified for
0098 coverage under the fund.

0099 (i) Notwithstanding the provisions of K.S.A. 40-3402 and
0100 amendments thereto, if the board of governors determines due to
0101 the number of claims filed against a health care provider [and]
0102 the outcome of those claims that an individual health care
0103 provider presents a material risk of significant [future] liability to
0104 the fund, the board of governors is authorized by a vote of a
0105 majority of the members thereof, after notice and an opportunity
0106 for hearing, to terminate the liability of the fund for all claims
0107 against the health care provider for damages for death or per-
0108 sonal injury arising out of the rendering of or the failure to render
0109 professional services after the date of termination. The date of
0110 termination shall be 30 days after the date of the determination
0111 by the board of governors. The board of governors, upon termi-
0112 nation of the liability of the fund under this subsection (g), shall
0113 notify the licensing or other disciplinary board having jurisdic-
0114 tion over the health care provider involved of the name of the
0115 health care provider and the reasons for the termination.

0116 Sec. 25. K.S.A. 1985 Supp. 40-3404 is hereby amended to
0117 read as follows: 40-3404. (a) Except for any health care provider
0118 whose participation in the fund has been terminated pursuant to
0119 subsection (g) (i) of K.S.A. 40-3403 and amendments thereto, the
0120 commissioner shall levy an annual premium surcharge on each

The provisions of this subsection shall apply to all claims filed on or after the effective date of this act.

(Ks. Med. Soc.)

or (Ks. Med. Soc.)

(strike) (Ks. Med. Soc.)

0121 health care provider who has obtained basic coverage and upon
 0122 each self-insurer for each fiscal year. Such premium surcharge
 0123 shall be an amount equal to a percentage of the *average* annual
 0124 premium paid by the *all health care provider providers within*
 0125 *the rate classification of the health care provider* for the basic
 0126 coverage required to be maintained as a condition to coverage by
 0127 the fund by subsection (a) of K.S.A. 40-3402 and amendments
 0128 thereto. The annual premium surcharge upon each self-insurer,
 0129 except for the university of Kansas medical center, shall be an
 0130 amount equal to a percentage of the *average* amount ~~such self-~~
 0131 ~~insurer~~ *all self-insurers within the rate classification of the*
 0132 *self-insurer* would pay for basic coverage as calculated in ac-
 0133 cordance with rating procedures approved by the commissioner
 0134 pursuant to K.S.A. 40-3413 and amendments thereto. The annual
 0135 premium surcharge upon the university of Kansas medical center
 0136 for persons who are engaged, under the supervision of the
 0137 clinical faculty member of the university of Kansas school of
 0138 medicine, in a postgraduate training program approved by the
 0139 state board of healing arts and operated by the university of
 0140 Kansas medical center shall be an amount equal to a percentage
 0141 of an assumed aggregate premium of \$600,000.

0142 (b) In the case of a resident health care provider who is not a
 0143 self-insurer, the premium surcharge shall be collected in addi-
 0144 tion to the annual premium for the basic coverage by the insurer
 0145 and shall not be subject to the provisions of K.S.A. 40-252,
 0146 40-1113 and 40-2801 *et seq.*, and amendments ~~to these sections~~
 0147 *thereto*. The amount of the premium surcharge shall be shown
 0148 separately on the policy or an endorsement thereto and shall be
 0149 specifically identified as such. Such premium surcharge shall be
 0150 due and payable by the insurer to the commissioner within 30
 0151 days after the annual premium for the basic coverage is received
 0152 by the insurer, but in the event basic coverage is in effect at the
 0153 time this act becomes effective, such surcharge shall be based
 0154 upon the unearned premium until policy expiration and annually
 0155 thereafter. Within 15 days immediately following the effective
 0156 date of this act, the commissioner shall send to each insurer
 0157 information necessary for their compliance with this subsection.

Ins. Comm.: Either return to current language
 or make amendments effective July 1, 1987
 and add:

The commissioner shall promulgate such average
 premium by a simple average of the rates
 approved pursuant to K.S.A. 40-1113 for all
 insurers writing over 25% of the health care
 providers in each classification established
 by the commissioner, as reported, on a form
 prescribed by the commissioner, as of
 December 31st of the preceding calendar year,
 effective July 1, 1987.

0158 The certificate of authority of any insurer who fails to comply
 0159 with the provisions of this subsection shall be suspended pursu-
 0160 ant to K.S.A. 40-222 and amendments thereto until such insurer
 0161 shall pay the annual premium surcharge due and payable to the
 0162 commissioner. In the case of a nonresident health care provider
 0163 or a self-insurer, the premium surcharge shall be collected in the
 0164 manner prescribed in K.S.A. 40-3402 and amendments thereto.

0165 (c) The premium surcharge shall be an amount deemed suf-
 0166 ficient by the commissioner to fund anticipated claims based
 0167 upon reasonably prudent actuarial principles. In setting the
 0168 amount of such surcharge, the commissioner: (1) May require
 0169 any health care provider who has paid a surcharge for less than
 0170 24 months to pay a higher surcharge than other health care
 0171 providers; (2) *shall require a health care provider with a poor*
 0172 *loss experience with respect to medical malpractice liability*
 0173 *actions to pay a higher surcharge than other health care pro-*
 0174 *viders]* and ~~(2)~~ (3) shall amortize any anticipated deficiencies in
 0175 the fund over a reasonable period of time. *[The rating schedule*
 0176 *formulated by the commissioner to impose a higher surcharge*
 0177 *required by subsection (c)(2) shall be approved by the board of*
 0178 *governors.]*

0179 Sec. 26. K.S.A. 1985 Supp. 40-3408 is hereby amended to
 0180 read as follows: 40-3408. The insurer of a health care provider
 0181 covered by the fund or self-insurer shall be liable only for the
 0182 first \$200,000 of a claim for personal injury or death arising out of
 0183 the rendering of or the failure to render professional services by
 0184 such health care provider, subject to an annual aggregate of
 0185 \$600,000 for all such claims against the health care provider.
 0186 However, if any liability insurance in excess of such amounts is
 0187 applicable to any claim or would be applicable in the absence of
 0188 this act, any payments from the fund shall be excess over such
 0189 amounts paid, payable or that would have been payable in the
 0190 absence of this act. The liability of an insurer for claims made
 0191 prior to July 1, 1984, shall not exceed those limits of insurance
 0192 provided by such policy prior to July 1, 1984.

0193 If any inactive health care provider has liability insurance in
 0194 effect which is applicable to any claim or would be applicable in

1) shall promulgate a rating plan, to be effective
 July 1, 1987, that requires a higher surcharge
 from health care providers based upon past
 claims paid from the fund on behalf of such
 providers. In determining such rating plan, the
 commissioner shall give consideration to the
 number, size and frequency of such paid claims,
 and the classification of the health care
 provider, from the inception date of the fund.
 (Ins. Comm., Ks. Med. Soc.)

2) shall adhere strictly to the experience rating
 system established by the commissioner
 pursuant to section __ (Vancrum)

(strike) (Ins. Comm., Ks. Med. Soc.)

Ins. Comm.: Add a provision to K.S.A. 40-3409 to
 make clear that if the fund appeals an award
 against it, no appeal bond will be required.

0195 the absence of this act, any payments from the fund shall be
0196 excess over such amounts paid, payable or that would have been
0197 payable in the absence of this act.

0198 *Notwithstanding anything herein to the contrary, an insurer*
0199 *that provides coverage to a health care provider may exclude*
0200 *from coverage any liability incurred by such provider from the*
0201 *rendering of or the failure to render professional services by any*
0202 *other health care provider who is required by K.S.A. 40-3402*
0203 *and amendments thereto to maintain professional liability in-*
0204 *surance in effect as a condition to rendering professional ser-*
0205 *vices as a health care provider in this state.*

0206 Sec. 27. K.S.A. 65-430 is hereby amended to read as follows:
0207 65-430. The licensing agency may deny, suspend or revoke a
0208 license in any case in which it finds that there has been a
0209 substantial failure to comply with the requirements established
0210 under this law, *a failure to report any information required to be*
0211 *reported by K.S.A. 65-28,121 and amendments thereto or a*
0212 *failure to maintain a risk management program as required by*
0213 *section 2, after notice and an opportunity for hearing to the*
0214 *applicant or licensee in accordance with the provisions of the*
0215 *Kansas administrative procedure act.*

0216 Sec. 28. K.S.A. 65-2809 is hereby amended to read as fol-
0217 lows: 65-2809. (a) The license shall expire on June 30 each year
0218 and may be renewed annually upon request of the licensee. The
0219 request for renewal shall be on a form provided by the board and
0220 shall be accompanied by the prescribed fee, which shall be paid
0221 not later than the expiration date of the license.

0222 (b) Except as otherwise provided in this section, ~~from and~~
0223 ~~after July 1, 1978,~~ the board shall require every licensee in the
0224 active practice of the healing arts within the state to submit
0225 evidence of satisfactory completion of a program of continuing
0226 education required by the board. The requirements for continu-
0227 ing education for licensees of each branch of the healing arts
0228 shall be established by the members of such branch on the
0229 board. The board by duly adopted rules and regulations shall
0230 establish the requirements established by the members of each
0231 branch of the healing arts for each program of continuing educa-

See attachment (Vancrum)

Sec. __. On and after January 1, 1987, K.S.A. 1985 Supp. 40-3413 is hereby amended to read as follows: 40-3413. (a) Every insurer and every rating organization shall cooperate in the preparation of a plan or plans for the equitable apportionment among such insurers of applicants for professional liability insurance and such other liability insurance as may be included in or added to the plan, who are in good faith entitled to such insurance but are unable to procure the same through ordinary methods. Such plan or plans shall be prepared and filed with the commissioner within a reasonable time but not exceeding 60 calendar days from the effective date of this act. Such plan or plans shall provide:

(1) Reasonable rules governing the equitable distribution of risks by direct insurance, reinsurance or otherwise including the authority to make assessments against the insurers participating in the plan or plans;

(2) rates and rate modifications applicable to such risks which shall be reasonable, adequate and not unfairly discriminatory;

(3) a method whereby annually the plan shall compare the premiums earned to the losses and expenses sustained by the plan for the preceding fiscal year. If there is any surplus of premiums over losses and expenses received for that year such surplus shall be transferred to the fund. If there is any excess of losses and expenses over premiums earned such losses shall be

transferred from the fund;

(4) the limits of liability which the plan shall be required to provide, but in no event shall such limits be less than those limits provided for in subsection (a) of K.S.A. 40-3402 and amendments thereto;

(5) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner; and

(6) a method for determining rates which is in strict accordance with the system established by the commissioner pursuant to section ____.

(b) The commissioner shall review the plan as soon as reasonably possible after filing in order to determine whether it meets the requirements set forth in subsection (a). As soon as reasonably possible after the plan has been filed the commissioner shall in writing approve or disapprove the plan. Any plan shall be deemed approved unless disapproved within 30 days. Subsequent to the waiting period the commissioner may disapprove any plan on the ground that it does not meet the requirements set forth in subsection (a), but only after a hearing held upon not less than 10 days' written notice to every insurer and rating organization affected specifying in what respect the commissioner finds that such plan fails to meet such requirements, and stating when within a reasonable period thereafter such plan shall be deemed no longer effective. Such order shall not affect any assignment made or policy issued or made prior to the expiration

of the period set forth in the order. Amendments to such plan or plans shall be prepared, and filed and reviewed in the same manner as herein provided with respect to the original plan or plans.

(c) If no plan meeting the standards set forth in subsection (a) is submitted to the commissioner within 60 calendar days from the effective date of this act or within the period stated in any order disapproving an existing plan, the commissioner shall after a hearing, if necessary to carry out the purpose of this act, prepare and promulgate a plan meeting such requirements.

(d) If, after a hearing, the commissioner finds that any activity or practice of any insurer or rating organization in connection with the operation of such plan or plans is unfair or unreasonable or otherwise inconsistent with the provisions of this act, the commissioner may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act and requiring discontinuance of such activity or practice.

(e) For every such plan or plans, there shall be a governing board which shall meet at least annually to review and prescribe operating rules. Such board shall consist of nine members to be appointed by the commissioner as follows: Three members shall be representatives of foreign insurers, two members shall be representatives of domestic insurers, two members shall

be representatives of the general public, one member shall be a licensed insurance agent actively engaged in the solicitation of casualty insurance and one member shall be a health care provider. The members shall be appointed for a term of two years.

(f) An insurer participating in the plan approved by the commissioner may pay a commission with respect to insurance written under the plan to an insurance agent licensed for any other insurer participating in the plan or to any insurer participating in the plan. Such commission shall be reasonably equivalent to the usual customary commission paid on similar types of policies issued in the voluntary market.

(g) The provisions of this section shall expire on July 1, 1987, but any plan created hereunder shall continue to exist for the purpose of allowing policies then in effect to expire, transferring surplus to the fund, completing the payment of claims and receiving reimbursement therefor.

0232 tion as soon as possible after the effective date of this act. In
0233 establishing such requirements the members of the branch of the
0234 healing arts so establishing shall consider any programs of con-
0235 tinuing education currently being offered to such licensees. If,
0236 immediately prior to the effective date of this act, any branch of
0237 the healing arts is requiring continuing education or annual
0238 postgraduate education as a condition to renewal of a license of a
0239 licensee of such branch of the healing arts, such requirement as a
0240 condition for the renewal of such license shall continue in full
0241 force and effect notwithstanding any other provision of this
0242 section to the contrary.

0243 (c) *Prior to renewal of a license, the board shall require the*
0244 *licensee, if in the active practice of the healing arts within the*
0245 *state, to submit to the board evidence satisfactory to the board*
0246 *that the licensee is maintaining a policy of professional liability*
0247 *insurance as required by K.S.A. 40-3402 and amendments*
0248 *thereto and has paid the annual premium surcharge as required*
0249 *by K.S.A. 40-3404 and amendments thereto.*

0250 (d) At least ~~thirty (30)~~ 30 days before the expiration of his or
0251 her a licensee's license, the secretary of the board shall notify
0252 each the licensee of the expiration by mail addressed to his or
0253 her the licensee's last place of residence as noted upon the office
0254 records. Any licensee who ~~If the licensee~~ fails to pay the annual
0255 fee ~~within thirty (30) days after by the date of~~ the expiration of
0256 his or her the license, the licensee shall be given a second notice
0257 that his or her the licensee's license has expired and, that the
0258 board will suspend action for ~~ninety (90)~~ 30 days following the
0259 date of expiration and, that, upon receipt of the annual fee,
0260 together with an additional fee of not to exceed fifty dollars (\$50)
0261 \$500 within the ~~ninety (90) day~~ thirty-day period no order of
0262 revocation will be entered; ~~but that upon the failure to receive~~
0263 the amount then due, including the additional fee of not to
0264 exceed fifty dollars (\$50) and, if both fees are not received within
0265 the thirty-day period, the license shall be canceled.

0266 (e) Any licensee who allows his or her the licensee's license
0267 to lapse by failing to renew as herein provided may be reinstated
0268 upon recommendation of the board and upon payment of the

0269 renewal fees then due and from and after July 1, 1978, upon
0270 proof of compliance with the continuing educational require-
0271 ments established by the board.

0272 Sec. 29. K.S.A. 65-2812 is hereby amended to read as fol-
0273 lows: 65-2812. (a) For the purpose of administering the provi-
0274 sions of this act, the governor shall appoint a state board of
0275 healing arts consisting of ~~13~~ 15 members. At least 30 days before
0276 the expiration of any term, other than that of the member ap-
0277 pointed from the general public and the registered podiatrist
0278 member of the board, the professional society or association shall
0279 submit to the governor a list of three or more names of persons of
0280 recognized ability who have the qualifications prescribed for
0281 board members for each member of the board who will be
0282 appointed from its branch of the healing arts. The governor shall
0283 consider the list of persons in making the appointment to the
0284 board. In case of a vacancy on the board, other than that of the
0285 member appointed from the general public and the registered
0286 podiatrist member of the board, prior to the expiration of a term
0287 of office, the governor shall appoint a qualified successor to fill
0288 the unexpired term, and in making the appointment the governor
0289 shall give consideration to the list of persons last submitted to
0290 the governor.

0291 (b) The provisions of the Kansas sunset law apply to the state
0292 board of healing arts appointed pursuant to this section and the
0293 board is subject to abolition under that law.

0294 Sec. 30. K.S.A. 65-2813 is hereby amended to read as fol-
0295 lows: 65-2813. Five ~~(5)~~ members of the board shall hold a degree
0296 of doctor of medicine from an accredited medical school and
0297 shall be residents of and have been actively engaged in the
0298 practice of medicine and surgery in the state of Kansas under
0299 license issued in this state, for a period of at least six ~~(6)~~ consec-
0300 utive years immediately preceding their appointment; three ~~(3)~~
0301 members shall hold a degree of doctor of osteopathy from an
0302 accredited school of osteopathic medicine and surgery and shall
0303 be residents of and have been actively engaged in the practice of
0304 osteopathic medicine and surgery in the state of Kansas under
0305 license issued in this state, for a period of at least six ~~(6)~~ consec-

Reinsert stricken language
(Cloud, K.A.O.M.)

0306 utive years immediately preceding their appointment; ~~and~~ three
 0307 ~~(3)~~ members shall hold a degree of doctor of chiropractic from an
 0308 accredited school of chiropractic and shall be residents of and
 0309 have been actively engaged in the practice of chiropractic in the
 0310 state of Kansas under license issued in this state, for a period of at
 0311 least six ~~(6)~~ consecutive years immediately preceding their ap-
 0312 pointment; ~~and~~ one member shall be a registered podiatrist and
 0313 shall be a resident of and have been actively engaged in the
 0314 practice of podiatry in the state of Kansas under license issued in
 0315 this state for a period of at least six ~~(6)~~ consecutive years imme-
 0316 diately preceding appointment; and ~~one member shall be from~~
 0317 *three members shall be appointed to represent the general*
 0318 *public of this state and no two of such members representing the*
 0319 *general public shall be from the same United States congressio-*
 0320 *nal district.*

0321 Sec. 31. K.S.A. 65-2814 is hereby amended to read as fol-
 0322 lows: 65-2814. Whenever a vacancy ~~shall occur~~ *occurs* in the
 0323 membership of the board, the governor shall appoint a successor
 0324 of like qualifications. All appointments made shall be for a term
 0325 of four (4) years, but no member shall be appointed for more than
 0326 three ~~(3)~~ successive four-year terms, except that any term served
 0327 by a member as secretary shall not be considered in applying
 0328 successive term limitations. ~~The term of the board member from~~
 0329 ~~the general public, first appointed, and the term of the registered~~
 0330 ~~podiatrist, first appointed, shall commence on July 1, 1975, in the~~
 0331 ~~case of the member from the general public and July 1, 1976, in~~
 0332 ~~the case of the registered podiatrist.~~ Each *member* shall serve
 0333 until ~~his or her~~ a successor is appointed and qualified. Whenever
 0334 a vacancy ~~shall occur~~ *occurs* in the membership of the board for
 0335 any reason other than the expiration of a member's term of office,
 0336 the governor shall appoint a successor of like qualifications to fill
 0337 the unexpired term.

0338 Sec. 32. K.S.A. 65-2822 is hereby amended to read as fol-
 0339 lows: 65-2822. ~~Seven (7)~~ *Eight* members shall constitute a quo-
 0340 rum for the transaction of business.

0341 Sec. 33. K.S.A. 65-2833 is hereby amended to read as fol-
 0342 lows: 65-2833. The board, without examination, may issue a

No member representing the general public shall be a person or the spouse of a person who has a financial interest in any person's practice of the healing arts. (Ks. Chir. Assoc.)

See attachment (Ks. Med. Soc.)

New Sec. __. (a) In connection with any investigation by the board of healing arts, the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any document, report, record or other physical evidence of any person being investigated, or any document, report, record or other evidence maintained by and in possession of any clinic, office of a practitioner of the healing arts, laboratory, pharmacy, medical care facility or other public or private agency if such document, report, record or evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice the healing arts.

(b) For the purpose of all investigations and proceedings conducted by the board:

(1) The board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents or any other physical evidence if such evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice the healing arts. Within five days after the service of the subpoena on any person requiring the production of any evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to

practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity the physical evidence which is required to be produced. Any member of the board, or any agent designated by the board, may administer oaths or affirmations, examine witnesses and receive such evidence.

(2) Any person appearing before the board shall have the right to be represented by counsel.

(3) The district court, upon application by the board or by the person subpoenaed, shall have jurisdiction to issue an order:

(A) Requiring such person to appear before the board or the boards duly authorized agent to produce evidence relating to the matter under investigation; or

(B) revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

(c) Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, other reports or oral statements relating to diagnostic findings or treatment of patients, information from which a patient or a patient's family might be identified, peer review or risk management records or information received and records kept by

the board as a result of the investigation procedure outlined in this section shall not be available to the public.

(d) Nothing in this section or any other provision of law making communications between a physician and the physician's patient a privileged communication shall apply to investigations or proceedings conducted pursuant to this section. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this section.

0343 license to a person who has been in the active practice of a
0344 branch of the healing arts in some other state, territory, the
0345 District of Columbia or other country upon certificate of the
0346 proper licensing authority of that state, territory, District of
0347 Columbia or other country certifying that the applicant is duly
0348 licensed, that ~~his or her~~ *the applicant's* license has never been
0349 ~~[annulled]~~ *suspended or revoked, that the licensee has never*
0350 *been censured or had other disciplinary action taken* and that, so
0351 far as the records of such authority are concerned, the applicant
0352 is entitled to its endorsement. The applicant shall also present
0353 proof satisfactory to the board:

0354 (a) That the state, territory, District of Columbia or country in
0355 which the applicant last practiced has and maintains standards at
0356 least equal to those maintained by Kansas.

0357 (b) That the applicant's original license was based upon an
0358 examination at least equal in quality to the examination required
0359 in this state and that the passing grade required to obtain such
0360 original license was comparable to that required in this state.

0361 (c) Of the date of the applicant's original and any and all
0362 endorsed licenses and the date and place from which any license
0363 was attained.

0364 (d) That the applicant has been actively engaged in practice
0365 under such license or licenses since issued, and if not, fix the
0366 time when and reason why the applicant was out of practice.

0367 (e) That the applicant has a reasonable ability to communi-
0368 cate in English.

0369 An applicant for endorsement registration shall not be licensed
0370 unless the applicant's individual qualifications meet the Kansas
0371 legal requirements.

0372 In lieu of any other requirement prescribed by law for satis-
0373 factory passage of any examination in any branch of the healing
0374 arts the board may accept evidence satisfactory to it that the
0375 applicant or licensee has satisfactorily passed an equivalent
0376 examination given by a national board of examiners in chiro-
0377 practic, osteopathic medicine and surgery or medicine and sur-
0378 gery as now required by Kansas statutes for endorsement from
0379 other states.

(strike) (Ks. Med. Soc., Bd. of Healing Arts)

0380 Sec. 34. K.S.A. 65-2836 is hereby amended to read as fol-
0381 lows: 65-2836. A licensee's license may be ~~annulled,~~ (strike)
0382 suspended or limited when the licensee has been found to have
0383 committed any of the following acts, or the licensee may be
0384 publicly or privately censured, upon a finding of the existence of
0385 any of the following grounds:

0386 (a) ~~The licensee has committed fraud in or misrepresentation~~
0387 ~~in applying for or securing the an original or renewal license.~~

0388 (b) ~~The licensee has committed an act of immoral, unprofes-~~
0389 ~~sional or dishonorable conduct or professional incompetency.~~

0390 (c) ~~Conviction~~ ~~The licensee has been convicted of a felony if~~
0391 ~~the board determines, after investigation, that such person has~~
0392 ~~not been sufficiently rehabilitated to warrant the public trust or~~
0393 ~~class A misdemeanor, whether or not related to the practice of~~
0394 ~~the healing arts.~~

0395 (d) ~~Use of~~ ~~The licensee has used~~ fraudulent or false adver-
0396 tisements.

0397 (e) ~~Addiction to or distribution of~~ ~~The licensee is addicted to~~
0398 ~~or has distributed~~ intoxicating liquors or drugs for any other than
0399 lawful purposes.

0400 (f) ~~Willful or repeated violation of~~ ~~The licensee has willfully~~
0401 ~~or repeatedly violated~~ this act, the pharmacy act of the state of
0402 Kansas or the uniform controlled substances act, or any rules and
0403 regulations adopted pursuant thereto, or any rules and regula-
0404 tions of the secretary of health and environment which are
0405 relevant to the practice of the healing arts.

0406 (g) ~~Unlawful invasion of~~ ~~The licensee has unlawfully in-~~
0407 ~~vaded~~ the field of practice of any branch of the healing arts in
0408 which the licensee is not licensed to practice.

0409 (h) ~~Failure~~ ~~The licensee has failed to pay annual renewal fees~~
0410 specified in this act.

0411 (i) ~~Failure~~ ~~The licensee has failed to take some form of~~
0412 ~~postgraduate work each year or as required by the board.~~

0413 (j) ~~Engaging~~ ~~The licensee has engaged in the practice of the~~
0414 ~~healing arts under a false or assumed name, or the impersonation~~
0415 ~~of another practitioner. The provisions of this subsection relating~~
0416 ~~to an assumed name shall not apply to licensees practicing under~~

0417 a professional corporation or other legal entity duly authorized to
0418 provide such professional services in the state of Kansas.

0419 (k) *The licensee has the inability to practice the branch of the*
0420 *healing arts for which such person the licensee is licensed with*
0421 *reasonable skill and safety to patients by reason of illness,*
0422 *alcoholism, excessive use of drugs, controlled substances,*
0423 *chemical or any other type of material or as a result of any mental*
0424 *or physical condition. In determining whether or not such in-*
0425 *ability exists, the board, upon probable cause, shall have au-*
0426 *thority to compel a licensee to submit to mental or physical*
0427 *examination by such persons as the board may designate. The*
0428 *licensee shall submit to the board a release of information*
0429 *authorizing the board to obtain a report of such examination.*
0430 *Failure of any licensee to submit to such examination when*
0431 *directed shall constitute an admission of the allegations against*
0432 *the licensee, unless the failure was due to circumstances beyond*
0433 *the control of the licensee, and the board may enter a default and*
0434 *final order in any case of default without just cause being shown*
0435 *to the board without the taking of testimony or presentation of*
0436 *evidence. A person affected by this subsection shall be offered,*
0437 *at reasonable intervals, an opportunity to demonstrate that such*
0438 *person can resume the competent practice of the healing arts*
0439 *with reasonable skill and safety to patients. For the purpose of*
0440 *this subsection, every person licensed to practice the healing arts*
0441 *and who shall accept the privilege to practice the healing arts in*
0442 *this state by so practicing or by the making and filing of an*
0443 *annual renewal to practice the healing arts in this state shall be*
0444 *deemed to have consented to submit to a mental or physical*
0445 *examination when directed in writing by the board and further to*
0446 *have waived all objections to the admissibility of the testimony*
0447 *or examination report of the person conducting such examination*
0448 *at any proceeding or hearing before the board on the ground that*
0449 *such testimony or examination report constitutes a privileged*
0450 *communication. In any proceeding by the board pursuant to the*
0451 *provisions of this subsection, the record of such board proceed-*
0452 *ings involving the mental and physical examination shall not be*
0453 *used in any other administrative or judicial proceeding.*

0454 (l) ~~The licensee has had a license to practice the healing arts~~ (strike)
0455 ~~[annulled]~~ revoked, suspended, or limited ~~or, has been censured~~
0456 ~~or has had other disciplinary action taken, or an application for a~~
0457 license denied, by the proper licensing authority of another
0458 state, territory, District of Columbia, or other country, a certified
0459 copy of the record of the action of the other jurisdiction being
0460 conclusive evidence thereof.

0461 (m) ~~The licensee has violated any lawful rule or and regula-~~
0462 tion promulgated by the board or violated any lawful order or
0463 directive of the board previously entered by the board.

0464 (n) ~~Failure~~ The licensee has failed to report or reveal the
0465 knowledge required to be reported or revealed under K.S.A.
0466 65-28,122 and amendments thereto.

0467 (o) ~~Failure by persons~~ The licensee, if licensed to practice
0468 medicine and surgery, has failed to inform a patient suffering
0469 from any form of abnormality of the breast tissue for which
0470 surgery is a recommended form of treatment, of alternative
0471 methods of treatment specified in the standardized summary
0472 supplied by the board. The standardized summary shall be given
0473 to each patient specified herein as soon as practicable and
0474 medically indicated following diagnosis, and this shall constitute
0475 compliance with the requirements of this subsection ~~(e)~~. The
0476 board shall develop and distribute to persons licensed to practice
0477 medicine and surgery a standardized summary of the alternative
0478 methods of treatment known to the board at the time of distribu-
0479 tion of the standardized summary, including surgical, radiologi-
0480 cal or chemotherapeutic treatments or combinations of treat-
0481 ments and the risks associated with each of these methods.
0482 Nothing in this subsection ~~(e)~~ shall be construed or operate to
0483 empower or authorize the board to restrict in any manner the
0484 right of a person licensed to practice medicine and surgery to
0485 recommend a method of treatment or to restrict in any manner a
0486 patient's right to select a method of treatment. The standardized
0487 summary shall not be construed as a recommendation by the
0488 board of any method of treatment. The preceding sentence or
0489 words having the same meaning shall be printed as a part of the
0490 standardized summary. The provisions of this subsection ~~(e)~~

0491 shall not be effective until the standardized written summary
 0492 provided for in this subsection (e) is developed and printed and
 0493 made available by the board to persons licensed by the board to
 0494 practice medicine and surgery.

0495 (p) *The licensee has cheated on or attempted to subvert the*
 0496 *validity of the examination for a license.*

0497 (q) *The licensee has been found to be mentally ill, disabled,*
 0498 *not guilty by reason of insanity or incompetent to stand trial by*
 0499 *a court of competent jurisdiction.*

0500 (r) *The licensee has prescribed, sold, administered, distrib-*
 0501 *uted or given a controlled substance: (1) For other than medi-*
 0502 *cally accepted therapeutic purposes; (2) [to the licensee's self; (3)*
 0503 *to a member of the licensee's family;] or (4) except as permitted*
 0504 *by law, to a habitual user or addict.*

0505 (s) *The licensee has violated a federal law or regulation*
 0506 *relating to controlled substances.*

0507 (t) *The licensee has failed to furnish the board, or its inves-*
 0508 *tigators or representatives, any information legally requested*
 0509 *by the board.*

0510 (u) *Sanctions or disciplinary actions have been taken against*
 0511 *the licensee by a peer review committee, health care facility or a*
 0512 *professional association or society for acts or conduct similar to*
 0513 *acts or conduct which would constitute grounds for disciplinary*
 0514 *action under this section.*

0515 [(v) *The licensee has failed to report to the board any adverse*
 0516 *action taken against the licensee by another state or licensing*
 0517 *jurisdiction, a peer review body, a health care facility, a profes-*
 0518 *sional association or society, a governmental agency, by a law*
 0519 *enforcement agency or a court for acts or conduct similar to acts*
 0520 *or conduct which would constitute grounds for disciplinary*
 0521 *action under this section.]*

0522 (w) *The licensee has surrendered a license or authorization*
 0523 *to practice the healing arts in another state or jurisdiction or*
 0524 *has surrendered the licensee's membership on any professional*
 0525 *staff or in any professional association or society while under*
 0526 *investigation for acts or conduct similar to acts or conduct*
 0527 *which would constitute grounds for disciplinary action under*

(strike) (Ks. Med. Soc.)

(strike) (Ks. Med. Soc.)

0528 *this section.*

0529 (x) *The licensee has failed to report to the board surrender of*
0530 *the licensee's license or authorization to practice the healing*
0531 *arts in another state or jurisdiction or surrender of the licensee's*
0532 *membership on any professional staff or in any professional*
0533 *association or society while under investigation for acts or*
0534 *conduct similar to acts or conduct which would constitute*
0535 *grounds for disciplinary action under this section.*

0536 [(y) *The licensee has an adverse judgment, award or settle-*
0537 *ment against the licensee resulting from a medical liability*
0538 *claim related to acts or conduct similar to acts or conduct which*
0539 *would constitute grounds for disciplinary action under this*
0540 *section.*

0541 (z) *The licensee has failed to report to the board any adverse*
0542 *judgment, settlement or award against the licensee resulting*
0543 *from a medical malpractice liability claim related to acts or*
0544 *conduct similar to acts or conduct which would constitute*
0545 *grounds for disciplinary action under this section.]*

0546 (aa) *The licensee has failed to maintain a policy of profes-*
0547 *sional liability insurance as required by K.S.A. 40-3402 and*
0548 *amendments thereto.*

0549 (bb) *The licensee has failed to pay the annual premium*
0550 *surcharge as required by K.S.A. 40-3404 and amendments*
0551 *thereto.*

0552 Sec. 35. K.S.A. 65-2837 is hereby amended to read as fol-
0553 lows: 65-2837. As used in K.S.A. 65-2836 and amendments
0554 thereto and in this section:

0555 (a) "Professional incompetency" means:

0556 (1) One or more instances involving gross negligence; or, as
0557 determined by the board.

0558 (2) Repeated instances involving ordinary negligence, as de-
0559 termined by the board.

0560 (3) A pattern of practice or other behavior which demon-
0561 strates a manifest incapacity or incompetence to practice medi-
0562 cine.

0563 (b) "Unprofessional conduct" means:

0564 (1) Solicitation of professional patronage through the use of

(strike) (Ks. Med. Soc.)

(cc) The licensee has practiced in an area of
medicine and surgery or has performed a pro-
cedure for which the licensee does not have
sufficient training or experience.

(Ks. Med. Soc.)

K.B.A. note: Concern that (1) settlements
aren't considered in licensing and (2) board
sets standard of care and then determines
whether standard is met.

failure to adhere to the applicable standard
of care to a degree which constitutes
(Snowbarger)

0565 fraudulent or false advertisements, or profiting by the acts of
0566 those representing themselves to be agents of the licensee.

0567 (2) ~~Receipt of fees on the assurance~~ *Representing to a patient*
0568 that a manifestly incurable disease, *condition or injury* can be
0569 permanently cured.

0570 (3) Assisting in the care or treatment of a patient without the
0571 consent of the patient, the attending physician or the patient's
0572 legal representatives.

0573 (4) The use of any letters, words, or terms, as an affix, on
0574 stationery, in advertisements, or otherwise indicating that such
0575 person is entitled to practice a branch of the healing arts for
0576 which such person is not licensed.

0577 (5) Performing, procuring or aiding and abetting in the per-
0578 formance or procurement of a criminal abortion.

0579 (6) Willful betrayal of confidential information.

0580 (7) Advertising professional superiority or the performance of
0581 professional services in a superior manner.

0582 (8) Advertising to guarantee any professional service or to
0583 perform any operation painlessly.

0584 (9) Participating in any action as a staff member of a medical
0585 care facility which is designed to exclude or which results in the
0586 exclusion of any person licensed to practice medicine and sur-
0587 gery from the medical staff of a nonprofit medical care facility
0588 licensed in this state because of the branch of the healing arts
0589 practiced by such person or without just cause.

0590 (10) Failure to effectuate the declaration of a qualified pa-
0591 tient as provided in subsection (a) of K.S.A. 65-28,107 and
0592 amendments thereto.

0593 (11) Prescribing, ordering, dispensing, administering, sell-
0594 ing, supplying or giving any amphetamines or sympathomimetic
0595 amines, except as authorized by K.S.A. 65-2837a *and amend-*
0596 *ments thereto.*

0597 (12) *Conduct likely to deceive, defraud or harm the public.*

0598 (13) *Making a false or misleading statement regarding the*
0599 *licensee's skill or the efficacy or value of the drug, treatment or*
0600 *remedy prescribed by the licensee or at the licensee's direction*
0601 *in the treatment of any disease or other condition of the body or*

0602 mind.

0603 (14) Aiding or abetting the practice of the healing arts by an
0604 unlicensed, incompetent or impaired person.

0605 (15) Allowing another person or organization to use the
0606 licensee's license to practice medicine.

0607 (16) Commission of any act of sexual abuse, misconduct or
0608 exploitation related to the licensee's practice of medicine.

0609 (17) The use of any false, fraudulent or deceptive statement
0610 in any document connected with the practice of the healing arts.

0611 (18) Obtaining any fee by fraud, deceit or misrepresentation.

0612 (19) Directly or indirectly giving or receiving any fee, com-
0613 mission, rebate or other compensation for professional services
0614 not actually and personally rendered, other than through the
0615 legal functioning of lawful professional partnerships, corpora-
0616 tions or associations.

0617 (20) Failure to transfer medical records to another physician
0618 when requested to do so by the subject patient or by such
0619 patient's legally designated representative.

0620 (c) "False advertisement" means any advertisement which is
0621 false, misleading or deceptive in a material respect. In deter-
0622 mining whether any advertisement is misleading, there shall be
0623 taken into account not only representations made or suggested
0624 by statement, word, design, device, sound or any combination
0625 thereof, but also the extent to which the advertisement fails to
0626 reveal facts material in the light of such representations made.

0627 (d) "Advertisement" means all representations disseminated
0628 in any manner or by any means, for the purpose of inducing, or
0629 which are likely to induce, directly or indirectly, the purchase of
0630 professional services.

0631 Sec. 36. K.S.A. 65-2838 is hereby amended to read as fol-
0632 lows: 65-2838. (a) The board shall have jurisdiction of the pro-
0633 ceedings to ~~revoke, suspend or limit the license of~~ take discipli-
0634 nary action authorized by K.S.A. 65-2836 and amendments
0635 thereto against any licensee practicing under this act. Any such
0636 action ~~for the revocation, suspension or limitation of a license~~
0637 shall be taken in accordance with the provisions of the Kansas
0638 administrative procedure act.

(21) performing unnecessary tests, examinations or services which have no legitimate medical purpose.

(22) charging an excessive fee for services rendered.

(23) prescribing, dispensing, administering, distributing a prescription drug or substance, including all controlled substances in an excessive, improper or inappropriate manner or quantity or not in the course of the physician's professional practice.

(24) repeated failure to practice medicine and surgery or chiropractic with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

(25) obtaining fees by use of fraud, misrepresentation, deceit, trickery or other illegal means.

(26) failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and test results.

(27) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

(28) using experimental forms of therapy without proper informed patient consent or without conforming to generally accepted criteria, standard protocols, or without keeping detailed legible records, without having periodic analysis of the study and results reviewed by a committee or peers.

(Ks. Med. Soc.)

0639 (b) Either before or after formal charges have been filed, the
0640 board and the licensee may enter into a stipulation which shall
0641 be binding upon the board and the licensee entering into such
0642 stipulation, and the board may enter its findings of fact and
0643 enforcement order based upon such stipulation without the
0644 necessity of filing any formal charges or holding hearings in the
0645 case. An enforcement order based upon a stipulation may ~~revoke;~~
0646 ~~suspend or limit the license of order any disciplinary action~~
0647 *authorized by K.S.A. 65-2836 and amendments thereto against*
0648 the licensee entering into such stipulation.

0649 (c) The board may temporarily suspend or temporarily limit
0650 the license of any licensee in accordance with the emergency
0651 adjudicative proceedings under the Kansas administrative pro-
0652 cedure act if the board determines that there is cause to believe
0653 that grounds exist under K.S.A. 65-2836 and amendments
0654 thereto; ~~for the revocation, suspension or limitation of the license~~
0655 ~~of a disciplinary action authorized by K.S.A. 65-2836 and~~
0656 *amendments thereto against the licensee and that the licensee's*
0657 continuation in practice would constitute an imminent danger to
0658 the public health and safety.

0659 Sec. 37. K.S.A. 65-2840a is hereby amended to read as fol-
0660 lows: 65-2840a. The state board of healing arts shall appoint a
0661 disciplinary counsel, who shall not otherwise be an attorney for
0662 the board, with *the* duties as set out in this act. The disciplinary
0663 counsel shall be an attorney admitted to practice law in the state
0664 of Kansas. The disciplinary counsel shall have the power and the
0665 duty to investigate or cause to be investigated all matters in-
0666 volving professional incompetency, unprofessional conduct or
0667 any other matter which may result in ~~revocation, suspension or~~
0668 ~~limitation of a license disciplinary action against a licensee~~
0669 pursuant to K.S.A. 65-2836 to ~~65-2844, inclusive through 65-~~
0670 *2844*, and amendments thereto. In the performance of these
0671 duties, the disciplinary counsel may apply to any court having
0672 power to issue subpoenas for an order to require by subpoena the
0673 attendance of any person or by subpoena *duces tecum* the pro-
0674 duction of any records for the purpose of the production of any
0675 information pertinent to an investigation. Subject to approval by

0676 the state board of healing arts, the disciplinary counsel shall
0677 employ clerical and other staff necessary to carry out the duties
0678 of the disciplinary counsel. The state board of healing arts may
0679 adopt rules and regulations necessary to allow the disciplinary
0680 counsel to properly perform the functions of such position under
0681 this act.

0682 Sec. 38. K.S.A. 65-2898a is hereby amended to read as fol-
0683 lows: 65-2898a. (a) Any complaint or report, record or other
0684 information relating to a complaint which is received, obtained
0685 or maintained by the board shall be confidential and shall not be
0686 disclosed by the board or its employees in a manner which
0687 identifies or enables identification of the person who is the
0688 subject or source of such information except:

0689 (1) In a disciplinary proceeding conducted by the board
0690 pursuant to law or in an appeal of the order of the board entered
0691 in such proceeding, or to any party to such proceeding or appeal
0692 or such party's attorney.

0693 (2) To the proper licensing or disciplinary authority of an-
0694 other jurisdiction, if the person's license to practice in this state
0695 has been at any time revoked, suspended or limited *any disci-*
0696 *plinary action authorized by K.S.A. 65-2836 and amendments*
0697 *thereto has at any time been taken against the licensee* or the
0698 board has at any time denied a license to the person.

0699 (3) To a hospital committee which is authorized to grant,
0700 limit or deny hospital privileges, if the person's license to pra-
0701 *ctice in this state has been at any time revoked, suspended or*
0702 *limited any disciplinary action authorized by K.S.A. 65-2836*
0703 *and amendments thereto has at any time been taken against the*
0704 *licensee* or if the board has at any time denied a license to the
0705 person.

0706 (4) To the person who is the subject of the information, but
0707 the board may require disclosure in such a manner as to prevent
0708 identification of any other person who is the subject or source of
0709 the information.

0710 (b) This section shall be part of and supplemental to the
0711 Kansas healing arts act.

0712 Sec. 39. K.S.A. 65-28,121 is hereby amended to read as fol-

0713 lows: 65-28,121. (a) If the medical staff of any firm, facility,
 0714 corporation, institution or association which has granted practice
 0715 privileges to, or which has employed or is employing, any person
 0716 licensed, registered or certified by the state board of healing arts,
 0717 recommends that the practice privileges of any such person be
 0718 terminated, suspended or restricted for reasons relating to such
 0719 person's professional competence or finds that such person has
 0720 committed an act which is a ground for the revocation, suspen-
 0721 sion or limitation of such person's license, registration or certifi-
 0722 cation under law, the chief of the medical staff shall immediately
 0723 report the same, under oath, to the state board of healing arts. If
 0724 the medical staff has not made such a recommendation or find-
 0725 ing, but the governing board of any such firm, facility, corpora-
 0726 tion, institution or association has made such recommendation or
 0727 finding, the chief administrative officer thereof shall immedi-
 0728 ately report the same, under oath, to the state board of healing
 0729 arts.

0730 (b) Any report made pursuant to this section shall contain the
 0731 name and business address of the chief of the medical staff or the
 0732 chief administrative officer making the report and of the person
 0733 named in the report, information regarding the report, and any
 0734 other information which the chief of the medical staff or the chief
 0735 administrative officer believes might be helpful in an investiga-
 0736 tion of the case. (a) *A medical care facility licensed under K.S.A.*
 0737 *65-425 et seq. and amendments thereto shall, and any person*
 0738 *may, report under oath to the state board of healing arts any*
 0739 *information such facility or person has which appears to show*
 0740 *that a person licensed to practice the healing arts has committed*
 0741 *an act which may be a ground for disciplinary action pursuant*
 0742 *to K.S.A. 65-2836 and amendments thereto.*

0743 (b) *A medical care facility shall inform the state board of*
 0744 *healing arts whenever the [medical care facility recommends*
 0745 *that the] practice privileges of any person licensed to practice*
 0746 *the healing arts be terminated, suspended or restricted or*
 0747 *whenever such privileges are voluntarily surrendered or limited*
 0748 *for reasons relating to such person's professional competence.*

0749 (c) *Any medical care facility which fails to report within 30*

(strike) (Ks. Med. Soc.)

0750 *days after the receipt of information required to be reported by*
0751 *this section shall be reported by the state board of healing arts*
0752 *to the secretary of health and environment and shall be subject,*
0753 *after proper notice and an opportunity to be heard, to a civil*
0754 *fine assessed by the state board of healing arts in an amount not*
0755 *exceeding \$1,000 per day for each day thereafter that the in-*
0756 *cident is not reported. All fines assessed and collected under this*
0757 *section shall be remitted promptly to the state treasurer. Upon*
0758 *receipt thereof, the state treasurer shall deposit the entire*
0759 *amount in the state treasury and credit it to the state general*
0760 *fund.*

0761 Sec. 40. K.S.A. 65-28,122 is hereby amended to read as fol-
0762 lows: 65-28,122. (a) Any person licensed to practice the healing
0763 arts who possesses knowledge not subject to the physician-pa-
0764 tient privilege that another person so licensed has committed
0765 any act enumerated under K.S.A. 65-2836 and amendments
0766 thereto which *is may be* a ground for ~~the revocation, suspension~~
0767 ~~or limitation of a license~~ *disciplinary action pursuant to K.S.A.*
0768 *65-2836 and amendments thereto shall immediately report such*
0769 *knowledge, under oath, to the state board of healing arts. A*
0770 *person licensed to practice the healing arts who possesses such*
0771 *knowledge not subject to the physician-patient privilege con-*
0772 *cerning another person so licensed shall reveal fully such*
0773 *knowledge upon proper official request of the state board of*
0774 *healing arts.*

0775 (b) This section shall be part of and supplemental to the
0776 Kansas healing arts act.

0777 Sec. 41. K.S.A. 65-4902 is hereby amended to read as fol-
0778 lows: 65-4902. The district judge or, if the district court has more
0779 than one division, the administrative judge of such court shall
0780 notify the parties to the action that a screening panel has been
0781 convened and that the members of such screening panel are to
0782 be appointed within ~~ten (10)~~ 10 days of the receipt of such notice.
0783 If the plaintiff and the defendant or, if no petition has been filed,
0784 the claimant and the party against whom the claim is made are
0785 unable to jointly select a health care provider within ~~ten (10)~~ 10
0786 days after receipt of notice that a screening panel has been

0787 convened, the judge of the district court or, if the district court
 0788 has more than one division, the administrative judge of such
 0789 court shall select such health care provider. Members of such
 0790 screening panel shall receive compensation and expenses as may
 0791 be provided by rules of the supreme court of Kansas.

0792 Sec. 42. K.S.A. 65-4904 is hereby amended to read as fol-
 0793 lows: 65-4904. (a) Within ~~ninety (90)~~ 90 days after the screening
 0794 panel is commenced, such panel shall make written recommen-
 0795 dations on the issue of whether the health care provider departed
 0796 from the standard of care in a way which caused the plaintiff or
 0797 claimant damage. A concurring or dissenting member of the
 0798 screening panel may file a written concurring or dissenting
 0799 opinion. All written opinions shall be supported by corroborat-
 0800 ing references to published literature and other relevant docu-
 0801 ments.

0802 (b) The screening panel shall notify all parties when its
 0803 determination is to be handed down, and, within seven (7) days
 0804 of its decision, shall provide a copy of its opinion and any
 0805 concurring or dissenting opinion to each party and each attorney
 0806 of record and to the judge of the district court or, if the district
 0807 court has more than one division, the administrative judge of
 0808 such court. The screening panel shall also provide a copy of its
 0809 opinion and any concurring or dissenting opinions, and the
 0810 reasons therefor, to the commissioner of insurance.

0811 (c) The written report of the screening panel shall ~~not be~~
 0812 ~~admitted into evidence~~ *be admissible* in any subsequent legal
 0813 proceeding, ~~but~~ *and* either party may subpoena any and all
 0814 members of the panel as witnesses for examination relating to
 0815 the issues at trial.

0816 Sec. 43. K.S.A. 65-4907 is hereby amended to read as fol-
 0817 lows: 65-4907. ~~Unless otherwise provided by order of the judge~~
 0818 ~~of the district court or, if the district court has more than one~~
 0819 ~~division, the administrative judge of such court, the costs shall be~~
 0820 ~~allowed to the party in whose favor the final determination of the~~
 0821 ~~screening panel was made.~~ (a) *Each health care provider*
 0822 *member of the screening panel shall be paid a total of \$150 for*
 0823 *all work performed as a member of the panel exclusive of time*

return to current language (K.T.L.A.)

(d) If the screening panel, by unanimous vote, determines that the health care provider did not depart from the standard of care in a way which caused the plaintiff or claimant damage, the plaintiff or claimant shall be assessed court costs and defendant's reasonable expenses of defending the claim, including reasonable attorney fees, if at trial the defendant prevails.

(Rep. Buehler)

0824 involved if called as a witness to testify in court, and in addition
0825 thereto, reasonable travel expense. The chairperson of the panel
0826 shall be paid a total of \$250 for all work performed as a member
0827 of the panel exclusive of time involved if called as a witness to
0828 testify in court, and in addition thereto reasonable travel ex-
0829 penses. The chairperson shall keep an accurate record of the
0830 time and expenses of all the members of the panel, and the
0831 record shall be submitted to the parties for payment with the
0832 panel's report.

0833 (b) Costs of the panel including travel expenses and other
0834 expenses of the review shall be paid by the side in whose favor
0835 the majority opinion is written. If the panel is unable to make a
0836 recommendation, then each side shall pay $\frac{1}{2}$ of the costs. Items
0837 which may be included in the taxation of costs shall be those
0838 items enumerated by K.S.A. 60-2003 and amendments thereto.

0839 New Sec. 44. If any provisions of this act or the application
0840 thereof to any person or circumstances is held invalid, the
0841 invalidity shall not affect other provisions or applications of the
0842 act which can be given effect without the invalid provisions or
0843 application and, to this end, the provisions of this act are sever-
0844 able.

0845 Sec. 45. K.S.A. 7-121b, 65-430, 65-2809, 65-2812, 65-2813,
0846 65-2814, 65-2822, 65-2833, 65-2836, 65-2837, 65-2838, 65-2840a,
0847 65-2898a, 65-28,121, 65-28,122, 65-4902, 65-4904 and 65-4907
0848 and K.S.A. 1985 Supp. 40-3003, 40-3401, 40-3403, 40-3404 and
0849 40-3408 are hereby repealed.

0850 Sec. 46. This act shall take effect and be in force from and
0851 after its publication in the statute book.

Solbach suggestion: Add a section that
strengthens current frivolous law suit
statute.

0304 vices required due to the negligent rendering of or failure to
0305 render professional services by the liable health care provider.

0306 New Sec. 12. (a) In any medical malpractice liability action:

0307 (1) The total amount recoverable for all claims for nonecon-
0308 omic loss shall not exceed \$250,000; and

0309 (2) ~~the total amount recoverable for all claims shall not ex-~~
0310 ~~ceed \$1,000,000.~~

subject to K.S.A. 40-3403 and amendments thereto,

0311 (b) If a medical malpractice liability action is tried to a jury,
0312 the court shall not instruct the jury on the limitations imposed by
0313 this section. ←

nor the ability of a claimant to obtain supplemental funds under K.S.A. 40-3403 and amendments thereto.

0314 (c) In a medical malpractice liability action, after deduction
0315 of amounts pursuant to K.S.A. 60-258a and amendments thereto:

0316 (1) If the verdict results in an award for noneconomic loss
0317 which exceeds \$250,000, the court shall enter judgment for
0318 \$250,000 for all claims for noneconomic loss and shall apportion
0319 that amount among the claimants.

0320 (2) If the verdict results in an award for current economic loss
0321 which exceeds the difference between \$1,000,000 and the
0322 amount of the judgment entered for damages for noneconomic
0323 loss, the court shall enter judgment for an amount equal to such
0324 difference for all claims for current economic loss and shall
0325 apportion that amount among the claimants.

0326 (3) If the sum of the judgments entered for noneconomic loss
0327 and for current economic loss is \$1,000,000 or more, no judgment
0328 shall be entered for future economic loss. If the sum of such
0329 judgments is less than \$1,000,000 and the verdict results in an
0330 award for future economic loss which exceeds the difference
0331 between \$1,000,000 and the sum of such judgments, the court
0332 shall enter judgment for an annuity contract which: (A) Has a
0333 present value equal to such difference or, if there is more than
0334 one claimant, for annuity contracts apportioned among the
0335 claimants which have an aggregate present value equal to such
0336 difference; and (B) which, to the greatest extent possible, will
0337 provide for the payment of benefits over the period of time
0338 specified in the verdict in the amount awarded by the verdict for
0339 future economic loss.

0340 (d) The provisions of this section shall not be construed to

0711 claims;

0712 (C) *provide* advice, information and testimony to the appro-
0713 priate licensing or disciplinary authority regarding the qualifi-
0714 cations of a health care provider;

0715 (D) *approve the rating schedule formulated by the commis-*
0716 *sioner to impose the higher surcharge required by subsection*
0717 *(c)(2) of K.S.A. 40-3404 and amendments thereto.*

0718 (2) The board shall consist of 13 persons appointed by the
0719 commissioner of insurance, as follows: (A) The commissioner of
0720 insurance, or the designee of the commissioner, who shall act as
0721 chairperson; (B) one member appointed from the public at large
0722 who is not affiliated with any health care provider; (C) three
0723 members licensed to practice medicine and surgery in Kansas
0724 who are doctors of medicine; (D) three members who are repre-
0725 sentatives of Kansas hospitals; (E) two members licensed to
0726 practice medicine and surgery in Kansas who are doctors of
0727 osteopathic medicine; (F) one member licensed to practice
0728 chiropractic in Kansas; and (G) two members of other categories
0729 of health care providers. Meetings shall be called by the chair-
0730 person or by a written notice signed by three members of the
0731 board. The board, in addition to other duties imposed by this act,
0732 shall study and evaluate the operation of the fund and make such
0733 recommendations to the legislature as may be appropriate to
0734 ensure the viability of the fund.

0735 (3) The board shall be attached to the insurance department
0736 and shall be within the insurance department as a part thereof.
0737 All budgeting, purchasing and related management functions of
0738 the board shall be administered under the direction and super-
0739 vision of the commissioner of insurance. All vouchers for ex-
0740 penditures of the board shall be approved by the commissioner
0741 of insurance or a person designated by the commissioner.

0742 (c) Subject to subsections (d), (e) ~~and (g)~~ (f) and (i), the fund
0743 shall be liable to pay: (1) Any amount due from a judgment or
0744 settlement which is in excess of the basic coverage liability of all
0745 liable resident health care providers or resident self-insurers for
0746 any such injury or death arising out of the rendering of or the
0747 failure to render professional services within or without this

(E) review and determine claims for supp-
lemental grants under section 25 of this
act.

0047 sions of K.S.A. 75-3738 ~~to 75-3744, inclusive through 75-3744,~~
 0048 and amendments thereto, but shall not be subject to the provi-
 0049 sions of K.S.A. 75-4101 and amendments thereto; ~~(7)~~ (8) reason-
 0050 able and necessary actuarial expenses incurred in administering
 0051 the act, which expenditures shall not be subject to the provisions
 0052 of K.S.A. 75-3738 ~~to 75-3744, inclusive through 75-3744,~~ and
 0053 amendments thereto; ~~(8)~~ (9) annually to the plan or plans, any
 0054 amount due pursuant to subsection (a)(3) of K.S.A. 40-3413, and
 0055 amendments thereto; and ~~(9)~~ (10) reasonable and necessary ex-
 0056 penses incurred by the insurance department and the board of
 0057 governors in the administration of the fund;

0058 (d) All amounts for which the fund is liable pursuant to
 0059 paragraphs (1), (2), (3) ~~or~~, (4) ~~or~~ 5 of subsection (c) ~~of this section~~
 0060 shall be paid promptly and in full ~~if less than \$300,000, or if,~~
 0061 *except that, in any case arising out of a cause of action which*
 0062 *accrued before July 1, 1986, if the amount for which the fund is*
 0063 *liable is \$300,000 or more, it shall be paid by installment pay-*
 0064 *ments of \$300,000 or 10% of the amount of the judgment includ-*
 0065 *ing interest thereon, whichever is greater, per fiscal year, the*
 0066 *first installment to be paid within 60 days after the fund becomes*
 0067 *liable and each subsequent installment to be paid annually on*
 0068 *the same date of the year the first installment was paid, until the*
 0069 *claim has been paid in full; and any attorney's attorney fees*
 0070 *payable from such installment shall be similarly prorated.*

0071 (e) In no event shall the fund be liable to pay in excess of
 0072 \$3,000,000 pursuant to any one judgment or settlement against
 0073 any one health care provider relating to any injury or death
 0074 arising out of the rendering of or the failure to render profes-
 0075 sional services ~~from~~ on and after July 1, 1984, *and before July 1,*
 0076 *1986, subject to an aggregate limitation for all judgments or*
 0077 *settlements arising from all claims made in any one fiscal year in*
 0078 *the amount of \$6,000,000 for each provider.*

0079 ~~(f) In no event shall the fund be liable to pay in excess of~~
 0080 ~~\$1,000,000 pursuant to any one judgment or settlement against~~
 0081 ~~any one health care provider relating to any injury or death~~
 0082 ~~arising out of the rendering of or the failure to render profes-~~
 0083 ~~sional services on and after July 1, 1986, subject to an aggregate~~

and (11) amounts authorized by the Board of Governors pursuant to §25;

(f) Except as provided in section 25 of this Act, the fund shall not

0084 *limitation for all judgments or settlements arising from all claims*
 0085 *made in any one fiscal year in the amount of \$3,000,000 for each*
 0086 *provider.*

0087 (g) A health care provider shall be deemed to have qualified
 0088 for coverage under the fund: (1) On and after the effective date of
 0089 this act if basic coverage is then in effect; (2) subsequent to the
 0090 effective date of this act, at such time as basic coverage becomes
 0091 effective; or (3) upon qualifying as a self-insurer pursuant to
 0092 K.S.A. 40-3414 and amendments thereto.

0093 ~~(g)~~ (h) *A health care provider who is qualified for coverage*
 0094 *under the fund shall have no vicarious liability or responsibility*
 0095 *for any injury or death arising out of the rendering of or the*
 0096 *failure to render professional services inside or outside this*
 0097 *state by any other health care provider who is also qualified for*
 0098 *coverage under the fund.*

0099 (i) Notwithstanding the provisions of K.S.A. 40-3402 and
 0100 amendments thereto, if the board of governors determines *due to*
 0101 *the number of claims filed against a health care provider and*
 0102 *the outcome of those claims* that an individual health care
 0103 provider presents a material risk of significant future liability to
 0104 the fund, the board of governors is authorized by a vote of a
 0105 majority of the members thereof, after notice and an opportunity
 0106 for hearing, to terminate the liability of the fund for all claims
 0107 against the health care provider for damages for death or per-
 0108 sonal injury arising out of the rendering of or the failure to render
 0109 professional services after the date of termination. The date of
 0110 termination shall be 30 days after the date of the determination
 0111 by the board of governors. The board of governors, upon termi-
 0112 nation of the liability of the fund under this subsection ~~(g)~~, shall
 0113 notify the licensing or other disciplinary board having jurisdic-
 0114 tion over the health care provider involved of the name of the
 0115 health care provider and the reasons for the termination.

0116 Sec. 25. K.S.A. 1985 Supp. 40-3404 is hereby amended to
 0117 read as follows: 40-3404. (a) Except for any health care provider
 0118 whose participation in the fund has been terminated pursuant to
 0119 subsection ~~(g)~~ (i) of K.S.A. 40-3403 and amendments thereto, the
 0120 commissioner shall levy an annual premium surcharge on each

New Sec. 25. (A) As used in this section "Medical care and related benefits" has the meaning given to it under section 11 of this Act.

(b) In the event a claimant has been awarded the maximum amount allowable for all claims as provided by sections 12 and 14 of this act, and the amount so awarded has been exhausted in the payment of medical care and related benefits, and the amount so awarded is substantially insufficient to pay for future medical care and related benefits, the Board of Governors may, in its discretion, grant the claimant supplemental benefits to pay for future medical care and related benefits. Any application for supplemental benefits shall be on a form promulgated by the commissioner.

(c) The claimant has the burden of showing the Board that all of the amounts awarded for medical care and related benefits pursuant to sections 12 and 14 have been actually used to pay for medical care and related benefits, and that the amounts awarded are insufficient to pay for future medical care and related benefits.

(d) In reaching its decision on whether to grant supplemental benefits, the Board shall consider the following: (i) the needs of the claimant; (ii) the availability of collateral source or governmental benefits to the claimant; (iii) the ability of the Fund to pay supplemental benefits.

(e) In no event shall the supplementary grant when added to the amount previously received exceed the amount specified in the jury verdict for medical care and related benefits nor the amount actually necessary to pay for medical care and related benefits. Such a grant may be in the form of an annuity contract.



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February 7, 1986

The Honorable Joe Knopp
State Representative
Statehouse
Topeka, KS 66612

re: Taxability of annuities, HB 2661


Dear Joe,

Robert Laing, the JD-CLU who looked at the annuities part of the referenced bill for us, also looked at the marked up bill that I sent to him. He suggests the following additional language on page 9 of the markup, and the bottom of the page after the period in line 339 and after the other proposed language:

"The fund will remain the owner of the annuity at all times. The judgment shall incorporate the terms of the annuity payments which shall be fixed and determinable as to amounts and dates of payment. The claimant shall have no right to accelerate, defer, increase or decrease such payments. The judgment shall be in such form as is necessary in order to assure that the annuity payments to the claimant will be excluded from claimant's taxable income under United States internal revenue code section 104(a)(2)."

Mr. Laing believes this additional language added at this point in the bill will insure that the plaintiff's annuity compensation will not be taxed as income, and will meet the concept he outlined in his letter that was part of Gary McCallister's presentation.

Sincerely yours,


Ronald D. Smith
Legislative Counsel

RDS/s

cc: Members, Judiciary Committee
Jerry Slaughter
Mary Torrence/Mike Heim