Approved February 1, 1989
Date

MINUTES OF THE House COMMITTEE ON Insurance.

The meeting was called to order by Dale Sprague at
Chairperson

3:30 a.m./p.m. on January 26, 1989 in room 531-n of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research
Bill Edds, Revisor of Statutes
Patti Kruggel, Committee Secretary

Conferees appearing before the committee:

Jerry Slaughter, Kansas Medical Society
Ted Fay, Insurance Department

Others Present: (Attachment 1)

The Chairman called the meeting to order at 3:40 p.m. and the Committee resumed hearing on HB 2047.

HB 2047 --

An Act abolishing the health care stabilization fund and eliminating the requirement that health care providers maintain professional liability insurance; establishing the medical malpractice liability liquidation fund for the purpose of liquidating liabilities of the health care stabilization fund; providing for the administration of such fund; providing for the adoption of a plan designed to amortize such liability; amending K.S. A. 40-3416, 40-3422, and 40-3423 and K.S.A. Supp. 40-3401 and repealing the existing sections.

Jerry Slaughter, Kansas Medical Society, provided testimony in opposition of HB 2047, and presented a proposal by the Kansas Medical Society of a tentative recommendation. (Attachment 2.) Mr. Slaughter advised the Committee to be deliberate and caution in the abolishment of the Fund, and recommended getting a second opinion from an actuary, possibly chosen by the Committee.

Ted Fay, Attorney for the Health Care Stabilization Fund and testifying on behalf of the Insurance Commissioner, also presented opposition of HB 2047 due to the mechanical problems with the bill. (Attachment 3) Mr. Fay also passed out a written request from the Board of Governors who oppose the bill and would like to see the Fund continue under different circumstances. (Attachment 4)

A Memorandun from Fletcher Bell, Commissioner of Insurance was handed to the Chairman and Vice-Chairman (Attachment 5) summarizing medical malpractice experience in Kansas during the fiscal year 1988.

Rep. Turnbaugh asked Tom Bell, Hospital Association, if he could provide the Committee with a survey of what kind of level acceptable to the Hospitals, could the limit be reduced to. Mr. Bell said he would try to have that information available by Monday.

The Chairman reported that discussion on HB 2047 would begin at the next meeting, January 31, 1989.

The meeting was adjourned at 4:50 p.m.

GUEST LIST

COMMITTEE: Insurance Committee DATE: 1/26/89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jerry Slaughter	Topeka	KTLA
Chip Wheelen	Topeka	KMS
Jeff Rockett	Topeka	St. Francis - Wichita
Pam Scott	Topeka	Ks Ins Dept
Jim Oliver	Topeka	Prof Res Ctrs of Ks
Harold Riehm	Topeka	KADA
Michael David	Independence	KADA
Connie Hatton	Topeka	Atty Rep KHA
Tom Bell	Topeka	KHA
Larry Magill	"	I.I.A.K.
Brad Smoot	"	KCTR
Robert Watson	"	KTLA
L M Cornish	"	Ks Assn P/C Cos
Ted Fay	"	KAI
Steve Sanford	"	K.I.D.
Kathleen O'Brien	Lawrence, KS	intern, Rep. O'Neal

KANSAS MEDICAL SOCIETY
1300 Topeka Avenue · Topeka, Kansas 66612 · (913) 235-2383

January 25, 1989

TO: House Insurance Committee

FROM: Jerry Slaughter
Executive Director

SUBJECT: House Bill 2047 - Abolishing the Health Care Stabilization Fund

Thank you for this opportunity to express our qualified support for the concept of abolishing the Health Care Stabilization Fund. We do, however, have some reservations about the technical aspects of terminating the Fund and therefore cannot support HB 2047 in its current form.

We agree that the function of insuring health care providers against liability risks should be a private sector response to the market demand. Unfortunately, history has proven that when the environment is not conducive, the law of supply and demand does not always govern in the manner we expect.

Late last summer we surveyed our membership to get a better handle on physician attitudes towards the Health Care Stabilization Fund, and insurance coverage in general (two graphs are attached to our testimony which illustrate the results). We found physicians to be about evenly divided on whether the Fund should be retained or abolished. While 51% said the Fund should be abolished, 49% said the Fund should be retained either exactly as it is, or retained in a manner that gives them the ability to select lower levels of coverage. When asked about adequacy of insurance coverage, over half of the physicians (56%) indicated they would need at least $1 million of coverage. These results were fairly consistent throughout the sample group, across all specialties and geographical locations. The results clearly substantiate what we have been saying for some time: the overwhelming majority of physicians will continue to carry insurance, and better than half will need access to higher limits of coverage.

In view of the findings outlined above, and after thorough consideration of all relevant factors, the Kansas Medical Society can endorse a reasonable and responsible phase-out of the Health Care Stabilization Fund premised on the following conditions:

1. The Fund must be actuarially sound when it is terminated.

2. Provision should be made to adequately finance the cost of tail coverage.

3. There must be adequate insurance available, including "excess limits" coverage, to meet the needs of Kansas physicians.

We believe that in the absence of these conditions, access to health care in Kansas will deteriorate even further as dislocations in physician practices accelerates. It is extremely important that any policy changes adopted by the Legislature provide incentives for providers to continue practicing in Kansas. Any action that would penalize health care providers by removing insurance protection could worsen what is already a crisis situation.

Our principle concern with HB 2047, the interim committee recommendation, is that the abrupt closing of the Fund would leave many physicians without access to higher limits of insurance coverage, which is exactly the problem we faced in 1976 when the Legislature created the Fund. Clearly, anything that creates more uncertainty and unpredictability in the liability insurance system will only aggravate an already difficult problem of physicians either dropping high risk services, retiring early, or leaving the state altogether.

For these reasons, the Kansas Medical Society proposes a substitute plan for HB 2047 which calls for a gradual, but deliberate, phase-out of the Health Care Stabilization Fund over a five year period. We developed this proposal after a thorough consideration of the many factors which are a part of the equation including: physicians' insurance needs and the cost of that insurance; an uncertain market for "excess" insurance; and the problem of providing "tail" coverage for claims arising after the Fund is terminated.

Basically, our plan would set in motion a "stepped-down" reduction in the level of insurance coverage provided by the Fund (an outline of our proposal is attached to this testimony). This should accomplish two things: 1) as the layer of higher or "excess" limits coverage opens up, we should have more success attracting private insurance companies back into the market so physicians will have such coverage available to them; and 2) as the Fund's exposure is reduced over the next few years, it should significantly lower the dollars needed to properly fund "tail" coverage after the phase-out is completed. Obviously, during the phase-out process the Insurance Commissioner would set the Fund surcharge at a level that would amortize over five years the total amount needed to provide the Fund with an adequate ending balance to pay all claims.

After the five years is up, the Fund would cease providing "excess" coverage, and the mandatory insurance requirement could be repealed. From that point on, physicians would be able to select the level of insurance coverage which is adequate for their needs through the private market.

We strongly recommend that prior to adoption of any plan to phase-out the Fund, that a detailed actuarial analysis be sought from the consultants to the Health Care Stabilization Fund. Whatever approach is chosen, the interim committee's, our proposal, or others, the actuaries should be asked to make an estimate of the needed surcharge for each of the next several years so that phy-

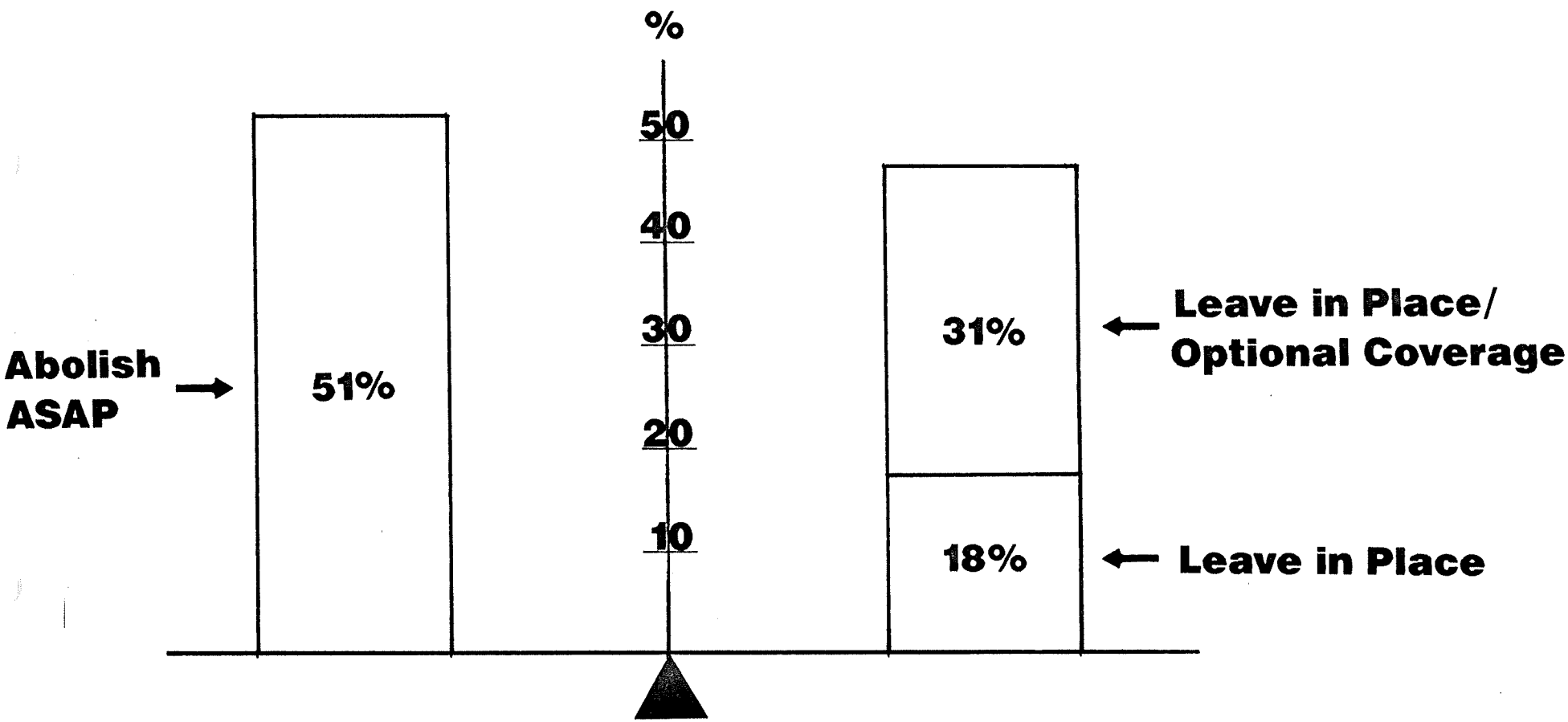
sicians and other health care providers can plan accordingly. It would be unwise to proceed with any dismantling of the Fund without a clear idea of what effect the plan will have on malpractice premiums.

In summary, we do not support HB 2047 because we believe it will worsen the access problem by removing the only source of excess coverage which is available to Kansas physicians without reasonable assurances that the vast majority of physicians will have access to adequate insurance thereafter. We would urge consideration of the plan we have outlined above, and also ask that you move deliberately, and only after the Fund's actuaries have a chance to analyze the proposal and project the surcharges necessary to fund the phase-out process. We think our proposal is a reasonable approach which accomplishes the goal envisioned in HB 2047, but in a manner that causes fewer disruptions in coverage. Thank you for your consideration of these comments.

JS:nb

Attachments

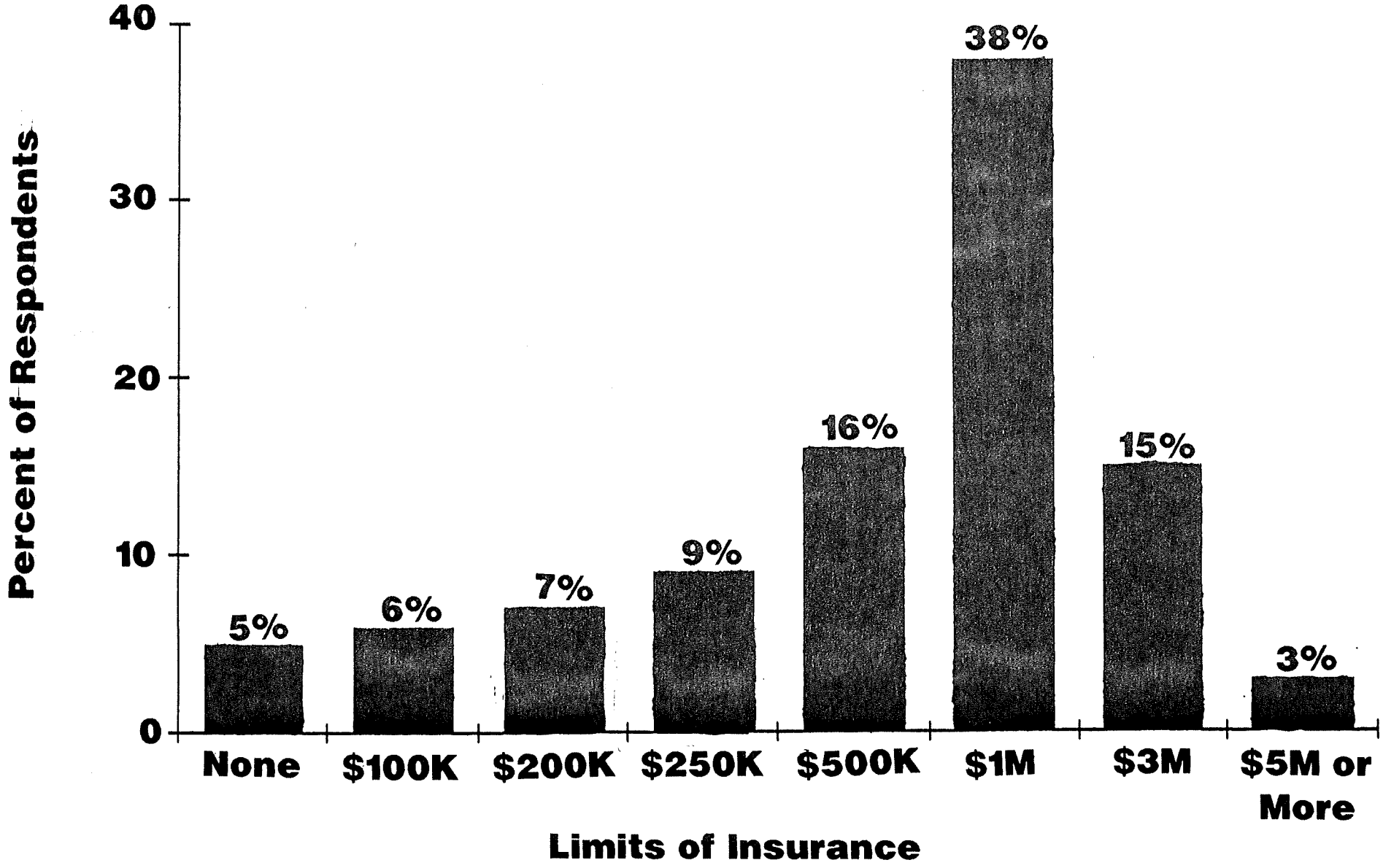
HCSF: Abolish or Maintain



KMS Member Survey
July 1988

Physician Attitudes on Insurance Coverage

July 1988



January 1989

Outline of Kansas Medical Society Proposal to Phase Out the Health Care Stabilization Fund

1. An advisory group would be established to oversee the process of phasing out the Fund. The five members would be:

   a. The Commissioner of Insurance or designee who would serve as Chairman;
   b. Four members appointed by the Governor, three of whom shall be health care providers, and one representative of the insurance industry.

2. The advisory group would annually report to the Governor and the Legislature on the progress of the phase-out process of the Fund, and if adjustments to the plan should be made.

3. The Fund's exposure to liability (coverage) would be stepped down in the following manner:

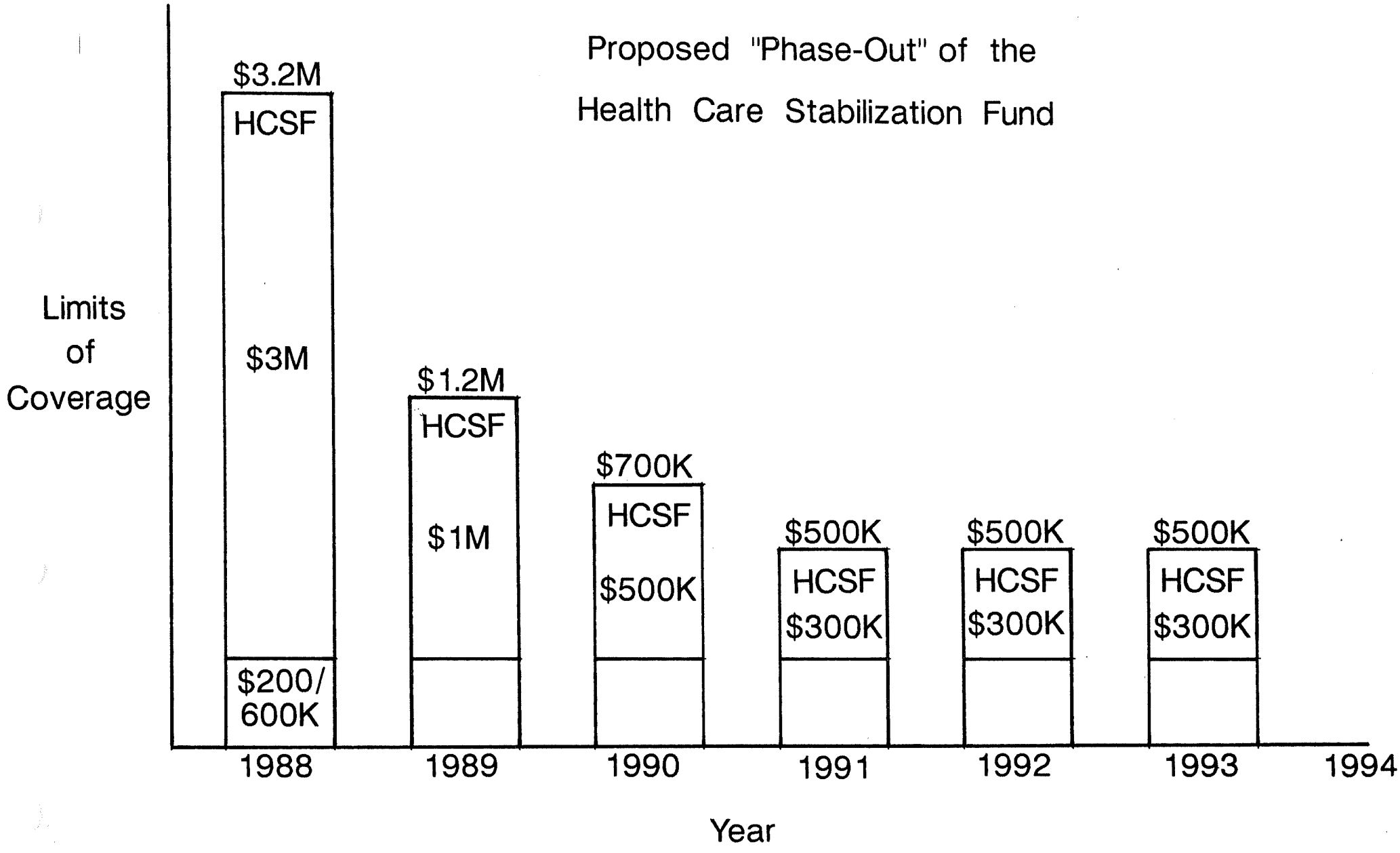
Effective Date	Fund Liability*
Current	$3 million/$9 million
7/1/89	$1 million/$3 million
7/1/90	$500,000/$1.5 million
7/1/91	$300,000/$900,000
7/1/94	$0

*The amount for which the Fund is liable in excess of the $200,000/$600,000 basic coverage.

4. Health care providers would continue to be required to purchase the $200,000/$600,000 basic liability coverage and pay a Fund surcharge until July 1, 1994.

5. During the period from July 1, 1991 through June 30, 1994 the amount of revenue necessary to finance liabilities should be substantially less when compared to the current $3 million exposure. During that time period, it should be possible to collect adequate surcharge amounts to finance all estimated future liabilities for all health care providers that would become inactive on July 1, 1994 (tail coverage for all acts through June 30, 1994).

6. On July 1, 1994 medical malpractice liability insurance would no longer be required as a condition of licensure, and the Fund surcharge would cease.


Proposed "Phase-Out" of the
Health Care Stabilization Fund
Limits
of
Coverage
$3.2M
HCSF
$3M
$200/
600K
$1.2M
HCSF
$1M
$700K
HCSF
$500K
$500K
HCSF
$300K
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$500K
HCSF
$300K
1988
1989
1990
1991
1992
1993
1994
Year

TESTIMONY OF TED F. FAY, JR.
ATTORNEY FOR THE
HEALTH CARE STABILIZATION FUND

ON BEHALF OF

FLETCHER BELL
COMMISSIONER OF INSURANCE

BEFORE THE HOUSE INSURANCE COMMITTEE

JANUARY 25, 1989

I AM TED FAY REPRESENTING FLETCHER BELL, THE KANSAS INSURANCE COMMISSIONER. I WILL NOT GO INTO GREAT DETAIL REGARDING THE SPECIFIC PROVISIONS OF HOUSE BILL 2047 SINCE THE INSURANCE DEPARTMENT SUPPORTS A DIFFERENT PROPOSAL. I WILL SAY, HOWEVER, THAT THERE ARE A NUMBER OF MECHANICAL PROBLEMS WITH HOUSE BILL 2047 WHICH WILL NEED TO BE ADDRESSED IF THIS LEGISLATION IS TO BE ENACTED. FOR EXAMPLE, K.S.A. 40-3403, WHICH PROVIDES THE ADMINISTRATIVE APPARATUS FOR THE FUND, HAS BEEN REPEALED. PERHAPS IT WAS ANTICIPATED THAT THE NEW LIQUIDATION FUND LEGISLATION WOULD CONTAIN THESE PROVISIONS. I SUGGEST, HOWEVER, THAT THE TRANSITION FROM THE EXISTING FUND TO THE LIQUIDATION FUND WILL BE VERY COMPLICATED AND WILL REQUIRE EXTREMELY DETAILED LEGISLATION BOTH TO ABOLISH THE HEALTH CARE STABILIZATION FUND AS WELL AS TO ESTABLISH THE LIQUIDATION FUND. I COULD MENTION OTHER PROVISIONS OF HOUSE BILL 2047 WHICH MAY CAUSE A PROBLEM. FOR EXAMPLE, K.S.A. 40-3408 WHICH ESTABLISHES PRIORITIES BETWEEN INSURERS AND THE FUND, HAS BEEN ABOLISHED. THIS STATUTE IS AN INTEGRAL PART OF THE CLAIMS HANDLING PROCEDURE FOR THE FUND. SIMILARLY, K.S.A. 40-3403 PROVIDES THE

AUTHORITY TO PAY IN PERIODIC PAYMENTS AND I AM CERTAIN THE LEGISLATURE DOES NOT INTEND TO REPEAL THIS PROVISION.

THE HEALTH CARE STABILIZATION FUND WAS ESTABLISHED IN 1976 TO MAKE INSURANCE AVAILABLE FOR HEALTH CARE PROVIDERS, PARTICULARLY HIGH RISK PROVIDERS. THE FUND HAS ACCOMPLISHED THE OBJECTIVE IT WAS INTENDED TO ACCOMPLISH. UNFORTUNATELY, THE LEGISLATURE IN 1976 DID NOT INCLUDE THE TORT REFORM PROVISIONS THAT WERE INCLUDED BY OTHER STATES SUCH AS NEBRASKA AND INDIANA. WITHOUT THESE TORT REFORM PROVISIONS, IT HAS BEEN IMPOSSIBLE TO KEEP LOSSES WITHIN ACCEPTABLE LIMITS. TODAY, ALTHOUGH THE FUND HAS SOLVED THE AVAILABILITY PROBLEM, AN AFFORDABILITY PROBLEM EXISTS. HEALTH CARE PROVIDERS ARE SIMPLY UNABLE TO PAY FOR THE LOSSES BEING ASSESSED AND SERIOUS DISLOCATIONS IN OUR HEALTH CARE SYSTEM ARE, AND WILL CONTINUE, TO OCCUR.

AS A RESULT OF THESE INCREASING COSTS, MANY HEALTH CARE PROVIDERS WOULD LIKE TO TERMINATE THE FUND. NOT ALL HEALTH CARE PROVIDERS FEEL THIS WAY, BUT ENOUGH DO THAT THE KANSAS MEDICAL

SOCIETY IN CONJUNCTION WITH OTHER PROVIDER GROUPS, HAVE PROPOSED PHASING OUT THE FUND OVER THE NEXT FEW YEARS.

WE FULLY REALIZE THAT THE HEALTH CARE STABILIZATION FUND IS FUNDED ENTIRELY BY HEALTH CARE PROVIDERS' MONEY AND WE CAREFULLY MONITOR THE WISHES OF THE HEALTH CARE PROVIDERS AS EXPRESSED THROUGH THEIR PROFESSIONAL ORGANIZATIONS. WE BELIEVE THAT THE PROFESSIONAL ORGANIZATIONS FOR HEALTH CARE PROVIDERS ARE THE MOST RELIABLE BAROMETER OF THE WISHES OF THE MAJORITY OF HEALTH CARE PROVIDERS IN THIS STATE.

OUR ACTUARY, DURING THE SUMMER INTERIM COMMITTEE MEETINGS, COMMENTED THAT THE FUND HAS NOT BEEN OPERATED AS AN INSURANCE COMPANY. HE WENT ON TO LIST THE THINGS AN INSURANCE COMPANY WOULD DO IF THEY WERE THE FUND. THE BOTTOM LINE OF WHAT HE SAID IS THAT A PRIVATE INSURANCE COMPANY WOULD EITHER SUBSTANTIALLY WITHDRAW FROM THE MARKET OR SEVERELY LIMIT COVERAGE. THIS IS THE EXACT REASON THE FUND WAS ESTABLISHED IN 1976 AND WHY INSURANCE WILL NOT BE AVAILABLE AFTER THE FUND IS ABOLISHED. THE FUND EXISTS BECAUSE MANY PRIVATE

INSURERS DO NOT WANT TO WRITE MEDICAL MALPRACTICE INSURANCE FOR MANY KANSAS PROVIDERS AND THOSE WHO DO ARE EXTREMELY SELECTIVE IN WHO THEY INSURE AND THE AMOUNT OF COVERAGE THEY WILL PROVIDE.

YESTERDAY, IT WAS SUGGESTED THAT THE INSURANCE DEPARTMENT IS EQUIVOCATING IN ITS OPINION REGARDING THE DEACTIVATION OF THE FUND. IN TRUTH, WE HAVE CONSISTENTLY TESTIFIED THAT THE MONEY IN THE FUND BELONGS TO HEALTH CARE PROVIDERS. THEY MUST PAY THE DEFICITS IN THE FUND. WE ADMINISTER THE FUND ON THEIR BEHALF AND WILL ABIDE BY THEIR WISHES REGARDING THE FUTURE OF THE FUND.

THIS DOES NOT MEAN THAT WE ARE VERY OPTIMISTIC ABOUT WHAT WILL HAPPEN WHEN THE FUND IS ELIMINATED.

IF THE FUND IS TERMINATED ABRUPTLY AS CALLED FOR BY HOUSE BILL 2047, HEALTH CARE PROVIDERS WILL BE REQUIRED TO PAY APPROXIMATELY $150 MILLION TO MAKE UP THE DEFICIT IN THE FUND. KEEP IN MIND THAT THIS YEAR'S SURCHARGE WILL RAISE APPROXIMATELY $52 MILLION. HOUSE BILL 2047 CREATES A DEFICIT APPROXIMATELY AS LARGE AS THREE YEARS' SURCHARGES. THIS IS A VERY SUBSTANTIAL PAYMENT. IN ADDITION, IF

THE FUND IS ABOLISHED, THE SAME HEALTH CARE PROVIDERS WILL NEED TO PROCURE INSURANCE ON THE OPEN MARKET FOR THE COVERAGE LEVELS THAT THEY DESIRE. WE ARE CERTAIN THAT A SUBSTANTIAL NUMBER OF PROVIDERS WILL NOT PRACTICE IN KANSAS WITHOUT $1 MILLION COVERAGE. THAT COVERAGE IS NOT AVAILABLE IN KANSAS AT THIS TIME FOR MOST PROVIDERS. WE SEE ABSOLUTELY NO EVIDENCE THIS INSURANCE COVERAGE WILL BE AVAILABLE IN THE NEAR FUTURE.

ST. PAUL PRESENTLY INSURES APPROXIMATELY 900 PHYSICIANS OUT OF THE TOTAL OF APPROXIMATELY 3,200 IN KANSAS, AND HAS INDICATED THAT--AT LEAST PRESENTLY--THEY WILL WRITE COVERAGE UP TO $1 MILLION FOR THESE PHYSICIANS. IT SHOULD BE NOTED HOWEVER, THAT ST. PAUL WILL ALMOST CERTAINLY UNDERWRITE THEIR POLICIES. NOT ALL DOCTORS HAVING ST. PAUL INSURANCE AT THE PRESENT TIME ARE GUARANTEED THESE HIGHER COVERAGE LIMITS. MOREOVER, ST. PAUL HAS INDICATED THAT THEY WILL NOT EXPAND THEIR MARKET IN KANSAS AND ST. PAUL WAS ONE OF THE INSURERS THAT SEVERELY RESTRICTED AND EVEN THREATENED TO CEASE WRITING IN KANSAS IN THE EARLY 70'S.

THE MEDICAL PROTECTIVE COMPANY WILL HOPEFULLY CONTINUE TO PROVIDE $200,000 COVERAGE, AND PERHAPS, SLIGHTLY MORE COVERAGE IF THE FUND IS ABOLISHED (ALTHOUGH WE HAVE NO EVIDENCE TO THAT EFFECT). THE MEDICAL PROTECTIVE COMPANY, HOWEVER, HAS MADE IT CLEAR THAT THEY WILL NOT PROVIDE $1 MILLION COVERAGE, AND WE KNOW OF NO COMPANY THAT WILL WRITE EXCESS OVER THE MEDICAL PROTECTIVE COMPANY'S LIMITS AT THIS TIME. THE MEDICAL PROTECTIVE COMPANY INSURES NEARLY 1,500 PROVIDERS IN KANSAS. A FEW ADDITIONAL COMPANIES HAVE EXPRESSED SOME INTEREST IN KANSAS, BUT UPON EXAMINATION THESE COMPANIES, WITH ONE OR TWO EXCEPTIONS, EITHER LACK THE FINANCIAL RESOURCES OR THE APPARENT WILLINGNESS TO WRITE A SUBSTANTIAL PROPORTION OF THE KANSAS MARKET. IF THE FUND WERE ABOLISHED, THERE IS NO DOUBT THAT A NUMBER OF COMPANIES AND RISK RETENTION GROUPS WOULD LOOK AT KANSAS TO PICK AND CHOOSE AMONG THE PROVIDERS WHO WOULD BE WITHOUT INSURANCE. THIS, HOWEVER, STILL LEAVES THE MAJORITY OF HEALTH CARE PROVIDERS IN THIS STATE WITHOUT INSURANCE. THOSE OF US WHO REMEMBER 1976 CAN PREDICT THAT OUR PRESENT PROBLEMS

WITH PROVIDERS LEAVING KANSAS MIGHT BE SMALL COMPARED TO WHAT THEY MIGHT BE IF PROVIDERS ARE UNABLE TO OBTAIN INSURANCE AT A REASONABLE RATE.

IT HAS BEEN SUGGESTED THAT THE KANSAS MEDICAL SOCIETY COMPANY WILL BE ABLE TO ADD CAPACITY TO THE KANSAS MARKET. I AM SURE THIS IS TRUE, BUT THE KANSAS MEDICAL SOCIETY COMPANY WILL NOT HAVE THE FINANCIAL ABILITY TO PROVIDE A SUBSTANTIAL NUMBER OF PROVIDERS WITH $1 MILLION COVERAGE THE FIRST YEAR OR TWO THEY ARE IN BUSINESS. THIS IS A TOTALLY UNREALISTIC EXPECTATION FOR A NEW COMPANY. IT WILL TAKE AT LEAST FOUR OR FIVE YEARS FOR THE KANSAS MEDICAL SOCIETY PROGRAM TO BECOME STRONG ENOUGH FINANCIALLY TO TAKE ON THE ENORMOUS MEDICAL MALPRACTICE RISKS IN OUR KANSAS SYSTEM. IN ADDITION, THE MEDICAL SOCIETY WILL ALSO UNDERWRITE THE RISKS THEY INSURE SO THE FACT THAT WE HAVE A "DOCTOR OWNED" COMPANY BY NO MEANS IS A GUARANTEE OF COVERAGE.

HOW ABOUT THE PLAN? AS YOU HAVE ALREADY BEEN ADVISED, THE PLAN IS UNDERWRITTEN BY THE FUND AND WHEN THE FUND IS GONE, THERE IS NO

BACKING FOR THE PLAN. THIS MEANS THAT THE COMMISSIONER WILL NECESSARILY BE REQUIRED TO IMPOSE A RESIDUAL MARKET MECHANISM ON THE CASUALTY INSURANCE INDUSTRY GENERALLY BECAUSE WITHOUT THE HEALTH CARE STABILIZATION FUND BACK-UP, THE INSURERS WRITING MEDICAL MALPRACTICE ARE NOT SUFFICIENT IN NUMBER TO SUPPORT AN ASSIGNED RISK PLAN, JUA OR SIMILAR MECHANISM. I DO NOT IMAGINE THAT IT WILL BE EASY TO GET THESE INSURANCE COMPANIES TO COME TO OUR DANCE. MOREOVER, IF THEY ARE MADE TO PARTICIPATE, IT IS UNLIKELY THEY WILL AGREE TO A PLAN UNLESS IT IS SELF-SUPPORTING. THIS MEANS PROVIDERS MUST PAY ENOUGH PREMIUMS TO PAY THEIR LOSSES. BECAUSE OF ADVERSE RISK SELECTION, THE COST OF INSURANCE IN THE PLAN FOR EQUIVALENT COVERAGE WILL BE SUBSTANTIALLY MORE THAN THE COST OF MEDICAL MALPRACTICE COVERAGE UNDER OUR PRESENT SYSTEM. ONE OF THE REASONS MANDATORY INSURANCE WAS ENACTED IN 1976 WAS TO AVOID ADVERSE RISK SELECTION FOR THE FUND. THERE ARE NOT ENOUGH PROVIDERS IN KANSAS TO RUN A VOLUNTARY PLAN AT A REASONABLE COST.

IN SHORT, DOING AWAY WITH THE FUND WILL PROBABLY CREATE PAIN AS SEVERE AS THE PAIN HEALTH CARE PROVIDERS ARE SUFFERING TODAY. THE PAIN MAY BE DIFFERENT AND FELT BY DIFFERENT PROVIDERS, BUT IT WILL BE JUST AS GREAT AND WILL RESULT IN JUST AS MUCH CONTROVERSY. IF, HOWEVER, THE PROVIDERS ELECT TO TAKE THEIR CHANCES IN A WORLD WITHOUT A FUND, WE WILL SUPPORT THEIR WISHES AND DO EVERYTHING POSSIBLE TO MAKE THEIR NEW SYSTEM WORK. WE, BY NO MEANS, WANT TO LEAVE THE IMPRESSION THAT WE VIEW THE FUND WITH ANY KIND OF PROPRIETARY INTEREST OR CONSIDER SUGGESTIONS TO TERMINATE THE FUND AS ANY KIND OF TURF BATTLE. AS A MATTER OF FACT, NOTHING WOULD PLEASE US MORE THAN TERMINATION OF THE FUND IF BY SO DOING BOTH THE AFFORDABILITY AND AVAILABILITY PROBLEMS WOULD BE RESOLVED.

WE DO, HOWEVER, STRONGLY RECOMMEND THAT YOU PERMIT THE PROVIDERS TO SELECT THEIR OWN COURSE, PARTICULARLY SINCE IT IS THEIR MONEY. WE UNDERSTAND THE TEMPTATION TO CUT LOSSES BEFORE THE SITUATION GETS WORSE, HOWEVER, TO FORCE PROVIDERS TO ACCEPT A SYSTEM NOT OF THEIR CHOOSING WILL OPEN THE DOOR TO VERY SERIOUS CRITICISM IN THE FUTURE

WHEN THE PAIN WITHOUT THE FUND STARTS TO BE EXPERIENCED, AS IT SURELY WILL BE. THE PROVIDERS HAVE ELECTED TO PHASE OUT THE FUND AS OPPOSED TO AN ABRUPT TERMINATION AND, AS LONG AS THEIR SUGGESTION IS POSSIBLE, WE WILL SUPPORT THEIR RIGHT TO JUDGE HOW THEY WILL EXTRICATE THEMSELVES FROM THEIR PRESENT PROBLEMS.

WE KNOW THE KANSAS LEGISLATURE DOES NOT WISH TO CREATE NEW AND MORE SERIOUS PROBLEMS. THE KANSAS LEGISLATURE HAS DONE EVERYTHING POSSIBLE TO SOLVE THE MEDICAL MALPRACTICE PROBLEM BUT HAS BEEN CONSTANTLY FRUSTRATED BY THE JUDICIAL SYSTEM. IT IS UNDERSTANDABLE WHY YOU MAY WANT TO THROW UP YOUR HANDS OF THE MATTER, BUT YOU MUST BE CAREFUL NOT TO ACT PRECIPITOUSLY.

FINALLY, LET ME POINT OUT A FACT WHICH I AM SURE MOST OF YOU ALREADY KNOW. THE FUND IS OPERATED WITH A MINIMUM OF OVERHEAD. THE COSTS HEALTH CARE PROVIDERS ARE PAYING TO THE FUND IN THEIR SURCHARGE ARE BEING PAID ALMOST EXCLUSIVELY TO PAY JUDGMENTS AND SETTLEMENTS. THE PROVIDERS ARE VIRTUALLY SELF INSURED IN THE FUND. PROVIDERS WHO--AS A CLASS--HAVE NO LOSSES, PAY VIRTUALLY NO

SURCHARGES IN TERMS OF DOLLAR AMOUNTS. PHARMACISTS, E.G. PAY ONLY SLIGHTLY MORE THAN $100 FOR $3.2 MILLION COVERAGE UNDER THE ACT.

BUT, FOR THOSE PROVIDERS WITH HIGH RISKS AND HIGH COSTS UNDER THE FUND, THEIR COSTS WILL NOT BE REDUCED WHEN THE FUND IS ABOLISHED. THEY WILL PAY THE SAME JUDGMENTS, SETTLEMENTS AND DEFENSE COSTS WHETHER THEY HAVE INSURANCE WITH THE FUND OR FROM SOME OTHER SOURCE.

UNTIL LOSSES ARE CONTROLLED, NOTHING THIS LEGISLATURE DOES WITH THE INSURANCE MECHANISM WILL SOLVE THE PROBLEM.

LE/5901

Board of Governors

Health Care Stabilization Fund

January 26, 1989

Not in favor of abolishing the Health Care Stabilization Fund because of serious concern about coverage availability for Health Care Providers in the future.

The Board believes the legislature should consider continuing the Fund under different circumstances.

BOARD OF GOVERNORS

Established by Senate Bill No. 507

The Honorable Fletcher Bell
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LE/3795

MEMORANDUM

TO: Kansas Legislators

FROM: Fletcher Bell
Commissioner of Insurance

SUBJECT: Medical Malpractice Experience
Fiscal Year 1988

DATE: January 25, 1989

Please find attached a report prepared by the Health Care Stabilization Fund summarizing medical malpractice experience in Kansas during fiscal year 1988.

Attached to the Health Care Stabilization Fund report is a copy of the judicial administrator's fiscal year 1988 report, "Jury Verdicts in Tort Cases". Unlike last year, the Health Care Stabilization Fund has not relied on figures contained in the judicial administrator's report. The Health Care Stabilization Fund has determined that the statistical information provided in the judicial administrator's report omits at least two plaintiff verdicts, one in Barton County for $45,000 and one in Sherman County for $248,763 which should certainly be added to the seven reported. The judicial administrator's report also includes three cases in its definition of medical malpractice that did not involve defined health care providers. Cases involving dentists, not covered by the Health Care Stabilization Fund, are not included in the Fund's report. The number and extent of any other omissions or inaccuracies in the judicial administrator's report have not been determined. Nevertheless, for these reasons, we have not attempted to draw any comparison between the Fund's data and the judicial administrator's report. Any attempt to make such comparisons would perpetuate the inaccuracies of the judicial administrator's report.

FB/tp
Attachment
LE/5903

MEDICAL MALPRACTICE EXPERIENCE
FISCAL YEAR 1988

This report by the Commissioner of Insurance summarizes medical malpractice experience in Kansas during fiscal year 1988. The report is based on statistical information gathered by the Health Care Stabilization Fund.

Depositions

In fiscal year 1988 the Health Care Stabilization Fund reports that 620 individual claims were closed in 347 medical malpractice cases. A number of medical malpractice cases involved claims against more than one defendant or health care provider. The 620 claims in fiscal year 1988 were closed as follows.

Cases Closed in Fiscal Year 1988

Disposition	Cases	Claims
Plaintiff verdict, no fund exposure	3*	5
Plaintiff verdict, fund exposure	3*	5
Defendant verdict	23*	33
Settlement, no fund contribution	111	190
Settlement with fund contribution	47	59
Summary judgments	15	15
Dismissed with prejudice	63	99
Dismissed without prejudice	55	102
Coverage denied	28	38
Claim closed without lawsuit	11	11
Denied liability	14	18
Screening panel decision for defendant	19	44
Screening panel decision for plaintiff	1	1
Screening panel dismissed	1	1
	394	621

*Note, the above figures do not coincide with figures reported by the judicial administrator. The judicial administrator's report does not include two medical malpractice plaintiff's verdicts returned in Kansas in fiscal year 1988. The judicial administrator's report indicates only sixteen medical malpractice defense verdicts, while the Health Care Stabilization Fund reports thirty-three defense verdicts in twenty-three cases. The judicial administrator's report also defines medical malpractice to include cases not involving defined health care providers, and does not include jury verdicts against Kansas health care providers from other jurisdictions.

Awards

Five medical malpractice cases were tried to Kansas juries* in fiscal year 1988 that resulted in plaintiff verdicts against Kansas health care providers**. Note, the figures below are actual jury verdicts and do not reflect the amount collected, or possible reductions by the court or by later settlement.

Plaintiff Verdicts

Barton County	$ 45,000***
Bourbon County	$ 50,000
Sherman County	$ 248,763***
Wyandotte County	$ 510,000
Ford County	$1,567,886
Sedgwick County	$2,353,100
Total:	$4,774,749
Average:	$ 795,791

*The above figures do not include cases against Kansas health care providers tried in Federal courts or other jurisdictions. In fiscal year 1988 a St. Louis, Missouri jury returned a $1.7 million verdict against Kansas health care providers.

**The above table does not include three cases included in the judicial administrator's report because these cases did not involve defined health care providers. K.S.A. 40-3401. The cases omitted above involved dentists.

***Note: The judicial administrator's report does not include plaintiff's verdicts returned in Barton County on October 23, 1987 and in Sherman County in March, 1988.

Based on the above figures, the average Kansas jury verdict involving a health care provider is $795,791. If the St. Louis, Missouri jury verdict is considered the average plaintiff's verdict for fiscal year 1988 is $924,964.

Settlements

The Health Care Stabilization Fund settled 59 claims in 47 cases during fiscal year 1988. These claims were settled for a total of $9,408,127. The average settlement value of a case in fiscal year 1988 was $200,173, down 16% from the fiscal year 1987 average of $238,965. Settlement figures only include payments by the Health Care Stabilization Fund. These figures do not include contributions made by primary carriers or non-health care providers.

Settlement Values

Dollar Range	Number of Settlements
$ 1.00 -- $ 9,999	6
$ 10,000 -- $ 49,999	18
$ 50,000 -- $ 99,999	5
$ 100,000 -- $499,999	13
$ 500,000 -- $999,999	3
$1,000,000 or more	2
Total:	47

Average Fund Settlement Value

Fiscal Year 1986	---	$242,334
Fiscal Year 1987	---	$238,965
Fiscal Year 1988	---	$200,173

Claims

In fiscal year 1988, 534 individual claims were reported to the Health Care Stabilization Fund, and 262 lawsuits were filed.

Claims Fiscal Year 1988

Jurisdiction	Cases	Claims
Kansas district courts	208	426
Kansas federal courts	15	28
Out of state courts	39	80
	262	534

Conclusion

The statistical information provided above provides an overview of the medical malpractice experience in Kansas during fiscal year 1988. Unfortunately, these statistics taken in the abstract, without regard to the specifics of any given case, cannot provide a complete picture of medical malpractice in Kansas.

LE/5902

JURY VERDICTS IN TORT CASES

District Courts of the State of Kansas
Fiscal Year 1987-88

A Report By
Office of Judicial Administration
Kansas Judicial Center
301 W. 10th Street
Topeka, KS 66612

December 1988

The comments in the right-hand column of page five are provided by the Health Care Stabilization Fund, and are intended to supplement or correct the information reported by the judicial administrator.

JURY VERDICTS IN TORT CASES

This report summarizes jury awards in Chapter 60 tort cases in the state trial courts of Kansas. The report covers the time period from July 1, 1987 to June 30, 1988.

In addition to the data on jury awards, the report contains information on the number and percentage of trials resulting in a "defendant's verdict," defined as no judgment liability for the defendant.

These studies were made because of interest in the subject of tort litigation and the quest by a variety of institutions for additional information on the subject. Unlike settlement data, jury awards are available from court files and such information can be tabulated and analyzed fairly easily. Jury awards are significant since typically these are the cases where substantive differences of opinion may exist between or among the parties as to the value of a given case.

Since the study covers jury awards, the results of tort cases settled before or during the course of a trial are not included in this report. Further, the data shows only the value that juries determined cases to be worth, not the amount of money the prevailing party actually may have collected, or the amount of money the "losing" party had to pay.

Information for the report was obtained from the clerks of the district court through a special one-page questionnaire. As an aid in compiling the basic data, clerks of the district court were supplied with a computer printout which listed by case number all those civil cases earlier reported as being terminated by jury trial. Tort cases were identified and clerks were asked to pull case files to provide basic information requested on the questionnaire. As a guard against earlier coding errors, clerks were also requested to recheck the other nontort cases on the list of terminated cases to reverify the nature of each case. In the event of a questionable classification, the clerks were to review the file with either the judge presiding over the case or the district administrative judge. Finally, completed questionnaires were screened when received, and a number of calls were made to clarify the data received.

General Data

During the 1987-88 fiscal year, 309 tort cases in state trial courts of Kansas terminated by jury trial. Of this number, 127 cases, 41% of the total, resulted in a defendant's verdict. These totals are essentially unchanged from the previous year. In the remaining 182 cases, the plaintiffs received a money award, with the smallest award being $1.00.

Courts in 55 counties of the state had no cases of the type covered in this report. One hundred twenty-five of the 182 cases resulting in a money award occurred in the four urban counties of the state, with the remaining 57 cases distributed among 46 counties. The map following the appendix to this report shows those counties reporting no jury cases for FY 88.

Nature of Action

The following table details the nature of the tort litigation in the state that went to a jury:

Table One

Motor Vehicle Accidents	180	cases
Medical Malpractice	23	"
Other Professional Malpractice	2	"
Products Liability	8	"
Premises Liability	18	"
Other Personal Injury	24	"
Damage to Property Only	17	"
Other Torts*	37	"
Total	309	cases

Litigation involving motor vehicle accidents accounted for 58% of the tort cases covered by this study and obviously was the largest single category of cases. The percentage of motor vehicle accidents this year is consistent with last year's percentage and with national statistics on this subject.

*Fraud is an example of the type of case charged to this classification.

Jury Awards

Table Two below is a recap of the dollar amount of verdicts, including punitive damages, when applicable, awarded by juries in the state courts of Kansas during FY 88.

Table Two

Dollar Range	Number of Cases	
	All Torts	Motor Vehicle Only
$1.00-$9,999	62	34
$10,000-$49,999	68	51
$50,000-$99,999	18	11
$100,000-$499,999	21	10
$500,000-$999,000	7	3
$1,000,000 or over	6	2
Total Cases	182	111

Largest Awards

Table Three shows additional information on the six cases in the state with jury verdicts of one million dollars or more.

Table Three

County	Nature of Case	Amount
Finney	Motor Vehicle Accident	$1,018,635
Sedgwick	Other Tort	1,025,627
Sedgwick	Motor Vehicle Accident	1,086,123
Ford	Medical Malpractice	1,567,886
Sedgwick	Medical Malpractice	2,353,100
Sedgwick	Products Liability	2,618,648

Medical Malpractice Awards

Since jury awards in medical malpractice cases have been of special interest in recent years, Table Four that follows is a recap of jury awards for this category of injury. There were 23 medical malpractice cases that went to juries in FY 88. There were seven of these cases in which the plaintiff prevailed and received a money award. Sixteen of the cases resulted in a "defendant's verdict."

Table Four

Medical Malpractice

County	Amount
Sedgwick	$ 40,000
Bourbon	50,000
Wyandotte	90,209
Leavenworth	125,000
Wyandotte	510,000
Ford	1,567,886
Sedgwick	2,353,100

The judicial administrator reports seven (7) medical malpractice plaintiff verdicts were returned in Kansas during fiscal year 1988. These awards total $4,736,195. The average award is $676,599.

The judicial administrator's report does not include two plaintiff verdicts returned in Kansas against health care providers. In Barton County a jury awarded $45,000, and in Sherman County a jury awarded $248,763.

Three of the seven plaintiff verdicts reported by judicial administrator also include three cases that do not health care providers as defined by K.S.A. 40-3401. These cases are not included in the Health Care Stabilization Fund's report.

The Health Care Stabilization Fund reports six (6) plaintiff verdicts were returned in Kansas against health care providers. These awards total $4,774,749. The average award is $795,791.

The Health Care Stabilization Fund also reports a $1.7 million verdict was returned in St. Louis, Mo. against Kansas health care providers.

The judicial administrator's report indicates 16 medical malpractice cases resulted in defense verdicts. The Health Care Stabilization reports 23 cases resulting in defense verdicts.

Punitive Damage Awards

During FY 1988, there were 20 tort cases where juries awarded punitive damages to the plaintiff. Detail on these cases is shown in Table Five.

Table Five

Punitive Damages

County	Nature of Case	Amount
Wyandotte	Damage to Property Only	$ 1,000
Douglas	Motor Vehicle Accident	1,800
Kearny	Motor Vehicle Accident	2,000
Wyandotte	Premises Liability	9,500
Gray	Motor Vehicle Accident	10,000
Sedgwick	Motor Vehicle Accident	10,000
Sedgwick	Motor Vehicle Accident	10,000
Douglas	Motor Vehicle Accident	10,000
Leavenworth	Other Tort	16,500
Johnson	Products Liability	30,000
Sedgwick	Other Personal Injury	35,000
McPherson	Other Tort	35,000
Johnson	Motor Vehicle Accident	52,000
Douglas	Motor Vehicle Accident	55,000
Coffey	Motor Vehicle Accident	85,000
Shawnee	Other Professional Malpractice	100,000
Sedgwick	Other Tort	100,000
Johnson	Other Tort	150,000
Sedgwick	Other Tort	400,000
Decatur	Other Tort	526,613

Plaintiff's Recovery

Assuming that a defendant has the financial capacity to pay the amount of verdicts involved in these cases, a plaintiff's recovery may be reduced below levels of the jury decision in personal injury cases. First and foremost, verdicts are reduced by whatever percent of fault that may be assigned by the jury to the plaintiff for the plaintiff's comparative negligence in the incident or accident that was litigated. The data on the preceding tables in this report do not reflect such reductions.

Forty-one of the 182 cases were on appeal at the time this report was prepared. Reductions in recovery remain a possibility under the circumstances, and post-trial settlements in lieu of appeal may have occurred in still other cases.

Finally, the jury verdicts may not have reflected the full value of a case to the plaintiff. In the event of multiple defendants, there could well have been settlements with some defendants prior to trial. The amounts of these out-of-court settlements, if any, are not included in this study.

The totals in this section are based on only those cases in which the plaintiff received an award. The reader needs to keep in mind 41% of the cases terminated during the year resulted in a defendant's verdict where no money damages were awarded.

The volume of tort cases decided by a jury in the district courts of Kansas for FY 88 is consistent with the volume of such cases reported for FY 87. This year's median award of $17,261 is greater than the FY 87 figure of $15,750, and the average award increased from $96,458 to $116,779.

This year, as was the case in FY 87, a few cases, usually less than ten in number, will account for nearly one-half of the total dollar volume of jury awards.

Again, the purpose of this study was to provide a one-year snapshot of the frequency and size of jury awards in tort cases in the district courts of the State of Kansas.

TORT JURY VEDRICTS IN KANSAS

Counties With No Verdicts in FY '88