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MALPRACTICE INSURANCE STUDY COMMITTEE

Report to the Legislative Council  
and the Members of the  
Second Session of the Sixty-sixth General Assembly  
State of Iowa  
1976

F I N A L R E P O R T

MALPRACTICE INSURANCE STUDY COMMITTEE

January, 1976

Senate Joint Resolution 12, passed by the Senate on May 15, 1975, and passed by the House on May 27, 1975, directed the Legislative Council to create for the 1975-76 legislative interim a study committee for the purpose of undertaking

"a comprehensive study of the causes and effects of and solutions to the high cost and unavailability of malpractice insurance to licensed health care providers".

The Sixty-sixth General Assembly, 1975 Session, appropriated \$25,000 for use in the study. The resolution was approved by the governor on June 16, 1975.

The Legislative Council appointed on July 16, 1975 a ten member committee to undertake the study. The Study Committee was organized on September 9, 1975. Senator Lowell Junkins was elected Chairperson of the Study Committee, and Representative Arthur Small was elected Vice Chairperson. The other appointed members of the Study Committee were as follows:

Senator Robert Carr  
Senator Warren Curtis  
Senator Willard Hansen  
Senator William Palmer  
Representative Horrace Daggett  
Representative Maurice Hennessey  
Representative Robert Kreamer  
Representative Craig Walter

Although permitted by Senate Joint Resolution 12, the Study Committee decided against the appointment of nonlegislative members.

The Study Committee met in a series of two-day meetings following the initial meeting, and received both written and oral testimony from a wide variety of sources, including representatives of numerous professions and organizations; anesthesiologists, chiropractors, medical doctors and osteopathic doctors, nurses and physical therapists, the Iowa Hospital Association, two associations representing insurance carriers, several insurance carriers writing medical malpractice insurance, the Iowa Bar Association, the Iowa Association of Trial Attorneys, and the Iowa Insurance Department and members and staff of the various Iowa health care practitioner licensing boards. In addition to meetings held by the Study Committee, members of the Study Committee attended rate hearings held by the Iowa Insurance Department involving rate filings submitted by Insurance Services Office, a company which provides statistical and rate making information for its constituent insurance companies.

It became increasingly evident with each day's testimony that there presently is little if any agreement between health care providers, lawyers, legislators, insurance companies and consumers, about what are the causes of the malpractice insurance dilemma, and what constitute reasonable legislative responses. Every state has become involved in the subject and nearly all have responded. Those responses vary between simple study resolutions and comprehensive and complex legislation effecting practically every health care provider and every health care recipient.

It was suggested by certain individuals attending Study Committee meetings that those states passing the more complicated provisions were looked upon as leaders in the drive to reach solutions to the malpractice insurance problem. The Study Committee made repeated efforts to discover what, if any, legislative measures would assure the availability of medical malpractice insurance or would result in a stabilization, if not a reduction, of the premium charge for liability coverage. However, there is no source available at present which can be used as a basis of predicting either future availability or future costs of medical malpractice insurance. In addition to the lack of supportive information, of those states which early in 1975 adopted what was anticipated to be corrective legislation several have begun to experience repercussions, by way either of adverse judicial rulings or of unanticipated affects which further complicate the problem. The comprehensive legislation enacted by one state resulted in suggestions by some members of the insurance industry that a 10% reduction in premiums would be warranted: Even given that legislative "leadership", it is noted that there is no insurance company writing malpractice liability coverage in that state.

The experience in Iowa at this point has been good compared to that of several other states where total strikes by practitioners, refusals to perform elective surgery, and total unavailability of insurance have plagued doctors, patients and legislators alike. Iowa has not had an availability crisis in terms of basic liability insurance coverage for practitioners. Comments were received by the Study Committee indicating that some practitioners no longer carried liability insurance because of the cost, but in general insurance has been and continues to be available, at least at the lower limits of coverage.

There have been problems encountered by Iowa health care providers, however, in terms of the cost of the insurance and the availability of coverage at those higher dollar limits which a large portion of medical doctors believe to be essential for their personal financial protection. Where coverage limits of \$100,000 per incident are readily available for nearly everyone who applies for it, policies to insure oneself against liability to the million dollar level are becoming impossible to acquire at any price.

The experiences of those engaged or involved in health care delivery and its legal ramifications suggest that there are four basic problem areas which do not admit of easy resolution. The comments in these areas may be summarized as follows:

1. Consumers face sobering and perpetually increasing costs of health care. These high costs contain the pass-through of higher and higher insurance premiums paid by hospitals, physicians and other health care providers. In addition, consumers pay higher medical care costs as a result of the practice by health care providers of defensive medicine in order to reduce the possibility of malpractice claims, and may find that their family physician has restricted the nature of his or her practice in order to reduce the amount of malpractice insurance premiums. Those consumers not living in metropolitan areas find it increasingly difficult to attract practitioners into their localities.

2. Malpractice claims and losses are increasing both in frequency and in the amount demanded and recovered. On a nationwide basis an insurance statistical service company estimates that the number of claims is growing by more than 10% each year. That factor, in addition to an annual inflation factor, contributes to at least annual increases in insurance premium rates. Although no single Iowa health care provider has ever incurred a judgment liability in excess of a million dollars, and although less than 1% of all claims by insurance companies involve amounts in excess of \$100,000, insurance carriers assert that the increasing frequency of losses in excess of \$100,000 prevents any reliable estimation of losses to be anticipated in the future. Preliminary evidence has indicated that malpractice does exist, and one commentator advanced that as long as there is medical practice there also will be medical malpractice. Some interests conclude from these statistics, however, that patients are prone to expect and juries are prone to award higher and higher amounts to compensate the patient for an unpleasant result of medical treatment, whether or not there has been evidence of malpractice. One insurance company writing malpractice insurance in Iowa suggests on the other hand that the number of nuisance claims has diminished sharply, and that the bulk of claims present some evidence of the existence of malpractice.

3. Health care practitioners and hospitals are very discontent with what they perceive to be excessive costs of liability insurance protection. For practitioners, premiums in Iowa range from approximately \$15.00 a year for "adequate" coverage for certain nurses to more than \$18,000 for "adequate" insurance protection for some specialized medical doctors. The anesthesiologists in Iowa assert a particularly pressing problem of relatively high insurance premiums but relatively low annual incomes. Testimony was received that practitioners are moving from states where insurance premiums are high to other states where premiums are lower. It also has been stated that those doctors who practice medicine on a part-time basis, such as those who are nearing retirement, have found it necessary to cease practicing

altogether because the premium for malpractice insurance consumes too great a percentage of any income which could be derived from part-time practice. Many health care practitioners also stress that the higher levels of coverage which they believe necessary are fast disappearing from the market place. The Iowa Hospital Association has asserted that the dilemma has resulted in fewer and fewer insurance companies writing malpractice insurance, particularly for hospitals, and that in Iowa one company, St. Paul Fire and Marine Insurance Company, writes approximately 70% of all of the hospital malpractice insurance.

4. Insurance carriers assert a great reluctance to continue writing medical malpractice insurance. The malpractice line never was particularly profitable, they say, and in recent years the losses have been so great as to drive many companies into insolvency, and others into flight from the malpractice liability line. The major companies writing such coverage in Iowa, including Aetna, Hartford, Pacific Indemnity, St. Paul Fire and Marine Insurance Company and Medical Protective Company all have remained in the Iowa market, but have indicated that commitments to remain in the future cannot be made. The St. Paul Company has modified its insurance contracts, and now is writing claims-made as opposed to occurrence coverage. Although it often has been alleged that Iowa practitioners are subsidizing those of other states, information submitted to the Study Committee respecting 1970-1975 claims experience of insurance carriers suggests that practitioners in other states may in fact be shouldering a portion of Iowa malpractice losses. Malpractice carriers, in addition to other groups affected by the malpractice dilemma, have begun to question whether or not malpractice itself is an insurable risk.

Within this framework of interests, experience and information, the Study Committee set out to determine what Iowa could and should do, in addition to the measures enacted during 1975 in House File 803, in order to alleviate the continuing medical malpractice insurance problem. The fact that a cause and effect relationship between legislative action and problem reduction cannot be established was and continues to be a perplexing obstacle. An additional obstacle is that nearly every suggested remedy results in adverse and often antagonistic positions taken by at least two of the groups of interests involved. Nevertheless, the Study Committee did invite and receive a multitude of suggestions and proposals including the following:

1. Authorize the use of agreements providing for voluntary binding arbitration between patient and health care provider.

2. Provide for exclusive liability on the part of a hospital for injuries occurring on the premises, the so called "single defendant" concept.

3. Provide for the use of screening panels to evaluate every malpractice claim filed in the courts.

4. Permit offers of settlement to enable good faith negotiating by malpractice carriers without the fear of admitting liability.

5. Permit the defendant, or his insurance carrier, to offer advance payments to the plaintiff.

6. Make all medical records of the plaintiff available to both defense and plaintiff's counsel as a matter of right.

7. Limit or eliminate the doctrine of res ipsa loquitur.

8. Require the plaintiff to give notice to the defendant prior to filing suit.

9. Require expert testimony to prove any alleged lack of informed consent.

10. Modify the statute of frauds to prohibit malpractice claims based upon an oral contract.

11. Eliminate punitive damage awards, or restrict them to cases of willful or intentional injury.

12. Require each jury award to contain a specification of the damages awarded for each type of loss claimed.

13. Limit expert witnesses to those persons who actually practice or teach medicine in the same or a similar locality as that of the defendant's business. A related measure would limit potential witnesses to those persons who teach or practice a profession in Iowa or in a surrounding state.

14. Limit civil liability for injuries occurring in emergency treatment to those cases where gross negligence is established.

15. Reduce legal costs of malpractice actions.

16. Require a plaintiff to post a cost bond when suit is filed.

17. Assure a plaintiff a greater percentage of premium dollars.

18. Establish a statutory schedule of benefits for medical injuries.

19. Create limitations on recoverable damages.

20. Regulate contingency fees more strictly.

21. Provide for periodic payments of judgments as opposed to lump-sum payment.

22. Provide a reversionary trust scheme to eliminate windfall gain where the plaintiff recovers or dies prematurely.

23. Motivate individuals to purchase their own catastrophe (health) insurance.

24. Create a statutory definition of malpractice in order to insulate nonnegligence and to distinguish bad result-medical misadventure cases.

25. Expand the number of health care practitioners.

26. Expand the number and function of physicians assistants and specialized nurses.

27. Add nurses and physical therapists to the definition of "health care provider" and thus to the group of professions receiving attention.

28. Improve hospital facilities and the degree of care and treatment provided there.

29. Strengthen licensing and disciplinary procedures by;

a. Increasing the funding and staff of licensing agencies;

b. Providing for the channelling of local peer review decisions, and reports of malpractice judgments and settlements into licensing agency review; and

c. Permitting licensing agencies to establish continuing professional education requirements.

30. Encourage health care providers to voluntarily establish and publicize patient grievance procedures.

31. Strengthen peer review immunity to protect complainants and witnesses as well as panel members, and provide for a waiver of the doctor-patient privilege where required.

32. Equalize or reduce the spread between premiums charged for the various categories of practitioners.

33. Regulate reinsurance companies and rates.

34. Limit the individual liability of each health care provider and create a publicly supported fund to pay "excess" claims.

35. Permit the interstate operation of mutual insurance companies owned by health care providers.

The Study Committee investigated and received testimony from proponents and apponents of nearly all of the proposals.

Several meetings were devoted to comments and criticisms offered by persons experienced in the health care and liability insurance industries. Based upon this testimony the Study Committee tentatively concluded at its meeting on November 4 that the following general areas represented either potentially rewarding legislative action or subjects worthy of particular scrutiny.

1. Create a reversionary trust scheme to eliminate "windfall" gains by a plaintiff or his or her heirs.
2. Require a trial judge to review and make a specific finding as to the fairness of each contingency agreement, and also authorize the judge to modify any agreement deemed to be unfair.
3. Authorize the use of voluntary arbitration between patients and health care providers.
4. Provide for single defendant legal actions.
5. Establish a statutory locality rule for expert witnesses.
6. Create statutory limitations on the doctrine of res ipsa loquitur.
7. Modify and strengthen the laws relating to the licensing and disciplining of health care practitioners.
8. Reduce the differences between insurance premiums paid by the various classes or specialities of health care practitioners.
9. Regulate reinsurance carriers and rates.
10. Provide for an increase in the number of health care practitioners.
11. Provide for the use of public funds to reduce the burden on health care providers in cases of catastrophic loss.

The proposals relating to the licensing and disciplining of practitioners and to the number and functions of health care practitioners drew into the malpractice insurance discussion the state agencies having responsibilities in those areas. The Study Committee invited commentary and suggestions from all of the health care practitioner licensing boards and from the College of Medicine of the State University of Iowa. Both written and oral testimony were received by the Committee.

The members of the licensing boards were nearly unanimous of opinion that present laws do not enable the various professions to control practitioners to the extent desirable. Most of the boards expressed the need for independent authority both to investigate possible violations of the licensing laws and to conduct disciplinary proceedings against licensees. Another cited deficiency in regulatory authority is the lack of formalized

methods of obtaining complaints by consumers and others of alleged misconduct of licensees.

The dean and executive associate dean of the College of Medicine presented a detailed discussion of the policies and practices of the college respecting the number of practitioners trained in the state. Statistics were presented showing that the number of medical students graduating from the college has increased from approximately 102 per year in the early 1960's to a projected 175 per year for the late 1970's.

Evidence was presented indicating that there is a regional and local shortage of physicians, particularly in cities under 10,000 population. It was stated that

"The greatest deficits are among obstetricians on a statewide basis and primary care physicians (family physicians, internists and pediatricians) on a regional and local basis."

In general, it was concluded by the representatives of the college of medicine that the present programs in this state for the educating of health care practitioners and for establishing regional medical treatment programs could not be supplemented by any other programs which would have the result of providing greater availability of health care and treatment.

The Study Committee ultimately approved the provisions of two bill drafts, and adopted two recommendations not submitted in draft form. The measures approved in draft form are as follows:

1. PEER REVIEW MECHANISMS. The Committee RECOMMENDS that measures be adopted which increase the respective investigative and disciplinary authorities, including continuing professional education, of each of the practitioner licensing boards, and which provide for the review by those boards of malpractice claims and judgments and of local peer review group disciplinary actions. The Committee considered the provisions of S.F. 321 (filed in the 1975 Session) relating to continuing education and other matters, and also considered the requests of the various licensing boards to increase their respective regulatory authorities. A bill was drafted by the Legislative Service Bureau and was approved by the Committee for recommendation to the General Assembly.\* That bill draft, LSB 3354 is attached to this report.

2. REGULATION OF CONTINGENCY AGREEMENTS. The Study Committee RECOMMENDS measures strengthening the role of trial court judges in assessing the reasonableness of contingency fee agreements in medical malpractice actions. The Legislative Service Bureau was directed to prepare LSB 3306 which was reviewed by the Committee. Several members noted that the bill does not regulate contingency fees more strictly than as provided in House File 803, but does require the trial judge to enter findings and conclusions of record. The Committee approved the draft for recommendation on a vote of six to two, Senator Carr and Representative Walter voting against the proposal.

The Study Committee also considered and adopted without objection two recommendations which are not accompanied by bill drafts. Drafts are to be prepared and submitted by the Legislative Service Bureau upon the convening of the General Assembly. Those recommendations are as follows:

1. ARBITRATION. The Committee RECOMMENDS that chapter 679 of the Code be amended to permit agreements to arbitrate future disputes.

2. PHYSICAL THERAPISTS. The Committee RECOMMENDS that Acts of the Sixty-sixth General Assembly, 1975 Session, chapter 2399 (H.F. 803) and all pending legislation be modified to include physical therapists within the definition of "health care practitioner".

The Study Committee considered a proposal to establish a statutory limitation on the amount that can be recovered for noneconomic harm in malpractice actions, but the Committee declined to make a recommendation for legislation at this time. The Study Committee FINDS that there is merit in considering a limitation on the amount of damages recoverable for noneconomic harm in medical malpractice actions.

The Study Committee considered the proposal contained in LSB 3307 which relates to the payment of malpractice judgments in periodic installments rather than in a lump sum, and which relates to the creation of a reversionary trust. Some members of the Committee expressed approval of the concept of the bill, but questions persisted about the mechanics of implementing and administering the proposal. The Committee deferred the bill without objection, but approved a motion to include the bill draft as an appendix to this report. The bill is attached as Appendix I.

This report, although final in form, does not purport to suggest that the Study Committee has solved the medical malpractice insurance problem. Many of the members of the Committee maintain the view that there does not exist at present any immediate and direct solution either to the problem of the availability of insurance, or to the high cost of available insurance. None have suggested even a long-term remedy which present knowledge proves would be effective. The bill drafts submitted and recommended by this Committee contain proposals which are supported in concept by the 1973 Report of the Commission of the Secretary of Health, Education and Welfare on Medical Malpractice, and which speak to underlying but substantial causative factors of the malpractice insurance controversy. The problems of malpractice are as much social as scientific, and these bills direct relief toward some of the cited institutional deficiencies which widely are believed to lead to the more immediate symptoms of the frequency and high cost of medical malpractice legal actions.

In conclusion, it is emphasized that the problems encountered in this state likewise plague each of the other states,

and that short of abrogating malpractice suits no one state can quickly, if at all, eliminate the high cost of malpractice insurance or assure the availability of that insurance, even within its own borders. The present state of affairs of the malpractice insurance market is neither predictable nor good, but from the point of view of the individual state the alternatives appear even less desirable. The limited scope of the recommendations of this Study Committee perhaps signifies an unexpressed recognition by each of its members that many of the proposed remedies treat the symptoms rather than the disease, and that if the private malpractice insurance market collapses, far more extensive measures will be needed than those upon which this Study Committee deliberated.

Respectfully submitted

LOWELL L. JUNKINS  
Chairperson

Prepared by the Legislative Service  
Bureau at the request of the Malpractice  
Insurance Study Committee for  
consideration by the Iowa General  
Assembly. January, 1975.

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to contingency fee agreements in medical mal-  
2 practice actions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Chapter two hundred thirty-nine (239), Acts  
2 of the Sixty-sixth General Assembly, 1975 Session, section  
3 twenty-five (25), is amended to read as follows:

4 SEC. 25. ~~Chapter one hundred forty seven (147)~~ Chapter  
5 six hundred ten (610), Code 1975, is amended by adding the  
6 following new section:

7 NEW SECTION. CONTINGENCY FEE IN CERTAIN TORT ACTIONS.

8 1. In any action for personal injury or wrongful death  
9 against any physician-and-surgeon, osteopath, osteopathic  
10 physician-and-surgeon, dentist, pediatricist, optometrist,  
11 pharmacist, chiropractor or nurse licensed under this chapter  
12 or against any hospital licensed under chapter one hundred  
13 thirty-five-B-(135B) of the Code health care provider as  
14 defined in section two (2) of this Act, based upon the alleged  
15 negligence of the licensee in the practice of that profession  
16 or occupation, or upon the alleged negligence of the hospital  
17 in patient care, the court shall-determine-the-reasonableness  
18 of, in the event of a judgment for the plaintiff, shall make  
19 specific findings and conclusions of whether or not any  
20 contingent fee arrangement between the plaintiff and the  
21 plaintiff's attorney is equitable.

22 2. The Court, in making the findings and conclusions,  
23 shall order and be given the necessary evidence, and shall  
24 consider the amount of the judgment, the complexity of the  
25 legal and factual issues in the case, the extensiveness of  
26 required legal research, the length of the trial, and the  
27 amount of any expenses involved in the investigation and trial  
28 of the case which are to be or have been paid by the plaintiff  
29 and which are not recoverable as costs in the action. If  
30 the court determines the contingency agreement to be  
31 inequitable toward the plaintiff the court shall modify the  
32 contingency agreement as necessary to make it equitable.  
33 The findings and conclusions and order of the court shall  
34 be entered of record in the case.

35 3. The judgment of the court with respect to the con-

1 tingency agreement shall be subject to review by the supreme  
2 court in the discretion of the supreme court, upon application  
3 by the plaintiff or his or her attorney pursuant to rules  
4 for discretionary review of that judgment. The supreme court  
5 shall promulgate rules, subject to section six hundred eighty-  
6 four point nineteen (284.19) of the Code, for the discretionary  
7 review provided for in this Act which shall provide for  
8 expeditious and inexpensive review by the supreme court.

9 4. The findings, conclusions and order of the trial court  
10 respecting the contingency agreement shall be independent  
11 of any judgments as between the parties to the action, and  
12 each shall become final without respect to any motions,  
13 retrials, appeals or review proceedings applicable to the  
14 other.

15 Sec. 2. Section one hundred forty-seven point one (147.1),  
16 Code 1975, is amended by adding the following new subsection:

17 NEW SUBSECTION. "Health care provider" means and includes  
18 any physician and surgeon, osteopath, osteopathic physician  
19 and surgeon, dentist, podiatrist, optometrist, pharmacist,  
20 chiropractor or nurse licensed under this chapter, and any  
21 hospital licensed under chapter one hundred thirty-five B  
22 (135B) of the Code.

23 Sec. 3. Section one (1) of this Act shall take effect  
24 on January 1, 1977, and shall apply to every action in which  
25 judgment is entered on or after that date.

26 EXPLANATION

27 This bill modifies the provision contained in section 25  
28 of H.F. 803 enacted in 1975, and relating to contingency  
29 agreements in medical malpractice actions. The bill makes  
30 the following changes:

31 1. The court will be required to make findings in every  
32 case in which plaintiff wins a judgment.

33 2. The court must enter findings in the record of whether  
34 or not the contingency fee agreement is equitable to the  
35 plaintiff, based upon evidence received as to the amount of

1 the award, the complexity of the case, the length of the  
2 trial, and the relative amount of any expenses plaintiff  
3 incurs which are not recoverable as costs.

4 3. The judgment of the court relative to the contingency  
5 agreement is made subject to discretionary review by the  
6 supreme court according to rules which the court is required  
7 to promulgate.

8 The amendments to this section become effective January  
9 1, 1977, in order to allow time for the supreme court to  
10 promulgate rules.

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PREPARED BY THE LEGISLATIVE SERVICE  
BUREAU AT THE REQUEST OF THE  
MALPRACTICE INSURANCE STUDY  
COMMITTEE FOR CONSIDERATION  
BY THE IOWA GENERAL ASSEMBLY.  
January, 1976.

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to continuing education requirements as a con-  
2 dition of a professional or occupational license renewal or  
3 inactive licensee reentry, providing for legislative review  
4 of professional and occupational examining board activities,  
5 delegating rule-making authority to professional and occu-  
6 pational examining boards, strengthening the disciplinary  
7 procedures of health care boards, and eliminating mandatory  
8 annual renewal of professional and occupational licenses.  
9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. FINDINGS BY THE GENERAL ASSEMBLY.

2 1. The general assembly finds that there is a need to  
3 insure that the public health, safety, and well-being is  
4 protected by meaningful examination and licensing procedures  
5 which establish an initial achievement of skills and knowledge  
6 by a professional or occupational licensee commensurate with  
7 the current level of competency of members of the profession  
8 or occupation. The general assembly also finds that there  
9 is a need to insure that the public health, safety, and well-  
10 being is further protected by meaningful license renewal,  
11 inactive licensee reentry, continuing education, and dis-  
12 ciplinary procedures which guarantee a continued maintenance  
13 of skills and knowledge by a professional or occupational  
14 licensee commensurate with the current level of competency  
15 of members of the profession or occupation.

16 2. The general assembly finds that as a general proposition  
17 individual examining boards are the most capable bodies to  
18 determine which examination, licensure, renewal, inactive  
19 licensee reentry, continuing education, and disciplinary  
20 procedures are appropriate under subsection one (1) of this  
21 section. However, the general assembly also finds that it  
22 is desirable to maintain a legislative overview of the  
23 operation of such procedures. This legislative overview  
24 is to be conducted for the purpose of informing the general  
25 assembly of the changing nature of the licensed and unlicensed  
26 professions and occupations and of the expected need for  
27 periodic revision in the professional and occupational  
28 licensing laws.

29 Sec. 2. NEW SECTION. DEFINITIONS.

30 1. "Health care board" includes the following boards:

31 a. The board of medical examiners, created pursuant to  
32 chapter one hundred forty-seven (147) of the Code.

33 b. The board of podiatry examiners, created pursuant to  
34 chapter one hundred forty-seven (147) of the Code.

35 c. The board of chiropractic examiners, created pursuant

1 to chapter one hundred forty-seven (147) of the Code.

2 d. The board of physical therapy examiners, created pur-  
3 suant to chapter one hundred forty-seven (147) of the Code.

4 e. The board of nursing, created pursuant to chapter one  
5 hundred forty-seven (147) of the Code.

6 f. The board of dental examiners, created pursuant to  
7 chapter one hundred forty-seven (147) of the Code.

8 g. The board of optometry examiners, created pursuant  
9 to chapter one hundred forty-seven (147) of the Code.

10 h. The board of pharmacy examiners, created pursuant to  
11 chapter one hundred forty-seven (147) of the Code.

12 2. "Licensing board" includes the following boards:

13 a. Any health care board.

14 b. The board of engineering examiners, created pursuant  
15 to chapter one hundred fourteen (114) of the Code.

16 c. The board of examiners for shorthand reporters, created  
17 pursuant to chapter one hundred fifteen (115) of the Code.

18 d. The board of accountancy, created pursuant to chap-  
19 ter one hundred sixteen (116) of the Code.

20 e. The Iowa real estate commission, created pursuant to  
21 chapter one hundred seventeen (117) of the Code.

22 f. The board of architectural examiners, created pur-  
23 suant to chapter one hundred eighteen (118) of the Code.

24 g. The Iowa board of landscape architectural examiners,  
25 created pursuant to chapter one hundred eighteen A (118A)  
26 of the Code.

27 h. The board of watchmaking examiners, created pursuant  
28 to chapter one hundred twenty (120) of the Code.

29 i. The board of psychology examiners, created pursuant  
30 to chapter one hundred forty-seven (147) of the Code.

31 j. The board of cosmetology examiners, created pursuant  
32 to chapter one hundred forty-seven (147) of the Code.

33 k. The board of barber examiners, created pursuant to  
34 chapter one hundred forty-seven (147) of the Code.

35 l. The board of funeral directors and embalmer examiners,

1 created pursuant to chapter one hundred forty-seven (147)  
2 of the Code.

3 m. The board of examiners for nursing home administrators,  
4 created pursuant to chapter one hundred forty-seven (147)  
5 of the Code.

6 n. The board for the licensing and regulation of hear-  
7 ing aid dealers, created pursuant to chapter one hundred  
8 (fifty-four A (154A) of the Code.

9 o. The board of veterinary medical examiners, created  
10 pursuant to chapter one hundred sixty-nine (169) of the Code.

11 p. The board of certification, created pursuant to chapter  
12 four hundred fifty-five B (455B) of the Code.

13 q. The board of law examiners, created pursuant to chapter  
14 six hundred ten (610) of the Code.

15 3. "Continuing education" means that education which is  
16 obtained by a professional or occupational licensee in order  
17 to maintain, improve, or expand skills and knowledge obtained  
18 prior to initial licensure or to develop new and relevant  
19 skills and knowledge. This education shall be obtained through  
20 practice, formal or informal education programs, self-study,  
21 research, participation in professional, technical, and occupa-  
22 tional societies, or by other similar means.

23 4. "Inactive licensee reentry" means that process a for-  
24 mer or inactive professional or occupational licensee pursues  
25 to again be capable of actively and competently practicing  
26 as a professional or occupational licensee.

27 5. The term "licensing" and its derivations include the  
28 terms "registration" and "certification" and their derivations.

29 6. "Licensee discipline" means the sanction a licensing  
30 board may impose upon a licensee for conduct which threatens  
31 the public health, safety, or well-being. Such sanctions  
32 may include:

33 a. License revocation, suspension for a limited period,  
34 limitation, or curtailment.

35 b. Citation of the conduct and warning.

- 1 c. Imposition of a probationary period under specified
- 2 conditions.
- 3 d. Imposition of further educational requirements to
- 4 culminate in reexamination.
- 5 e. Reexamination.
- 6 f. Civil fine.
- 7 7. "Licensee disciplinary procedures" are those procedures
- 8 adopted by a licensing board to effect licensee discipline.
- 9 Sec. 3. NEW SECTION. LICENSING REVIEW COMMITTEE.

10 1. There is created the licensing review committee. The

11 committee shall be bipartisan and shall be composed of the

12 following members:

- 13 a. Three senators appointed by the president of the senate.
- 14 b. Three representatives appointed by the speaker of the
- 15 house.

16 c. The director of the consumer protection division of

17 the office of the attorney general to be designated by the

18 attorney general and to serve as an ex officio member.

19 2. A committee member shall be appointed prior to the

20 adjournment of a regular session convened in an odd-numbered

21 year. The term of office shall be for four years commencing

22 May first of the year of appointment. However, a member shall

23 serve until a successor is appointed. A vacancy on the com-

24 mittee shall be filled by the original appointing authority

25 for the remainder of the term. A vacancy shall exist when-

26 ever a committee member ceases to be a member of the house

27 of the general assembly from which the member was appointed.

28 3. A committee member, except an ex officio member, shall

29 be paid a per diem, as established for members of the general

30 assembly under subsection six (6) of section two point ten

31 (2.10) of the Code, for each day in attendance and shall be

32 reimbursed for actual and necessary expenses incurred in the

33 performance of duties. There is appropriated from money in

34 the general fund not otherwise appropriated an amount

35 sufficient to pay costs incurred under this subsection.

1 4. The committee shall choose a chairperson from its  
2 membership and prescribe its rules of procedure. The Code  
3 editor or a designee shall act as secretary for the commit-  
4 tee.

5 5. A committee meeting shall be held upon the call of  
6 the chairperson or at the request of two committee members.  
7 Unless impracticable, the subject matter to be considered  
8 at a committee meeting shall be published in advance of the  
9 meeting in the Iowa administrative code. A committee meeting  
10 shall be open to the public and an interested person may be  
11 heard and present evidence. The committee may require a  
12 representative of a licensing board to attend a committee  
13 meeting.

14 Sec. 4. NEW SECTION. POWERS AND DUTIES OF COMMITTEE.

15 The powers and duties of the licensing review committee are  
16 as follows:

17 1. a. The committee shall review the proposals of each  
18 licensing board to mandate continuing education requirements  
19 as a condition to license renewal or inactive licensee reentry.  
20 The committee shall also review the proposals of each health  
21 care board to establish licensee disciplinary procedures.

22 b. If a licensing board has not previously mandated con-  
23 tinuing education requirements, a proposal to do so shall  
24 not be implemented until it has been submitted to the licensing  
25 review committee for review. If a health care board has not  
26 previously established licensee disciplinary procedures, a  
27 proposal to do so shall not be implemented until it has been  
28 submitted to the licensing review committee for review.

29 c. The committee shall consider the convenience of the  
30 boards when requesting submission of their proposals. How-  
31 ever, each board shall submit the proposals required under  
32 this subsection within two years of the committee's initial  
33 formation. Subsequent to initial review, the continuing  
34 education requirements of each licensing board and the licensee  
35 disciplinary procedures of each health care board shall be

1 reviewed at least once every five years.

2 d. As used in this subsection, "proposal" means both a  
3 recommendation to implement a course of action and a  
4 recommendation that nothing be done.

5 2. a. The committee shall review all rules proposed by  
6 the licensing boards. Not less than seven days prior to the  
7 filing of an adopted rule under subsection one (1) of section  
8 seventeen A point five (17A.5) of the Code, and prior to the  
9 adoption, amendment, or repeal of a rule by a licensing board  
10 under section seventeen A point four (17A.4) of the Code,  
11 a licensing board shall submit a copy of the proposed rule  
12 to each member of the committee.

13 b. If the committee or attorney general finds objection  
14 to all or some portion of a rule, whether proposed or in  
15 effect, because that rule is deemed to be unreasonable,  
16 arbitrary, capricious or otherwise beyond the authority  
17 delegated to the licensing board, the committee or attorney  
18 general may, in writing, notify the board of the objection  
19 within seven days of the meeting at which the rule is reviewed.  
20 The committee or attorney general shall also file a certified  
21 copy of such an objection in the office of the secretary  
22 of state within the same time limits. A notice to the effect  
23 that an objection has been filed shall be published in the  
24 next supplement to the Iowa administrative code. Upon  
25 publishing of the notice, the burden of proof shall be on  
26 the board in any proceeding for judicial review or for  
27 enforcement of the rule heard subsequent to the filing to  
28 establish that the rule or portion of the rule timely objected  
29 to according to the procedure of this paragraph is not  
30 unreasonable, arbitrary, capricious or otherwise beyond the  
31 authority delegated to it.

32 c. If the licensing board fails to meet the burden of  
33 proof prescribed for a rule objected to according to the  
34 provisions of paragraph b of this subsection, the court shall  
35 declare the rule or portion of the rule objected to invalid

1 and render judgment against the board for court costs. Such  
2 court costs shall include a reasonable attorney fee and shall  
3 be payable by the state comptroller from the support  
4 appropriations of the board which issued the rule in question.

5 d. A licensing board rule adopted after the effective  
6 date of this Act is not valid unless adopted in the substantial  
7 compliance with the requirements of this subsection. However,  
8 a licensing board rule shall be conclusively presumed to have  
9 been made in compliance with all of the procedural requirements  
10 of this subsection if it has not been invalidated on the  
11 grounds of noncompliance in a proceeding commenced within  
12 two years after its effective date.

13 e. This section shall not be construed so as to relieve  
14 a licensing board from meeting the other requirements of  
15 chapter seventeen A (17A) of the Code.

16 3. The committee shall review any proposal by a pro-  
17 fessional or occupational group that it should be subject  
18 to state licensing laws. The committee shall, at least every  
19 five years, also review whether any existing licensing board  
20 should be discontinued.

21 4. In addition to the filing of an objection under  
22 paragraph b of subsection two (2) of this section and as a  
23 result of any review conducted under this section, the  
24 committee may refer recommendations for statutory revision  
25 of the professional or occupational licensing laws to the  
26 speaker of the house and the president of the senate at or  
27 during the next regular session of the general assembly.  
28 The speaker and the president shall refer such recommendations  
29 to the appropriate committee of the general assembly. This  
30 section shall not be construed to prevent a committee of the  
31 general assembly, except the administrative rules review  
32 committee, from reviewing, on its own motion, any possible  
33 statutory revision of the professional and occupational  
34 licensing laws.

35 Sec. 5. NEW SECTION. CONTINUING EDUCATION RULE-MAKING

## 1 DELEGATION.

2 1. Each licensing board is delegated the authority to  
3 mandate, by rule, continuing education requirements as a  
4 condition to license renewal or inactive licensee reentry.

5 2. Promulgated rules may simply create such continuing  
6 education requirements or may additionally establish continuing  
7 education programs to assist a licensee in meeting such  
8 continuing education requirements. Such rules also shall:

9 a. Give due attention to the effect of continuing education  
10 requirements on interstate and international practice.

11 b. Give due attention to continuing active practice in  
12 the licensee's profession or occupation as continuing  
13 education.

14 c. Place the responsibility for arrangement of financing  
15 of continuing education on the licensee, while allowing the  
16 board or continuing education provider to receive any other  
17 available funds or resources that aid in supporting their  
18 continuing education program.

19 d. Attempt to express continuing education requirements  
20 in terms of uniform and widely-recognized measurement units.

21 e. Establish guidelines, including guidelines in regard  
22 to the monitoring of licensee participation, for the approval  
23 of continuing education programs that qualify under the con-  
24 tinuing education requirements prescribed.

25 f. Not be implemented for the purpose of limiting the  
26 size of the profession or occupation.

27 g. Define the statuses of active and inactive licensure  
28 and establish appropriate guidelines for inactive licensee  
29 reentry.

30 h. Be promulgated solely for the purpose of assuring a  
31 continued maintenance of skills and knowledge by a pro-  
32 fessional or occupational licensee directly related and com-  
33 mensurate with the current level of competency of the li-  
34 censee's profession or occupation.

35 Sec. 6. NEW SECTION. LICENSEE DISCIPLINARY PROCEDURE

1 RULE-MAKING DELEGATION.

2 1. Each health care board is delegated the authority to  
3 establish, by rule, licensee disciplinary procedures. Each  
4 health care board may impose licensee discipline under these  
5 procedures. .

6 2. If rules are promulgated under subsection one (1) of  
7 this section, the rules:

8 a. Shall comply with the provisions of chapter seventeen  
9 A (17A) of the Code and otherwise be fundamentally fair.

10 b. Shall not specify grounds for imposition of licensee  
11 discipline other than those grounds for license revocation  
12 or suspension specified in sections one hundred forty-seven  
13 point fifty-five (147.55), one hundred forty-seven point  
14 fifty-six (147.56), one hundred forty-eight point six (148.6),  
15 one hundred fifty-three point thirty-four (153.34), one hundred  
16 fifty-four point four (154.4), one hundred fifty-four A point  
17 twenty-four (154A.24), and one hundred fifty-five point  
18 thirteen (155.13) of the Code; however, a board may impose  
19 licensee discipline upon a licensee if that licensee does  
20 not, either from individual observance or from service with  
21 a peer review or grievance group, report a health care incident  
22 which may affect a licensure to the board as may be required  
23 or if the licensee has committed unacceptable acts of  
24 malpractice.

25 c. Shall designate who may or shall initiate a licensee  
26 disciplinary action, who shall investigate and prosecute the  
27 action under what conditions, and that the majority of the  
28 health care board shall hear the action.

29 d. Shall state whether the procedures are an alternative  
30 to or an addition to the procedures stated in sections one  
31 hundred forty-seven point fifty-eight (147.58) through one  
32 hundred forty-seven point seventy-one (147.71), one hundred  
33 forty-eight point six (148.6) through one hundred forty-eight  
34 point nine (148.9), one hundred fifty-three point three  
35 (153.3), one hundred fifty-four A point twenty-three (154A.23),

1 and one hundred fifty-five point fourteen (155.14) through  
2 one hundred fifty-five point sixteen (155.16) of the Code.

3 e. Shall state fully what rights may be maintained by  
4 a licensee during the investigation and prosecution of a  
5 licensee disciplinary action.

6 f. Shall state specifically all time limitations.

7 g. May permit a grant of immunity under guidelines  
8 specified in the rule from civil suit or criminal prosecution  
9 to persons filing a complaint against a licensee.

10 h. Shall state what subpoena powers the board or its  
11 investigators may utilize, although such subpoena shall be  
12 enforced only upon application to a district court. A subpoena  
13 under this subsection may reach matters otherwise confidential  
14 or privileged under law if necessary to conduct a disciplinary  
15 proceeding.

16 i. Shall specify methods by which the reporting of com-  
17 plaints shall be publicized.

18 j. Shall specify the methods of reporting complaints.

19 3. In order to implement paragraph j of subsection two  
20 (2) of this section, a health care board may, pursuant to  
21 a rule, require:

22 a. The department of health to deny, suspend, or revoke  
23 a hospital or health care facility license, pursuant to the  
24 procedures of chapter one hundred thirty-five B (135B) or  
25 one hundred thirty-five C (135C) of the Code, if that hospital  
26 is delinquent in its peer review procedures or if its peer  
27 review committees do not report health care incidents which  
28 may affect a licensure to the board as may be required; or

29 b. The commissioner of insurance to suspend or revoke  
30 the authority of a company, as defined in section five hundred  
31 seven point one (507.1) of the Code, to transact business  
32 within this state, pursuant to the procedures established  
33 in the applicable insurance laws and rules, if the company  
34 does not report a health care incident which may affect a  
35 licensure to the board as may be required; or,

1 c. Another health care board to impose licensee discipline  
2 upon a licensee if that licensee does not, either from  
3 individual observance or from service with a peer review or  
4 grievance group, report a health care incident which may  
5 affect a licensure to the board as may be required.

6 Sec. 7. Section seventeen A point eight (17A.8), subsec-  
7 tion six (6), Code 1975, is amended to read as follows:

8 6. The committee shall meet for the purpose of selectively  
9 reviewing rules, whether proposed or in effect. However,  
10 the committee shall not review a rule subject to review by  
11 the licensing review committee under section four (4) of this  
12 Act. A regular or special committee meeting shall be open  
13 to the public and an interested person may be heard and present  
14 evidence. The committee may require a representative of an  
15 agency whose rule or proposed rule is under consideration  
16 to attend a committee meeting.

17 Sec. 8. Section one hundred fourteen point eighteen  
18 (114.18), Code 1975, is amended to read as follows:

19 114.18 EXPIRATIONS AND RENEWALS. Certificates of regis-  
20 tration shall expire ~~annually~~ as determined by the board.  
21 It shall be the duty of the secretary of the board to notify  
22 every person registered under this chapter, of the date of  
23 expiration of his certificate and the amount of the fee that  
24 shall be required for its renewal ~~for one year~~; such notice  
25 shall be mailed at least one month in advance of the date  
26 of the expiration of said certificate. Renewal may be effected  
27 by the payment of a fee the amount of which shall be deter-  
28 mined by the board. The failure on the part of any registrant  
29 to renew his certificate ~~annually~~ in the month of expiration  
30 as required above shall not deprive such a person of the right  
31 of renewal. A person who fails to renew his certificate  
32 by the expiration date shall be allowed to do so within thirty  
33 days following its expiration, but the board may assess a  
34 reasonable penalty. ~~For the duration of any war in which~~  
35 ~~the United States is engaged the board may, in its discretion,~~

1 ~~defer the collection of renewal fees without penalty, which~~  
2 ~~have or may become due from registered professional engineers~~  
3 ~~who are employed in the war effort, and residing outside the~~  
4 ~~state, or who are members of the armed forces of the United~~  
5 ~~States, and may renew the engineering certificates of said~~  
6 ~~registered professional engineers.~~

7 Sec. 9. Section one hundred fifteen point sixteen,  
8 (115.16), Code 1975, is amended to read as follows:

9 115.16 EXPIRATIONS AND RENEWALS. Certification shall  
10 expire **annually** as determined by the board. The board shall  
11 notify every person certified under this chapter of the date  
12 of expiration of his certificate and the amount of the fee  
13 required for its renewal ~~for one year~~. The notice shall be  
14 mailed at least one month in advance of the expiration date.  
15 A person who fails to renew his certificate by the expiration  
16 date shall be allowed to do so within thirty days following  
17 its expiration, but the board may assess a reasonable penalty.

18 Sec. 10. Section one hundred sixteen point twelve (116.12),  
19 Code 1975, is amended to read as follows:

20 116.12 RENEWALS. Licenses as accounting practitioners  
21 shall expire **annually** as determined by the board. The board  
22 shall notify every person licensed under this chapter of the  
23 date of expiration of his license and the amount of the fee  
24 required for its renewal ~~for one year~~. The notice shall be  
25 mailed at least one month in advance of the expiration date.  
26 A person who fails to renew his license to practice as an  
27 accounting practitioner by the expiration date shall be allowed  
28 to do so within thirty days following its expiration, but  
29 the board may assess a reasonable penalty.

30 Sec. 11. Section one hundred sixteen point twenty (116.20),  
31 subsection one (1), Code 1975, is amended to read as follows:

32 1. The certificate of certified public accountant granted  
33 by the board under section 116.5 and the registration with  
34 the board as a public accountant under section 116.6, and  
35 the license to practice as an accounting practitioner under

1 section 116.7 or 116.8 shall be renewed ~~annually~~ as determined  
2 by the board. There shall be ~~an annual~~ a renewal fee, in  
3 the amount to be determined from time to time by the board,  
4 not to exceed fifty dollars.

5 Sec. 12. Section one hundred sixteen point twenty (116.20),  
6 subsection six (6), Code 1975, is amended by striking the  
7 subsection.

8 Sec. 13. Section one hundred seventeen point twenty-seven  
9 (117.27), Code 1975, is amended to read as follows:

10 117.27 FEES. The commission shall set annual fees, ex-  
11 cept renewal fees which need not be annual, for examination  
12 and licensing of real estate brokers and real estate salesmen.  
13 The commission shall determine the annual cost of administer-  
14 ing the examination and shall set the examination fee accord-  
15 ingly. The commission shall set the fees for the real estate  
16 broker's licenses and for real estate salesmen's licenses  
17 based upon the administrative costs of sustaining the  
18 commission. The fees shall include, but shall not be limited  
19 to, the costs for:

- 20 1. Per diem, expenses, and travel for commission members.
- 21 2. Office facilities, supplies, and equipment.
- 22 3. Director, assistants, and clerical assistance.

23 Sec. 14. Section one hundred seventeen point twenty-eight  
24 (117.28), Code 1975, is amended to read as follows:

25 117.28 EXPIRATION OF LICENSE. Every license shall expire  
26 ~~annually~~ as determined by the commission. A person who fails  
27 to renew his license by the expiration date shall be allowed  
28 to do so within thirty days following its expiration, but  
29 the commission may assess a reasonable penalty. The commission  
30 shall upon the written request of the applicant on forms pre-  
31 scribed by the commission, and payment of the ~~annual~~ fee  
32 therefor as herein required, issue a new license for each  
33 ensuing year in the absence of any reason or condition which  
34 might warrant the revocation of a license after a hearing  
35 as provided in sections 117.34 and 117.35.

1     Sec. 15. Section one hundred eighteen point ten (118.10),  
2 Code 1975, is amended to read as follows:

3     118.10 RENEWALS. Certificates of registration shall  
4 expire ~~annually~~ as determined by the board. Registered  
5 architects shall renew their certificates of registration  
6 and pay a renewal fee in the manner prescribed by the board.  
7 A person who fails to renew his certificate of registration  
8 by the expiration date shall be allowed to do so within thirty  
9 days following its expiration, but the board may assess a  
10 reasonable penalty.

11     Sec. 16. Section one hundred eighteen A point thirteen  
12 (118A.13), Code 1975, is amended to read as follows:

13     118A.13 RENEWALS. Certificates of registration shall  
14 expire ~~annually~~ as determined by the board. Registered  
15 landscape architects shall renew their certificates of  
16 registration and pay a renewal fee in the manner and amount  
17 prescribed by the board. A person who fails to renew his  
18 certificate by the expiration date shall be allowed to do  
19 so within thirty days following its expiration, but the board  
20 may assess a reasonable penalty.

21     Sec. 17. Section one hundred twenty point eight (120.8),  
22 subsection four (4), Code 1975, is amended to read as follows:

23     4. Every certificate of registration shall expire ~~annually~~  
24 and ~~shall~~ be renewed ~~annually~~ as determined by the board upon  
25 application by the holder thereof, without examination.  
26 Application for such renewal shall be made in writing to the  
27 department, accompanied by a renewal fee in an amount  
28 determined by the board based upon the cost of renewing the  
29 certificate, at least thirty days prior to the expiration  
30 of such certificate. Every renewal shall be displayed in  
31 connection with the original certificate. The board shall  
32 notify each certificate holder by mail of the expiration of  
33 his certificate. A person who fails to renew his certificate  
34 by the expiration date shall be allowed to do so within thirty  
35 days following its expiration, but the board may assess a

1 reasonable penalty.

2 Sec. 18. Section one hundred twenty point nine (120.9),  
3 Code 1975, is amended to read as follows:

4 120.9 APPRENTICE WATCHMAKERS. Any person sixteen years  
5 of age or over, apprenticed to a registered watchmaker, may  
6 pursue the trade of watchmaking upon obtaining from the board  
7 a certificate of registration as an apprenticed watchmaker,  
8 which certificate shall be conspicuously displayed at all  
9 times in the place of employment of such apprentice. No  
10 apprentice certificate shall be renewed unless the application  
11 therefor shall be accompanied by a sworn statement of the  
12 employer or employers as to the length of time the applicant  
13 has been actually employed under his certificate in the pursuit  
14 of the watchmaking trade. Apprentice watchmakers shall pay  
15 a fee in an amount determined by the board for the certificate  
16 which shall expire annually as determined by the board and  
17 shall pay a renewal fee annually in an amount determined by  
18 the board. A person who fails to renew his certificate by  
19 the expiration date shall be allowed to do so within thirty  
20 days following its expiration, but the board may assess a  
21 reasonable penalty. Any applicant for a certificate of  
22 registration as a watchmaker who fails to pass the examination  
23 provided for herein may in the discretion of the board be  
24 issued a certificate as an apprentice watchmaker.

25 Sec. 19. Section one hundred forty-seven point ten  
26 (147.10), Code 1975, is amended to read as follows:

27 147.10 RENEWAL. Every license to practice a profession  
28 shall expire ~~annually-as-determined-by-the-board~~ and shall  
29 be renewed annually upon application by the licensee, as de-  
30 termined by the board, without examination. Application for  
31 such renewal shall be made in writing to the department accom-  
32 panied by the required fee at least thirty days prior to the  
33 expiration of such license. Every renewal shall be displayed  
34 in connection with the original license. ~~Every-year-the~~ The  
35 department shall notify each licensee by mail of the expiration

1 of his license. Failure to renew the license within a reason-  
2 able time after the expiration shall not invalidate the  
3 license, but a reasonable penalty may be assessed by the  
4 board.

5 Sec. 20. Section one hundred forty-seven point eighty  
6 (147.80), unnumbered paragraph one (1), Code 1975, is amended  
7 to read as follows:

8 An examining board shall set the fees for the examina-  
9 tion of applicants, which fees shall be based upon the annual  
10 cost of administering the examinations. An examining board  
11 shall set the annual fees, except renewal fees which need  
12 not be annual, required for any of the following based upon  
13 the cost of sustaining the board and the actual costs of  
14 licensing:

15 Sec. 21. Section one hundred forty-seven point one hundred  
16 (147.100), Code 1975, is amended to read as follows:

17 147.100 EXPIRATIONS AND RENEWALS. Licenses shall expire  
18 ~~annually~~ as determined by the examining board. A person who  
19 fails to renew his license by the expiration date shall be  
20 allowed to do so within thirty days following its expiration,  
21 but the examining board may assess a reasonable penalty.

22 Sec. 22. Section one hundred forty-seven point one hundred  
23 twenty-two (147.122), Code 1975, is amended to read as follows:

24 147.122 LICENSE FEES. Each person licensed as a nursing  
25 home administrator shall be required to pay a license fee  
26 in an amount to be fixed by the board. Said license shall  
27 expire ~~annually~~ and shall be renewable annually as determined  
28 by the board and upon payment of the license fee. A person  
29 who fails to renew his license by the expiration date shall  
30 be allowed to do so within thirty days following its ex-  
31 piration, but the board may assess a reasonable penalty.

32 Sec. 23. Section one hundred forty-seven point one hun-  
33 dred twenty-seven (147.127), Code 1975, is amended to read  
34 as follows:

35 147.127 RENEWAL OF LICENSE. Every holder of a nursing

1 home administrator's license shall renew it ~~annually-by-making~~  
2 ~~application-to~~ as determined by the board, ~~-except-that~~  
3 ~~biennially-the-individual-requesting-renewal-shall-submit~~  
4 ~~evidence-satisfactory-to-the-board-of-continued-education~~  
5 ~~in-this-field.~~ Such renewals shall be granted as a matter  
6 of course unless the board finds, after due notice and hearing,  
7 that the applicant has acted or failed to act in accordance  
8 with the rules or in such a manner or under such circumstances  
9 as would constitute grounds for suspension or revocation  
10 of a license.

11 Sec. 24. Section one hundred forty-eight point five  
12 (148.5), Code 1975, is amended to read as follows:

13 148.5 RESIDENT PHYSICIAN'S LICENSE. Any physician, who  
14 is a graduate of a medical school and is serving only as a  
15 resident physician and who is not licensed to practice medicine  
16 and surgery in this state, shall be required to obtain from  
17 the medical examiners a temporary or special license to prac-  
18 tice as a resident physician. The license shall be designated  
19 "Resident Physician License" and shall authorize the licensee  
20 to serve as a resident physician only, under the supervision  
21 of a licensed practitioner of medicine and surgery, in an  
22 institution approved for this purpose by the medical examiners.  
23 Such license shall be valid for one year and may be ~~annually~~  
24 renewed at the discretion of the medical examiners. The fee  
25 for this license shall be set by the board to cover the  
26 administrative costs of issuing the license, and if extended  
27 beyond one year, ~~an-annual~~ a renewal fee as set by the board  
28 shall be required. The medical examiners shall determine  
29 in each instance those eligible for this license, whether  
30 or not examinations shall be given, and the type of  
31 examinations. No requirements of the law pertaining to regular  
32 permanent licensure shall be mandatory for this resident  
33 licensure except as specifically designated by the medical  
34 examiners. The granting of a resident physician's license  
35 does not in any way indicate that the person so licensed is

1 necessarily eligible for regular licensure, nor are the medical  
2 examiners in any way obligated to so license such individual.  
3 The medical examiners shall revoke the license at any time  
4 they shall determine either that the caliber of work done  
5 by a licensee or the type of supervision being given such  
6 licensee does not conform to reasonable standards established  
7 by the medical examiners.

8 Sec. 25. Section one hundred forty-eight point ten  
9 (148.10), unnumbered paragraph two (2), Code 1975, is amended  
10 to read as follows:

11 The temporary certificate shall be issued for one year  
12 and, at the discretion of the medical examiners may be re-  
13 newed, but no person shall be entitled to practice medicine  
14 and surgery or osteopathic medicine and surgery in excess  
15 of three years while holding a temporary certificate. The  
16 fee for this license shall be set by the medical examiners  
17 and if extended beyond one year ~~an annual~~ a renewal fee per  
18 year shall be set by the medical examiners. The fees shall  
19 be based on the administrative costs of issuing and renewing  
20 the licenses. The medical examiners may cancel a temporary  
21 certificate at any time, without a hearing, for reasons deemed  
22 sufficient to the medical examiners.

23 Sec. 26. Section one hundred fifty A point nine (150A.9),  
24 Code 1975, is amended to read as follows:

25 150A.9 RESIDENT LICENSE. Any osteopathic physician and  
26 surgeon who is a graduate of a college of osteopathic medicine  
27 and surgery approved by the medical examiners and is serving  
28 only as a resident osteopathic physician and surgeon and who  
29 is not licensed to practice osteopathic medicine and surgery  
30 in this state, shall be required to obtain from the medical  
31 examiners a temporary or special license to practice as a  
32 resident osteopathic physician and surgeon. The license shall  
33 be designated "Resident Osteopathic Physician and Surgeon  
34 License", and shall authorize the licensee to serve as a  
35 resident only, under the supervision of a licensed practitioner

1 of osteopathic medicine and surgery, in an institution approved  
2 for this purpose by the medical examiners. Such license shall  
3 be valid for one year and may be ~~annually~~ renewed at the dis-  
4 cretion of the medical examiners. The fee for this license  
5 shall be set by the board and based on the cost of issuing  
6 the license, and if extended beyond one year, ~~an annual~~ a  
7 renewal fee shall be required. The medical examiners shall  
8 determine in each instance those eligible for this license,  
9 whether or not examinations shall be given, and the type of  
10 examinations. No requirements of the law pertaining to regular  
11 permanent licensure shall be mandatory for this resident  
12 licensure except as specifically designated by the medical  
13 examiners. The granting of a resident osteopathic physician  
14 and surgeon's license does not in any way indicate that the  
15 person so licensed is necessarily eligible for regular  
16 licensure, nor are the medical examiners in any way obligated  
17 to so license such individual. The medical examiners shall  
18 revoke said license at any time they shall determine either  
19 that the caliber of work done by the licensee or the type  
20 of supervision being given such licensee does not conform  
21 to reasonable standards established by the medical examiners.

22 Sec. 27. Section one hundred fifty-three point twenty-  
23 two (153.22), Code 1975, is amended to read as follows:

24 153.22 RESIDENT DENTIST LICENSE. Any dentist, who is  
25 a graduate of an accredited dental school and is serving only  
26 as a resident, intern or graduate student dentist and who  
27 is not licensed to practice dentistry in this state, shall  
28 be required to obtain from the board of dentistry a tempor-  
29 ary or special license to practice as a resident, intern or  
30 graduate dentist. The license shall be designated "Resident  
31 Dentist License" and shall authorize the licensee to serve  
32 as a resident, intern or graduate student only, under the  
33 supervision of a licensed practitioner of dentistry, in an  
34 institution approved for this purpose by the board. Such  
35 license shall be valid for one year and may be ~~annually~~ re-

1 newed at the discretion of the board for a period not to  
 2 exceed three additional years. The fee for this license and  
 3 the ~~annual~~ renewal fee shall be set by the board based upon  
 4 the cost of issuance of the license. The board shall determine  
 5 in each instance those eligible for this license, whether  
 6 or not examinations shall be given, and the type of  
 7 examination. No requirements of the law pertaining to regu-  
 8 lar permanent licensure shall be mandatory for this resident  
 9 licensure except as specifically designated by the board.

10 The granting of a resident dentist's license does not in any  
 11 way indicate that the person so licensed is necessarily elig-  
 12 ible for regular licensure, nor is the board in any way ob-  
 13 ligated to so license such individual. The board may revoke  
 14 said license at any time it shall determine either that the  
 15 caliber of work done by a licensee or the type of supervi-  
 16 sion being given such licensee does not conform to reason-  
 17 able standards established by the board.

18 Sec. 28. Section one hundred fifty-four point six (154.6),  
 19 Code 1975, is amended to read as follows:

20 154.6 EXPIRATION AND RENEWAL OF LICENSES. Every license  
 21 to practice optometry shall expire ~~annually~~ as determined  
 22 by the board. Application for renewal of such license shall  
 23 be made in writing to the department of health at least thirty  
 24 days prior to the ~~annual~~ expiration date, and be accompanied  
 25 by the required renewal fee and the affidavit of the licensee  
 26 or other proof satisfactory to the department and to the Iowa  
 27 state board of optometry examiners, that said applicant has  
 28 attended, since the issuance of the last license to said  
 29 applicant, an educational program or clinic as conducted by  
 30 the Iowa optometric association, or its equivalent, for a  
 31 period of at least two days. -- The attendance requirement at  
 32 said educational program or clinic shall not be conditioned  
 33 upon membership in said Iowa optometric association.  
 34 Nonmembers shall be admitted to said annual educational program  
 35 or clinic upon payment of their pro-rata share of the cost.

1 ~~In-lieu-of-attendance-at-the-said-annual-educational-program~~  
2 ~~or-clinic,-it-shall-be-the-duty-of-the-board-of-optometry~~  
3 ~~examiners-to-recognize-and-approve-attendance-at-local~~  
4 ~~optometric-study-group-meetings-as-shall,-in-the-judgment~~  
5 ~~of-said-board,-constitute-an-equivalent-to-attendance-at-the~~  
6 ~~annual-educational-program-of-said-association.~~

7       Sec. 29. Section one hundred fifty-four point seven  
8 (154.7), Code 1975, is amended to read as follows:

9       154.7 NOTICE OF EXPIRATION. Notice of expiration of the  
10 annual license to practice optometry shall be given by the  
11 state department of health to all certificate holders by  
12 mailing said notice to the last known address of such li-  
13 censee at least seventy-five days prior to the expiration  
14 date, and said notice shall contain a statement of the edu-  
15 ~~catienal-program-attendance-requirement-and-the~~ amount of  
16 legal fee required as a condition to the renewal of the license  
17 ~~for-the-coming-year.~~ Subject to the provisions of this  
18 chapter, said license shall be renewed without examination.

19       Sec. 30. Section one hundred fifty-four A point fifteen  
20 (154A.15), Code 1975, is amended to read as follows:

21       154A.15 LICENSE RENEWAL. Licenses shall be renewed  
22 annually in a manner determined by the board. The renewal  
23 fee shall be determined by the board pursuant to section  
24 154A.17. The department shall notify every person licensed  
25 under this chapter of the date of expiration of his license  
26 and the amount of fee required for its renewal ~~for-one-year.~~  
27 The notice shall be mailed at least one month in advance of  
28 the expiration date. A person who fails to renew his license  
29 by the expiration date shall be allowed to do so within thirty  
30 days following its expiration, but the board may assess a  
31 reasonable penalty.

32       Sec. 31. Section one hundred fifty-five point twelve  
33 (155.12), unnumbered paragraph one (1), Code 1975, is amended  
34 to read as follows:

35       Licenses shall be obtained from the board for each and

1 every place of business. Applications shall be upon such  
2 forms and shall contain such information as the board may  
3 reasonably require. Each application for license shall be  
4 made by the pharmacist-owner to the secretary of the board,  
5 accompanied by the license fee, which shall be paid over into  
6 the state treasury and credited to the general fund if the  
7 license is issued. The license fee for a pharmacy license  
8 or a wholesale drug license shall be set by the board and  
9 based upon the administrative costs of issuing the licenses.  
10 ~~These licenses shall be due annually on the first day of each~~  
11 ~~January:~~ The board shall issue a license upon receipt of  
12 an application accompanied by the license fee and after  
13 approval thereof by the board.

14 Sec. 32. Section one hundred fifty-five point thirteen  
15 (155.13), unnumbered paragraph one (1), Code 1975, is amended  
16 to read as follows:

17 Each license issued under this chapter unless sooner sus-  
18 pended or revoked, shall be renewable ~~annually~~ as determined  
19 by the board upon payment of the ~~annual~~ license fee. The  
20 board shall have the authority to deny, suspend or revoke  
21 a license in any case where it finds that there has been a  
22 substantial failure to comply with the provisions of this  
23 chapter or the regulations promulgated hereunder, or the  
24 violation thereof, and in addition the board shall have the  
25 power to deny, suspend or revoke a license, when the appli-  
26 cant or licensee, or any employee, providing the offense is  
27 committed on licensed premises or is in the conduct of the  
28 business licensed, is guilty of any of the following facts  
29 or offenses:

30 Sec. 33. Section one hundred sixty-nine point six (169.6),  
31 Code 1975, is amended to read as follows:

32 169.6 RENEWAL. Every license issued under this chapter  
33 shall expire ~~annually~~, and shall be renewed ~~annually~~ as  
34 determined by the board upon application by the licensee.  
35 A person who fails to renew his license by the expiration

1 date shall be allowed to do so within thirty days following  
2 its expiration, but the board may assess a reasonable penalty.  
3 Application for such renewal shall be made in writing to the  
4 department of agriculture, accompanied by the required fee,  
5 at least thirty days prior to the expiration of such license.  
6 The department shall notify each licensee by mail of the ex-  
7 piration of his license. Every renewal shall be displayed  
8 in connection with the original license. ~~A-licensed-veterin-~~  
9 ~~arian-of-the-state-of-iowa-who-is-called-into-military-duty~~  
10 ~~for-the-United-States-government-is-exempt-from-paying-the~~  
11 ~~renewal-fee-for-such-license-but-said-license-must-be-renewed~~  
12 ~~within-one-year-from-date-of-discharge-or-the-license-shall~~  
13 ~~be-revoked-~~

14 Sec. 34. Section four hundred fifty-five B point fifty-  
15 eight (455B.58), Code 1975, is amended to read as follows:  
16 455B.58 DURATION. Certificates shall continue in effect  
17 ~~for one-year-from-the-date-of-issuance~~ a period determined  
18 by the board unless sooner revoked by the executive director,  
19 but such certificates shall remain the property of the depart-  
20 ment and the certificate shall so state. A person who fails  
21 to renew his certificate by the expiration date shall be  
22 allowed to do so within thirty days following its expiration,  
23 but the board may assess a reasonable penalty.

24 Sec. 35. Section six hundred ten point forty-five (610.45),  
25 Code 1975, is amended to read as follows:  
26 610.45 RENEWALS. The right to practice law in this state  
27 shall be renewed annually by the supreme court upon such  
28 conditions as the court shall determine. Any moneys received  
29 from those persons admitted to practice law and which are  
30 designated for a client security fund or similar fund created  
31 by the supreme court shall be separately retained and  
32 administered by said court in accordance with rules promulgated  
33 by it.

34 Sec. 36. Sections one hundred fifty-four point eight  
35 (154.8) and one hundred fifty-four A point sixteen (154A.16),

1 Code 1975, are repealed.

2 Sec. 37. The provisions of section twenty-three (23),  
3 except where the words "annually by making application to"  
4 are stricken and where the words "as determined by" are  
5 inserted, section twenty-eight (28), except where the words  
6 "annually" and "annual" are stricken and where the words "as  
7 determined by the board" are inserted, and sections twelve  
8 (12) and thirty-six (36) of this Act shall be effective on  
9 July 1, 1977.

10

#### EXPLANATION

11 This bill, by its legislative findings in section 1, expands  
12 the principles stated in section 1 of chapter 1086, Laws of  
13 the Sixty-fifth General Assembly, 1974 Session. These  
14 legislative findings are implemented by the remainder of the  
15 bill.

16 Section 3 of the bill creates the licensing review committee  
17 composed of six legislative members and an ex officio member  
18 from the attorney general's office. Section 4 of the bill  
19 delineates the committee's review powers and duties, including  
20 powers and duties similar to those given the administrative  
21 rules review committee under the Iowa Administrative Procedure  
22 Act. Sections 4 and 7 of the bill establish that the  
23 committee's duty of reviewing the examining boards' rules  
24 is to the exclusion of the administrative rules review  
25 committee. Section 4 of the bill also gives the committee  
26 the power to recommend revision of the licensing laws.

27 Section 5 of the bill delegates rule-making authority to  
28 the 24 examining boards to establish continuing education  
29 requirements and programs. Specific guidelines for rule  
30 promulgation are prescribed. Section 6 of the bill delegates  
31 rule-making authority to eight health care boards to establish  
32 disciplinary procedures, also under specific guidelines.

33 Sections 8 through 37 of the bill eliminate the mandatory  
34 statutory annual renewal of licenses. This allows the boards  
35 to coordinate renewals with continuing education requirements.

1 Sections 12, 23, 28 and 36 of the bill repeal current  
2 statutory specifications of continuing education for the  
3 accountancy, hearing aid dealers, nursing home administrators,  
4 and optometry boards. The repeal contemplates uniformity  
5 and is, pursuant to section 37 of the bill, delayed until  
6 July 1, 1977, so that these boards may implement necessary  
7 rules to replace the repealed statutory provisions.

8 Sections 8 and 33 delete obsolete language.

9 Under this bill and in particular under subsection 1 of  
10 section 4, the boards are not required to establish continuing  
11 education requirements or programs.

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1 Section 1. Chapter six hundred twenty-four (624), Code  
2 1975, is amended by adding the following new section:

3 NEW SECTION.1. JUDGMENTS IN MEDICAL MALPRACTICE ACTIONS.

4 1. As used in this section, the following definitions  
5 shall apply unless the context otherwise requires:

6 a. "Health care provider" means as provided in section  
7 two (2) of this Act.

8 b. "Health care practitioner" means as provided in section  
9 two (2) of this Act.

10 c. "Hospital" means as provided in section two (2) of  
11 this Act.

12 d. "Medical malpractice action" means every action for  
13 damages for personal injury, other than in contract, against  
14 a health care provider based upon alleged acts or omissions  
15 of a health care practitioner in the practice of his or her  
16 profession or occupation, or based upon alleged acts or omis-  
17 sions of a hospital in patient treatment or care.

18 e. "Future injuries" means and includes all legal harm  
19 which the trier of fact determines will be incurred by the  
20 injured party subsequent to the entry of judgment.

21 f. "Injured person" means the person during whose medi-  
22 cal treatment or care the acts or omissions of malpractice  
23 are determined to have occurred.

24 g. "Injured party" means a party plaintiff to a medical  
25 malpractice action, and includes the injured person when a  
26 party.

27 h. "Injury" means and includes every legal harm for which  
28 damages are recoverable.

29 2. The trier of fact in every medical malpractice action  
30 shall find as separate facts with respect to each injured  
31 party the total amount to be awarded as damages for past  
32 injuries, if any, and the specific amounts to be awarded as  
33 damages for future injuries, if any. The award for future  
34 injuries shall be expressed in three elements, to the ex-  
35 tent that each of the elements is found to be present; loss

1 of future income, future expenses for care and treatment,  
2 and future noneconomic harm to be endured by the party.

3 3. The court, in a medical malpractice action in which  
4 a damage award for future injuries to a party exceeds fifty  
5 thousand dollars shall enter a judgment ordering that the  
6 amount of the award to that party in excess of fifty thou-  
7 sand dollars shall be payable to that party in installments,  
8 subject to the limitations contained in this section. The  
9 court shall make a specific finding as to the dollar amount  
10 of regular installments which will be required to compensate  
11 the party periodically for loss of future income and future  
12 noneconomic harm, based upon the life expectancy of the party  
13 and the amounts awarded. The judgment shall specify the  
14 recipient of periodic payments, the dollar amount of each  
15 payment, the interval between payments, and the number of pay-  
16 ments required to be made. The judgment also shall specify  
17 the amount of and the purposes for which the balance of the  
18 judgment awarded for the future care and treatment of the  
19 party may be used.

20 4. Attorney fees of the party receiving an award, if  
21 payable out of the judgment, shall be assessed by the court  
22 and applied pro rata against amounts awarded for past injuries  
23 and for future injuries. The amount thus determined by the  
24 court to be payable out of damages for future injuries shall  
25 be deducted by the court from the amount to be ordered paid  
26 into trust as provided in subsection four (4) of this section,  
27 and shall be deducted pro rata from those amounts awarded,  
28 if any, for loss of future income, future care and treatment,  
29 and future noneconomic harm. The amount thus determined for  
30 attorney fees attributable to the award for future injuries  
31 shall be payable upon entry of judgment.

32 5. When a judgment has been entered pursuant to this  
33 section ordering periodic payments, the amount awarded in  
34 excess of fifty thousand dollars, less the deductions pro-  
35 vided for in this section, shall be ordered paid into trust

1 for the benefit of the party to whom the award was made.  
2 A trustee shall be named by agreement of the parties to the  
3 action, or if the parties cannot agree, a trustee shall be  
4 named by the court. A person shall not qualify to act as  
5 trustee unless that person is authorized to exercise the  
6 powers of a fiduciary under either chapter five hundred twenty-  
7 four (524) of the Code or the laws of the United States.

8 6. The trustee shall receive the amount ordered to be  
9 paid into trust, and shall administer the trust and shall  
10 assure that payments from trust are made only to or on be-  
11 half of the named recipient and only for the purposes which  
12 are specified in the order of the court. Funds which are  
13 specified to be used for one purpose shall not be paid by  
14 the trustee for use for other purposes. The trustee shall  
15 receive annually out of the corpus of the trust as compen-  
16 sation for administering the trust one-half of one percent  
17 of the average of the fair market value of the trust assets  
18 contained in the trust during the year, and shall be reim-  
19 bursed for any costs advanced at the time those costs are  
20 incurred. In the event any extraordinary services are per-  
21 formed by the trustee, upon application of the trustee and  
22 notice to trust beneficiaries, the court may award additional  
23 compensation to be paid out of the trust. All payments to  
24 the trustee shall be deducted pro rata from each of the funds  
25 in trust.

26 7. In the event of the death of the beneficiary, amounts  
27 remaining in trust shall revert to the judgment debtor or  
28 to the person who actually paid those funds into trust on  
29 behalf of the judgment debtor, except that remaining assets  
30 specified to be paid for loss of future income shall be payable  
31 to those persons to whom the injured person owed a duty of  
32 support. If the beneficiary dies prior to depletion of those  
33 amounts held in trust for other than loss of future income,  
34 the judgment shall be satisfied upon the payment out of trust  
35 of all obligations incurred up to the time of death, but

1 including expenses of final illness and reasonable burial  
2 expenses.

3 8. Except with respect to amounts representing loss of  
4 future income, that portion of a judgment for future injuries  
5 which exceeds fifty thousand dollars shall be a contingent  
6 award, and the right to payment shall vest only at such times  
7 and in such amounts as accrue pursuant to the order specifying  
8 the amount of periodic payments and the interval of those  
9 payments.

10 9. The district court shall retain jurisdiction of any  
11 judgment in a medical malpractice action which orders periodic  
12 payments, and upon the death of the recipient of installment  
13 payments, the dependants of the decedent in the case of an  
14 award for loss of future income, or the trustee in the case  
15 of all other amounts held in trust, or any other interested  
16 party to the action or a representative, may petition the  
17 court for a modification of the judgment and of the trust  
18 and for a redesignation of the recipient of trust funds, in  
19 accordance with the rights of persons as established by this  
20 section. Unless otherwise ordered, the redesignated recipients  
21 of an award for loss of future income shall be paid in those  
22 amounts and at those intervals specified in the original  
23 judgment. Payments shall continue until the remaining amounts  
24 designated for that purpose have been depleted, or until the  
25 death of those dependants, whichever occurs sooner. In the  
26 event the last surviving person to whom the injured person  
27 owed an obligation of support dies prior to depletion of the  
28 amount specified for loss of future income, the judgment shall  
29 be deemed satisfied upon payment of amounts accrued up to  
30 the time of death, and any amounts remaining shall revert  
31 as provided in subsection seven (7) of this section.

32 10. In the event that the person paying funds into trust  
33 on behalf of a judgment debtor is a person who contracted  
34 to insure the judgment debtor against liability arising from  
35 medical malpractice actions, any amount which reverts to that

1 person pursuant to this section and which is repaid to that  
2 person by the trustee shall be applied by that person as an  
3 offset against claims loss experience. The commissioner  
4 of insurance shall promulgate rules to assure compliance  
5 with this subsection.

6 Sec. 2. Section one hundred forty-seven point one (147.1),  
7 Code 1975, is amended by adding the following new subsec-  
8 tions:

9 NEW SUBSECTION. "Health care provider" means and includes  
10 a physician and surgeon, osteopath, osteopathic physician  
11 and surgeon, dentist, podiatrist, optometrist, pharmacist,  
12 chiropractor, nurse, or physical therapist, licensed pursuant  
13 to this chapter, and a hospital.

14 NEW SUBSECTION. "Health care practitioner" means every  
15 health care provider other than a hospital.

16 NEW SUBSECTION. "Hospital" means an institution licensed  
17 as a hospital pursuant to chapter one hundred thirty-five  
18 B (135B) of the Code.

19 EXPLANATION

20 This bill provides that in medical malpractice actions  
21 in which a party receives an award by the jury or court for  
22 future damages which exceeds \$50,000 the excess shall be  
23 payable in installments rather than in lump sum. Portions  
24 of that amount which represent noneconomic harm and future  
25 care and treatment are contingent awards only, and upon the  
26 death of the party to whom awarded, remaining portions of  
27 those amounts revert to the judgment debtor or his or her  
28 insurance carrier.

29 The full amount of the judgment is payable by the defendant  
30 upon entry of judgment. Amounts representing past losses  
31 are payable to the party upon entry of judgment. The excess  
32 over \$50,000 of an amount representing future losses is paid  
33 into trust, and the trustee distributes the funds periodically  
34 for income loss and noneconomic harm, and as needed for care  
35 and treatment of the injured party.

1 The purpose of this bill is to eliminate the windfall gain  
2 of the dependents of an injured party when that person is  
3 awarded large sums for future medical care and future pain  
4 and suffering, but unexpectedly dies shortly after the judg-  
5 ment is entered.

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