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HJ02 NONECONOMIC DAMAGE AWARDS - CONSTITUTIONAL AMENDMENT
COLIN SIMPSON'S SUMMARY OF TESTIMONY TO
HOUSE JUDICIARY COMMITTEE

1. Caps on noneconomic damages "in and of themselves" will not lower Medical Malpractice (Med Mal) premiums. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

2. Caps on noneconomic damages "dehumanize" someone who isn't a wage earner and is insulting to victims. (*Dean Greenwood, citizen, 1/23/03*)

3. Recent rate increases are a "corrective action of the past", the result of "artificially low" Med Mal premiums charged in recent years and not the result of lawsuits or the absence of caps. These types of premium increase have been cyclical in the past in "hard markets" (those lacking affordable insurance and a lack of carriers offering the product) like Wyoming. It is taking a shorter time for these cycles to hit "hard markets". (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

4. OHIC's Med Mal premium rates in Wyoming are "**based on Wyoming experience exclusively.**" (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

5. OHIC claims the "**true culprit**" behind their recent rate increases "has been the sudden dramatic rise in loss severity (the average paid per claim)" **on a national average**; in large part due to the rising costs of future medical care and defense costs. However, **OHIC's Wyoming "severity" statistics have dropped significantly over the last 5 years** with a 12% drop in last 5 years; a 26% drop in last 3 years and a **40% drop in the last year**. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*) Which is it; National statistics or Wyoming exclusively?

6. Professional malpractice cases make up less than 1% of all civil litigation in Wyoming. From 1989 through 2001, there have been only 31 medical malpractice cases tried in Wyoming, 26 of them resulting in $0 verdict, and no verdicts over $1 million. From 1996-2001 the number of claims in Wyoming has remained stable with an average paid of $198,131 paid per claim. (*Wyoming Trial Lawyers Assoc. 1/23/03*)

7. From 1994 through October 31, 2002, OHIC has paid or defended 28 medical malpractice claims over $250,000 in Wyoming, 13 on behalf of physicians and 14 on behalf of medical facilities. Of the claims paid on behalf of physicians, 6 claims were between $250,000 and $500,000; 3 claims were between $500,000 and $750,000; and there have been no claims paid over $750,000. OHIC says it pays meritorious claims prior to trial. (*Melissa Denison, Director of Business Development, OHIC, documentation supplied and followup conversations with her in February of 2003*)

8. Med Mal insurance only represents 3% of the Property Casualty Insurance Industry and the large national companies are no longer interested in the Med Mal line of insurance. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

9. Insurance spreads the loss of the few over a large base of insureds. Tort reform measures can reduce the total losses that will eventually be spread over the insured physicians and hospitals in Wyoming. The lower the level of total losses in Wyoming, the lower the premium level needed. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

10. Caps have no correlation to an insurer's margin of profit. The number of competitors in a market does. "Caps do provide more stability and increased predictability and will have a direct impact on the loss costs and rate level of the state. A stable and predictable environment will be attractive to new capital and will bring more competitors back into the state. The increased competition will force margins down to their appropriate levels." (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

11. In a competitive market the market, not the insurance department, sets the rates. A market is considered "noncompetitive" if two companies are writing 80% of a particular line of Insurance. **Wyoming's Med Mal market has been considered "noncompetitive" since 1991**. In Wyoming's noncompetitive Med Mal market the Insurance Department sets or approves the base premium rate proposed by the insurer. The "hospital liability insurance" line of coverage was declared noncompetitive by the Insurance Department in 2002. Wyoming has such a small market that it is hard to get carriers to come in and see that it is worthwhile for them to write policies in Wyoming. (*Ken Vines, Acting Wyo Insurance Commissioner, 1/23/03*)

12. All **"base rate"** rate change requests must be filed with the Wyoming Insurance Department and must receive prior approval before they may be used. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03; Ken Vines, Acting Wyo Insurance Commissioner, 1/23/03*)

13. **"Surcharges"** charged by Med Mal carriers to doctors having a claims history, over and above the "base rate", are driving the cost of Med Mal coverage to near impossible levels for some doctors in Wyoming. (*various doctors and lawyers testimony on 1/23/03*)

14. A Med Mal insurance **"tail"** charged by Med Mal carriers to extend coverage for past cases typically incurred after retirement, can also be onerous. (*various doctors and lawyers testimony on 1/23/03*)

15. OHIC, for instance, is required to file their **"Rules"** that apply to their Med Mal policies with the Wyoming Insurance Department and these Rules are what OHIC uses to set and charge "surcharges " to their insureds. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

16. Med Mal carrier "Rules" that apply to Med Mal policies in Wyoming **have never received much scrutiny** from the Wyoming Insurance Department. (*Ken Vines, Acting Wyo Insurance Commissioner, 1/23/03*)

17. OHIC, for instance, grants **premium "discounts"** to those doctors who are "loss free" of up to 15% and other discounts can be achieved through risk management seminars and risk aversion techniques. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*).

18. In 2001, Wyoming had 2 Med Mal carriers writing policies with the following market shares:

The Doctor's Company	36%
OHIC	47% (308 doctors, 11 hospitals & other HC institutions)

(*Ken Vines, Acting Wyo Insurance Commissioner, 1/23/03; Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

19. OHIC's profit margin target in Wyoming is 10%. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

20. Med Mal "base rate" premium requests and approvals in Wyoming since 1995 are:

The Doctor's Company

Year	rate requested	rate approved
1995	11.6%	7.8%
1998	1.0%	1.0%
1999	(5.3%)	(5.3%)
2000	12.4%	10%
2001	40.0%	28.8%
2002	NA	NA

OHIC (Wyoming physician)

Year	rate requested	rate approved
1995	(3.1%)	(3.1%)
1998	(0.7%)	(0.7%)
1999	None	None
2000	23.8%	23.8%
2001	None	None
2002	15.0%	14.6%

OHIC (Wyoming facility)

Year	rate requested	rate approved
1995	NA	NA
1998	NA	NA
1999	NA	NA
2000	NA	NA
2001	22.0%	22.0%
2002	21.0%	21.0%

(*Ken Vines, Acting Wyo Insurance Commissioner, 1/23/03; Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

21. OHIC's "future rate increases in Wyoming will be moderate." (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

22. The components of Med Mal premium rate making are: (1) Losses (claims & judgments paid); (2) Loss Adjustment Expenses (lawsuit defense costs); (3) administrative costs; and (4)

profit. OHIC also rate the legal environment and defense costs. Legal defense costs are high in Wyoming because of the small number of attorneys who specialize in Med Mal defense. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*).

23. Out-of-court settlement payments, legal defense costs and legal defense costs of claims without merit (as defined in some unknown fashion by OHIC) are the greatest factors influencing Med Mal rates in Wyoming. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

24. "Incurred Losses" reported by insurance companies are not the actual losses incurred but the amounts that insurance companies project they will pay out in the future and these amounts are always a guess. There are business reasons to underestimate incurred losses (so reserves may be overstated) and to overestimate incurred losses (to show more losses and increase rates). (*Jay Angoff, former Missouri Insurance Commissioner, 1/23/03*)

25. Population base was not a factor when OHIC entered the Wyoming Med Mal market in 1984. (*Melissa Denison, Director of Business Development, OHIC, 1/23/03*)

26. Exposure and fear of the unknown, in terms of jury verdicts on noneconomic damages, drives doctors and insurance companies to settle cases they would try with caps. (*Jeff Brinkerhoff, Med Mal insurance defense attorney, Casper, 1/23/03*)

27. Fear of the unknown isn't there because insurance companies better able to evaluate cases than Plaintiff's attorneys. Where is the fear of the unknown when the top Med Mal jury verdict was $750,000? Caps inherently distrust juries. (*Rob Shivley, Med Mal insurance defense and Plaintiff's attorney, Casper, 1/23/03*)

28. There was a "disruption" in the Med Mal insurance industry in Wyoming when St. Paul withdrew from the market and FICA became insolvent. (*Ken Vines, Acting Wyo Insurance Commissioner, 1/23/03*)

29. Utah Medical Insurance Association (UMIA) appears to be getting into the Med Mal market in Wyoming and currently insures approximately 20 doctors. (*Ken Vines, Acting Wyo Insurance Commissioner, 1/23/03*)

30. There is a coalition of 12 hospitals in Wyoming that will be going self-insured. Wyoming has the highest per capita health care costs in the country. Hospital liability coverage and Med Mal premiums are $1.7m for Wyoming Medical Center in Casper and deductibles are increasing. (*Jim Gardner, President/CEO of the Wyoming Medical Center, 1/23/03*)

31. Keeping doctors in Wyoming and recruiting doctors to come to Wyoming is very difficult. (*various speakers, 1/23/03)*

32. Small hospital in Wyoming run on very slim margins, are at risk of loosing doctors, have medical staffs in fragile states, and are faced with the axiom "no margin, no mission." (*various speakers, 1/23/03)*

33. Without "meaningful tort reform" Wyoming is perceived by potential medical providers and insurers as having a "hostile legal environment". *(Dr. Dick Torkelson, Cheyenne Orthopaedics, and various other speakers, 1/23/03)*

34. Nationally, 9,000 doctors quit doing obstetric in 2002. General surgery and OBGYN residencies only filed 40% of the available positions nationally in 2002 due to lifestyle issues and the nationally publicized problems. *(Dr. Kay, OBGYN in Casper, 1/23/03)*

35. MICRA was enacted in 1975 in response to California's medial malpractice crisis and keeps open access to health care for Californians by curbing the size of payouts in medical malpractice litigation. MICRA tightens the statute of limitations, limits payment for "pain and suffering" damages to $250,000, sets a sliding contingency fee scale for plaintiff attorney fees, permits medical liability disputes to be resolved by arbitration, and allows for the payment of future damages in excess of $50,000 to be paid periodically rather than in a lump sum. Rate stabilization began in California in 1986, the year after the Supreme Court upheld the balance of MICRA against legal challenge. *(Wyoming Medical Society)*

36. Proposition 103, the Insurance Rate Reduction and Reform Act, was enacted in 1988 and went into effect in 1989. It was designed primarily to reduce automobile, homeowners, and small business insurance rates which had skyrocketed in California by 1988. It provided that "no rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter." The Insurance Commissioner was required to approve all rate increases, and, upon request, required to grant a public hearing for rate increases more than 15%. It also mandated a 20% across the board decrease (or "rollback") for all rates. *(Wyoming Medical Society)*

37. Caps on noneconomic damages "dehumanize" someone who isn't a wage earner and is insulting to victims. *(Dean Greenwood, citizen, 1/23/03)*

COMPREHENSIVE LEGISLATION PACKAGE IS NEEDED THAT MAY INCLUDED MANY OF THE FOLLOWING:

- Repeal antitrust exemption for the insurance industry
- Require prior approval of rate changes (base, surcharge and tail coverages), with automatic standing for doctors to intervene
- Prohibit recoupment of investment losses through rate increase
- Update and amend the Wyoming "Medical Malpractice Insurance" statute created in 1977 (26-33-101 et seq.) and fund the program
- Adopt a Medical Incident Disclosure Act
  Require Certificates of Review in civil actions against professionals (2003 session HB33)
- Require medical malpractice claims reporting by insurance carries (2003 session HB86)
- Strengthen Insurance Department actuarial abilities and consumer advocacy
- Address civil litigation issues such as: inadmissibility of seatbelt use, motor vehicle violations and insurance coverage
- Encourage carriers to use Physician Review Panels to help lower the risk status of doctors and minimize premium increases and policy cancellation
- Encourage doctors to start and join a self-insurance program like ALPS and no legislative authorization is needed

PAST REFORMS WYOMING HAS ADOPTED TO DEAL WITH "INSURANCE CRISIS"

Board certified experts required in medical malpractice cases

- Civil litigation rule changes including: Rule 11 frivolous claims, limits on discovery, Supreme Court rules on attorney contingent fees
- Joint and several liability thrown out
- Restrictions to comparative fault theory
- Volunteer immunity
- Recreation Safety Act
- Government immunity for highways, street and alleys
- Medical Malpractice Review Panel (found unconstitutional)
- Ad Damnum clause or prayer for damages statute (1-1-114)
- Wyoming "Medical Malpractice Insurance" statute created in 1977 (26-33-101 et seq.) and never funded
- Negligent actors who are not parties to a lawsuit shall be on jury verdict form

HOUSE BILL NO. HB0303

Medical malpractice liability fund.

Sponsored by: Representative(s) Simpson, Childers and Ross

A BILL

for

AN ACT relating to the medical malpractice insurance program; increasing insurance coverage amounts as specified; specifying applicability of advance payments; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 26-33-102(a), 26-33-103, 26-33-104, 26-33-105(c), (g) and (h), 26-33-107 and 26-33-108 are amended to read:

26-33-102. Qualification

(a) To be qualified under this chapter, a physician shall annually purchase health care professional liability insurance coverage of not less than ~~fifty thousand dollars ($50,000.00)~~ one million dollars ($1,000,000.00) per

occurrence for any act, error or omission relating to medical care rendered during the policy year and pay the surcharge pursuant to W.S. 26-33-105(c)

26-33-103. Insurance coverage

A qualified physician shall be insured in a minimum amount of ~~fifty thousand dollars ($50,000.00)~~ one million dollars ($1,000,000.00) against a claim for malpractice. Any award or settlement adjudicated or allowed on a malpractice claim in excess of ~~fifty thousand dollars ($50,000.00)~~ one million dollars ($1,000,000.00) or limits of other underlying coverage if greater occurring during any year in which the physician is qualified under this chapter shall be paid from the account subject to the limitation that obligations from the account shall not exceed ~~one million dollars ($1,000,000.00)~~ two million five hundred thousand dollars ($2,500,000.00) on any one (1) claim, or five million dollars ($5,000,000.00) in any calendar year for one (1) or more awards or settlements against an individual physician

26-33-104. Advance payments.

Any advance payment a defendant physician or his insurer makes to or for the plaintiff, or any other person, is not an admission of liability for injuries or damages the plaintiff or anyone else suffers as to a claim for malpractice. Evidence of an advance payment is not admissible in a court proceeding concerning malpractice until there is final determination in the plaintiff's favor, in which case the final amount payable from the fund shall be reduced by any advance payments.

26-33-105. Medical liability compensation fund

(c) To create the account, all physicians qualified under W.S. 26-33-102, practicing in Wyoming and who elect to participate, shall pay an annual surcharge. The commissioner shall determine the surcharge based upon sound actuarial principles using data obtained from Wyoming experience. The surcharge shall not exceed one hundred fifty percent (150%) of the cost to each physician for a basic ~~fifty thousand dollar ($50,000.00)~~ one million dollar ($1,000,000.00) malpractice insurance premium and shall be collected on the same basis as premiums by each insurer from the physician.

(g) ~~If the account balance exceeds four million dollars ($4,000,000.00) at the end of any calendar year after payment of all claims and expenses,~~ The commissioner shall ~~reduce~~ annually adjust the surcharge to maintain the account at ~~an approximate~~ a level ~~of four million dollars ($4,000,000.00)~~ that is actuarially sound using data obtained from Wyoming experience.

(h) The commissioner shall purchase reinsurance, if needed, to protect the account from depletion due to judgment against it. The reinsurance so purchased shall cover each qualified physician ~~from two hundred fifty thousand dollars ($250,000.00)~~ to ~~one million dollars ($1,000,000.00)~~ five million dollars ($5,000,000.00) per year. Cost of reinsurance shall be paid from the monies of the account

26-33-107. Settlements

Any settlement of a claim against a physician exceeding ~~fifty thousand dollars ($50,000.00)~~ one million dollars ($1,000,000.00) or limits of other underlying coverage if greater shall be carried out through agreement jointly by the claimant, the insurance carrier and the commissioner

If the claimant settles with the insurance carrier, without including the commissioner in the settlement agreement, the claimant waives any claim for damages exceeding ~~fifty thousand dollars ($50,000.00)~~ one million dollars ($1,000,000.00) or limits of other underlying coverage if greater arising from the incident for which the claim is made

26-33-108. Payments from account.

The state treasurer shall issue a warrant in satisfaction of each claim submitted to him against the account after receipt of a certified copy of a final judgment from a court having jurisdiction, or a settlement agreement signed by a claimant, a qualified representative of the insurance carrier and the commissioner, with original signatures. The warrant shall be for the amount exceeding ~~fifty thousand dollars ($50,000.00)~~ one million dollars ($1,000,000.00) or limits of other underlying coverage, if greater, set forth in the judgment or settlement, subject to the limitation that the amounts paid from the account shall not exceed ~~one million dollars ($1,000,000.00)~~ two million five hundred thousand dollars ($2,500,000.00) on any one (1) claim, or five million dollars ($5,000,000.00) in any calendar year

for one (1) or more awards or settlements against an individual physician.

Section 2. This act is effective July 1, 2003.

(END)

H.B. No. 0303	Medical malpractice liability fund.

Sponsored By: Representative(s) Simpson, Childers and Ross

AN ACT relating to the medical malpractice insurance program; increasing insurance coverage amounts as specified; specifying applicability of advance payments; and providing for an effective date.

2/3/2003 Bill Number Assigned
2/3/2003 H Received for Introduction
2/3/2003 H Introduced and Referred to H01
2/7/2003 H01 Recommended Do Pass

ROLL CALL

Ayes: Representative(s) Alden, Bagby, Berger, Buchanan, Landon, Olsen, Petersen, Simpson and Warren

Ayes 9 Nays 0 Excused 0 Absent 0 Conflicts 0

2/7/2003 H Placed on General File
3/6/2003 H Indefinitely Postponed

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2003 *STATE OF WYOMING* 03LSO-0648.E1
ENGROSSED

HOUSE BILL NO. HB0305

Medical malpractice panel

Sponsored by: Representative(s) Simpson, Boswell Childers, Osborn, Parady, Ross and Tipton

A BILL

for

AN ACT relating to administration of government; modifying the Wyoming medical review act; providing an alternative means to resolve medical malpractice claims; authorizing a position; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 9-2-1501, 9-2-1502, 9-2-1503(a)(iii), (v) and (vii), 9-2-1505(a) and (c), 9-2-1506(a) and by creating a new subsection (d) and 9-2-1507(a), (c and (d) are amended to read:

ARTICLE 15

MEDICAL MALPRACTICE PANEL

9-2-1501. Short title.

This act may be cited as the "Wyoming Medical ~~Review~~ Malpractice Panel Act"

9-2-1502. Purpose of provisions

The purpose of this act is to provide an alternative means to resolve medical malpractice claims to prevent where possible the filing in court of actions against health care providers ~~and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice~~ and to make possible the fair and equitable disposition of ~~such~~ medical malpractice claims ~~against health care providers as~~ ~~that are, or reasonably may be, well founded~~ that have been filed in court and are appropriate for alternative dispute resolution.

9-2-1503. Definitions

(a) As used in this act:

(iii) "Health care provider" means a ~~physician, dentist, health care facility or any~~ person ~~employed by a~~

~~health care facility~~ who, in accordance with law or a license granted by a state agency, provides health care~~,~~ including:

A) A physician, dentist, nurse, podiatrist, pharmacist, chiropractor, optometrist or health care facility; and

(B) An officer, employee or agent of a person listed in subparagraph (A) of this paragraph acting in the course and scope of employment.

(v) "Panel" means the medical ~~review~~ malpractice panel provided for under this act;

(vii) "This act" means W.S. 9-2-1501 through ~~9-2-1512~~ 9-2-1511.

9-2-1505. Panel created; compensation; director of panel; appointment and duties; rulemaking.

(a) There is created the Wyoming medical ~~review~~ malpractice panel.

(c) Members of the panel shall receive compensation while engaged in the business of the board of ~~forty dollars ($40.00)~~ sixty dollars ($60.00) per hour for any hour during which a hearing or part of a hearing is held. Compensation for travel and other services shall be as provided in W.S. 9-3-102 and 9-3-103. Compensation to any panel member under this subsection shall not exceed ~~three hundred twenty dollars ($320.00)~~ four hundred eighty dollars ($480.00) per day. Unless otherwise agreed by the parties or otherwise ordered by a court, each party shall pay fifty percent (50%) of the fees of the panel, including travel expenses and other expenses of the review. Any amount paid under this subsection by a prevailing party shall be considered as costs for purposes of Rule 54 of the Wyoming Rules of Civil Procedure.

9-2-1506. Claims to be reviewed by panel; tolling of statute of limitation; immunity of panel and witnesses; administration

(a) The panel shall review ~~all~~ malpractice claims against health care providers filed with the panel ~~except those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to~~

~~July 1, 1986. No complaint alleging malpractice shall be filed in any court against a health care provider before a claim is made to the panel and its decision is rendered. The running of the applicable limitation period in a malpractice action is tolled upon receipt by the director of the application for review and does not begin again until thirty (30) days after the panel's final decision is served upon the claimant.~~ as follows:

(i) With the voluntary agreement of both the complainant and the health care provider; or

(ii) At the request of either the complainant or the health care provider, provided the court determines pursuant to Rule 40, Wyoming Rules of Civil Procedure, that alternative dispute resolution by the medical malpractice panel is appropriate.

(d) Unless an action has been filed, the running of the applicable limitation period in a malpractice action is tolled upon receipt by the director of the application for review and does not begin again until thirty (30) days after the panel's final decision is served upon the claimant.

9-2-1507. Claim review procedure; contents of claim; service of claim on provider; answer

(a) ~~Claimants shall~~ With agreement of the health care provider against whom a claim is asserted, a claimant may submit a case for the consideration of the panel prior to filing a complaint in any court in this state by addressing a claim, in writing, signed by the claimant or his attorney, to the director of the panel. The claim shall contain:

(i A statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians~~, dentists~~ and hospitals having contact with the claimant relevant to the claim and all witnesses;

(ii) A statement, signed by the claimant, authorizing the panel to obtain access to all medical~~, dental~~ and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents

of those records. Nothing in the statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court;~~.~~

(iii) Written authorization of the health care provider for submission of the claim for review under this act.

(c) Upon receipt of a claim, the director shall cause a true copy of the claim to be served on the health care ~~providers~~ provider against whom the claim has been filed.

(d) The health care provider shall answer the claim within thirty (30) days after service and shall submit a statement authorizing the panel to inspect all medical~~,~~ ~~dental and~~ hospital records and information pertaining to the claim except those records which are privileged pursuant to W.S. 35-17-105. The answer shall be filed with the director who shall serve a copy on the claimant

Section 2. W.S. 9-2-1503(a)(i) and 9-2-1512 are repealed

Section 3. This act is effective July 1, 2003

(END)

H.B. No. 0305	Medical malpractice panel.

Sponsored By: Representative(s) Simpson, Boswell, Childers, Osborn Parady, Ross and Tipton

AN ACT relating to administration of government; modifying the Wyoming medical review act; providing an alternative means to resolve medical malpractice claims; providing an appropriation; authorizing a position; and providing for an effective date.

2/3/2003 Bill Number Assigned
2/3/2003 H Received for Introduction
2/3/2003 H Introduced and Referred to H01
2/5/2003 H01 Recommended Do Pass

ROLL CALL
Ayes: Representative(s) Alden, Bagby, Berger, Buchanan, Landon, Olsen, Petersen, Simpson and Warren
Ayes 9 Nays 0 Excused 0 Absent 0 Conflicts 0

2/5/2003 H Rereferred to H02
2/7/2003 H02 Recommended Amend and Do Pass

ROLL CALL
Ayes: Representative(s) Jones, Jorgensen, Meuli, Nicholas, Reese and Tipton
Excused: Representative(s) Philp
Ayes 6 Nays 0 Excused 1 Absent 0 Conflicts 0

2/7/2003 H Placed on General File

2/10/2003 H Amendments Considered
HB0305HS001/A ADOPTED
Page 1-line 3 Delete "providing an".
Page 1-line 4 Delete "appropriation;".
Page 7-lines 16 through 20 Delete.
Page 7-line 22 Delete "Section 4" insert "Section 3". NICHOLAS, CHAIRMAN

HB0305HW001/A ADOPTED
Page 4-line 3 After "parties" insert "or otherwise ordered by a court".
Page 4-line 5 After "." insert "Any amount paid under this subsection by a prevailing party shall be considered as costs for purposes of Rule 54 of the Wyoming Rules of Civil Procedure.". NICHOLAS

HB0305HW002/A ADOPTED
Page 3-line 1 Strike "physician,".
Page 3-line 2 Strike the line through "any"; after "person" strike balance of the line.
Page 3-line 3 Strike the line through "facility".
Page 3-line 4 Strike ";" insert "including:
(A) A physician, dentist, nurse, podiatrist, pharmacist, chiropractor, optometrist or health care facility; and
(B) An officer, employee or agent of a person listed in subparagraph (A) of this paragraph acting in the course and scope of employment.". OLSEN

2/10/2003 H Passed CoW
2/11/2003 H Passed 2nd Reading
2/12/2003 H Passed 3rd Reading

ROLL CALL
Ayes: Representative(s) Alden, Anderson, R., Bagby, Baker, Berger, Boswell, Brechtel, Buchanan, Bucholz, Childers, Cohee, Cooper, Diercks, Edwards, Esquibel Gentile, Gilmore, Hageman, Harshman, Harvey, Hinckley, Iekel, Illoway, Jansen,

Johnson, L., Johnson, W., Jones, Jorgensen, Landon, Latta, Law, Lockhart, Luthi, Martin, McOmie, Meyer, Miller, D., Morgan, Nicholas, Olsen, Osborn, Parady, Petersen, Philp, Powers, Prosser, Reese, Robinson, Ross, Semlek, Simpson, Slater, Thompson, Tipton, Warren, Wasserburger and Wostenberg.
Nays: Representative(s) McMurtrey and Meuli.
Excused: Representative(s) Walsh
Ayes 57 Nays 2 Excused 1 Absent 0 Conflicts 0

2/13/2003 S Received for Introduction
2/13/2003 S Introduced and Referred to S10
2/25/2003 S10 Recommended Amend and Do Pass

ROLL CALL
Ayes: Senator(s) Barrasso, Boggs, Case, Massie and Scott
Ayes 5 Nays 0 Excused 0 Absent 0 Conflicts 0

2/25/2003 S Placed on General File

2/28/2003 S Amendments Considered
HB0305SS001/AE (TO ENGROSSED COPY) ADOPTED
That Substitute No. 1 be substituted for HB0305 ENGROSSED and
Substitute No. 1 DO PASS SCOTT, CHAIRMAN

2/28/2003 S Passed CoW
3/1/2003 S Laid Back Without Prejudice
3/3/2003 S Passed 2nd Reading
3/3/2003 S Suspended Rules

ROLL CALL
Ayes: Senator(s) Anderson, J., Barrasso, Barton, Boggs, Burns, Caller, Cathcart, Coe, Decaria, Devin, Erb, Geis, Hanes, Hawks, Hines, Job, Kunz, Larson, Massie, Mockler, Northrup, Peck, Roberts, Schiffer, Scott, Sessions and Vasey.
Nays: Senator(s) Case and Goodenough.
Excused: Senator(s) Meier
Ayes 27 Nays 2 Excused 1 Absent 0 Conflicts 0

3/3/2003 S Laid Back Without Prejudice

3/4/2003 S Amendments Considered
HB0305S3001/F FAILED
[TO SUBSTITUTE BILL No. 1]
Page 12-line 4 After "(c)" insert "Without objection from any party,". MEIER

HB0305S3002/A ADOPTED
[TO SUBSTITUTE BILL No. 1]
Page 6-line 1 Before "alternative" insert "nonbinding". MEIER

3/4/2003 S Passed 3rd Reading

ROLL CALL
Ayes: Senator(s) Anderson, J., Barrasso, Barton, Boggs, Burns, Caller, Case, Cathcart, Coe, Devin, Erb, Hanes, Hawks, Hines, Job, Kunz, Larson, Massie, Meier, Northrup, Peck, Roberts, Schiffer, Scott and Sessions.
Nays: Senator(s) Decaria, Geis, Goodenough, Mockler and Vasey.
Ayes 25 Nays 5 Excused 0 Absent 0 Conflicts 0

3/4/2003 H Did Not Concur

ROLL CALL
Nays: Representative(s) Alden, Anderson, R., Bagby, Baker, Berger, Boswell, Brechtel, Buchanan, Childers, Cohee, Cooper, Diercks, Edwards, Esquibel, Gentile, Gilmore, Hageman, Harshman, Harvey, Hinckley, Iekel, Illoway, Jansen, Johnson, L., Johnson, W., Jones, Jorgensen, Landon, Latta, Law, Lockhart, Luthi, Martin, McMurtrey, McOmie, Meuli, Meyer, Miller, D., Morgan, Nicholas, Olsen, Osborn,

Parady, Petersen, Philp, Powers, Prosser, Reese, Robinson, Ross, Semlek, Simpson, Slater, Thompson, Tipton, Walsh, Warren, Wasserburger and Wostenberg.
Excused: Representative(s) Bucholz
Ayes 0 Nays 59 Excused 1 Absent 0 Conflicts 0

3/4/2003 H Appointed JCC01 Members
Simpson, McMurtrey and Ross
3/5/2003 S Appointed JCC01 Members
Hanes, Barrasso and Decaria

ARTICLE 15
MEDICAL REVIEW PANEL

9-2-1501. Short title.

This act may be cited as the "Wyoming Medical Review Panel Act".

9-2-1502. Purpose of provisions.

The purpose of this act is to prevent where possible the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against health care providers as are or reasonably may be, well founded.

9-2-1503. Definitions

(a) As used in this act:

(i) "Dentist" means a person licensed under W.S. 33-15-108;

(ii) Repealed By Laws 2000, Ch. 48, § 3

(iii) "Health care provider" means a physician, dentist health care facility or any person employed by a health care facility who, in accordance with law or a license granted by a state agency, provides health care;

(iv) "Malpractice claim" means any claim against a health care provider for alleged medical treatment, alleged lack of medical treatment, or other alleged departure from accepted standards of health care which results in damage to the patient;

(v) "Panel" means the medical review panel provided for under this act;

(vi) "Physician" means a person licensed under W.S 33-26-303;

(vii "This act" means W.S. 9-2-1501 through 9-2-1512

9-2-1504. Service of pleadings; computation of time

(a) The claim, answer, decision and all other pleadings required to be served under this act shall be served in

accordance with the Wyoming Rules of Civil Procedure

(b) Computation of time periods prescribed or allowed under this act shall be in accordance with rule 6 of the Wyoming Rules of Civil Procedure.

9-2-1505. Panel created; compensation; director of panel; appointment and duties; rulemaking.

(a There is created the Wyoming medical review panel.

(b) The panel shall have a director who shall be the attorney general or his designee and shall conduct the administrative business of the panel and otherwise implement this act. The director may employ personnel or contract for services necessary to implement this act. The director shall promulgate rules and regulations in accordance with the Wyoming Administrative Procedure Act to implement this act.

(c) Members of the panel shall receive compensation while engaged in the business of the board of forty dollars ($40.00) per hour for any hour during which a hearing or part of a hearing is held. Compensation for travel and other services shall be as provided in W.S. 9-3-102 and 9-3-103. Compensation to any panel member under this subsection shall not exceed three hundred twenty dollars ($320.00) per day.

9-2-1506. Claims to be reviewed by panel; prohibition on filing claims in court; tolling of statute of limitation; immunity of panel and witnesses; administration.

(a) The panel shall review all malpractice claims against health care providers filed with the panel except those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to July 1, 1986. No complaint alleging malpractice shall be filed in any court against a health care provider before a claim is made to the panel and its decision is rendered. The running of the applicable limitation period in a malpractice action is tolled upon receipt by the director of the application for review and does not begin again until thirty (30) days after the panel's final decision is served upon the claimant.

(b) Panel members and witnesses are absolutely immune from civil liability for all acts in the course and scope of the duties under this act, including but not limited to communications, findings, opinions and conclusions.

(c) The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required

under this act, the issuance of subpoenas in connection with the administration of this act, and the performance of all other acts required to fairly and effectively administer this act. A party requesting a subpoena shall bear all costs of mileage and witness fees.

9-2-1507. Claim review procedure; contents of claim; service of claim on provider; answer.

(a) Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any court in this state by addressing a claim, in writing, signed by the claimant or his attorney, to the director of the panel. The claim shall contain:

(i) A statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians, dentists and hospitals having contact with the claimant relevant to the claim and all witnesses;

(ii) A statement, signed by the claimant, authorizing the panel to obtain access to all medical, dental and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in the statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

(b) The claim may be amended by filing an amendment not less than fourteen (14) days prior to the hearing date.

(c) Upon receipt of a claim, the director shall cause a true copy of the claim to be served on the health care providers against whom the claim has been filed.

(d) The health care provider shall answer the claim within thirty (30) days after service and shall submit a statement authorizing the panel to inspect all medical, dental and hospital records and information pertaining to the claim except those records which are privileged pursuant to W.S. 35-17-105. The answer shall be filed with the director who shall serve a copy on the claimant.

9-2-1508. Panel composition; selection; disqualification of panelist; multiple defendants.

(a) The panel for each claim reviewed under this act shall consist of two (2) health care providers licensed in this state,

two (2) members of the state bar and one (1) lay person who is not a lawyer, health care provider or an employee of a health care provider. All panel members shall be residents of this state. If feasible one (1) member of the panel shall be from the health care provider's profession or specialty. In those cases where the theory of respondeat superior or some other derivative theory of recovery is employed, if feasible one (1) member shall be from the individual health care provider's profession or specialty and one (1) member shall be from the profession or specialty of the health care provider named as employer, master or principal.

(b) Within five (5) days of receipt, the director shall notify the state licensing agency of the health care provider involved and the state bar of the filing of the claim. Within fourteen (14) days of notification, the state licensing agency and the state bar shall each provide the director a list of twelve (12) of its members as proposed panelists. To the extent possible, the state licensing agency shall include on the list persons specializing in the same field or discipline as the health care provider against whom the claim is made. The director shall select two (2) from each list to serve as panelists and shall notify the parties and the panel members selected of their selection. The four (4) professional panelists shall unanimously select and appoint one (1) person as a lay panelist. The director shall notify the parties of the name of the lay panelist.

(c) At or prior to the hearing, the panel shall select a chairman from among its members. The chairman shall preside over the panel proceedings.

(d) If, within fifteen (15) days of receipt of the notice of selection of the professional panelists, the claimant or the health care provider against whom the claim is made files an affidavit stating his belief that a professional panelist selected by the director cannot be impartial in reviewing the claim, the panel member is disqualified, and the director shall select another from the list. Each party may disqualify not more than three (3) professional panel members under this subsection.

(e) The director may excuse a panelist from serving if the panelist feels his presence on the panel would be inappropriate under the circumstances of the case.

(f) When a claim is filed against two (2) or more health care providers, the claim against each health care provider shall be consolidated for hearing unless by stipulation of all parties or at the discretion of the panel, the claims are heard separately.

9-2-1509. Hearing procedure; review of decision prohibited.

(a) The director shall set a time and place for the hearing and provide notice to all parties at least thirty (30) days prior to the hearing. The proper place for hearing shall be the county in which an action is required to be brought according to W.S. 1-5-101 through 1-5-109. The hearing date shall not be more than one hundred twenty (120) days after the director receives the claim unless the director or panel finds good cause to delay the hearing. At least fifteen (15) days before the hearing the director shall provide each panel member copies of all claims, briefs, records and other documents the director considers necessary.

(b) The hearing shall be conducted in accordance with rules and regulations promulgated by the director. The hearing shall be informal, and the Wyoming Rules of Evidence and, except as specified in this act, the Wyoming Administrative Procedure Act do not apply. No decision of the director or the panel is subject to review in a court. A record of the hearing may be made if so stipulated by all the parties and the panel. The panel may issue subpoenas to compel the attendance of witnesses as provided under the Administrative Procedure Act.

(c) The panel may take the case under advisement or may request that additional facts, records, witnesses or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date not later than thirty (30) days from the date of the original hearing unless the claimant or his attorney consents in writing to a longer period.

9-2-1510. Panel deliberations and decision; decision not binding.

(a) Upon consideration of all the relevant material, the panel shall determine whether there is:

(i) Substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(ii) A reasonable probability that the patient was injured as a result of the acts complained of.

(b) The deliberations of the panel are confidential. All votes of the panel on the questions for discussion shall be by secret ballot. The decision shall be by a majority vote of the panel and shall be signed by the chairman.

(c The decision shall be in writing and forwarded to the

director who shall serve copies on the parties. A copy of the decision shall be sent to the health care provider's state licensing board.

(d) The panel's decision is not binding upon any party. The panel may by stipulation of the parties recommend an award.

9-2-1511. Confidentiality of panel proceedings; privilege; decision not admissible.

(a) The director shall maintain records of all proceedings before the panel, which shall include the nature of the act or omissions alleged in the claim, a brief summary of the evidence presented, the decision of the panel and any majority or minority opinions filed. Except as otherwise required by law, any records which may identify any party to the proceedings shall not be made public and are not subject to subpoena but are to be used solely for the purpose of compiling statistical data and facilitating ongoing studies of medical malpractice in this state.

(b) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions and internal proceedings of the panel.

(c) The decision of the panel is not admissible as evidence in any action.

9-2-1512. Panel funding; assessments; collection; rulemaking; medical review account; expenditures.

(a) The panel shall be funded from assessments levied against and paid by each health care provider covered by this act. The director shall promulgate rules in accordance with the Wyoming Administrative Procedure Act to annually establish appropriate assessments based on the following guidelines:

(i) The total amount of the panel's proposed annual budget shall be prorated among the classes of health care providers covered by this act based on the number of cases reviewed by the panel during the immediately preceding calendar year involving each such class of health care providers;

(ii) The prorated amount determined for each class of health care providers shall be divided by the number of practicing providers within each class of health care providers to determine the individual assessment;

(iii) The first four (4) annual assessments for each resident practicing provider shall be equal to one and one-fourth (1 1/4) the assessment determined pursuant to paragraphs (i) and

(ii) of this subsection. Thereafter annual assessments shall be in the amount determined pursuant to those paragraphs.

(b) The director shall certify the amount of each assessment to the appropriate licensing board, agency or authority, and the board, agency or authority shall levy and collect the assessments annually at the same time as annual license fees are collected. Assessments collected under this subsection shall be remitted to the director not later than thirty (30) days from the date of collection and paid immediately by the director to the state treasurer for deposit in an account, to be known as the medical review account, within the earmarked revenue fund.

(c) Monies in the medical review account shall be expended by the panel to carry out the purposes of this section.

Rule 39.3. Copies of instructions for jurors.

The trial court shall provide each juror with the juror's own copy of all written instructions that the court reads to the jury before, during or at the conclusion of the trial. The court may include the copies of the instructions in the juror notebook provided to each juror, if juror notebooks will be used at trial. Jurors shall be permitted to take their copies of the instructions with them for reference during recesses and during their deliberations. Jurors shall not be permitted, however, to take their copies of the jury instructions out of the courthouse.
(Added October 26, 2000, effective March 1, 2001.)

Rule 39.4. Juror questions for witnesses.

At the beginning of civil trials, the court shall instruct jurors that they will be permitted to submit written questions for witnesses if they have questions about the witnesses' testimony that have not been answered after counsel for all parties have finished examining the witnesses. The court shall also instruct the jurors that some questions they submit may not be asked, as some jurors' questions may be legally improper or otherwise inappropriate. The court shall provide jurors with paper and a pen or pencil with which they may write down questions for submission to the court.

Before each witness is excused, the court shall determine whether any jurors have questions for that witness. The court shall review jurors' written questions with counsel, out of the hearing of the jury, making the question part of the record. The court shall permit counsel to interpose objections, including objections based on litigation strategy or stipulation of the parties. The court shall rule on any objections, noting the basis of the ruling on the record. If the court determines that the question is not improper or unfairly prejudicial, the court shall read the question to the witness or permit counsel to read the question to the witness. The question may be modified as deemed appropriate by the court in consultation with counsel. After the witness responds to the question, the court shall permit counsel for both sides to ask follow-up questions if such follow-up questions appear to be necessary or appropriate.

The court shall permit counsel to present additional rebuttal evidence at trial if necessary to prevent unfair prejudice attributable to testimony that results from questions that jurors submit.
(Added October 26, 2000, effective March 1, 2001.)

Rule 40. Assignment of cases for trial or alternative dispute resolution.

(a) *Trial calendar.* — The court shall place actions upon the trial calendar: (1) without request of the parties; (2) upon request of a party and notice to the other parties; or (3) in such other manner as the court deems expedient. Precedence shall be given to actions entitled thereto by statute.

(b) *Limited assignment for alternative dispute resolution.* — The court may, or at the request of any party shall, assign the case to another active judge or to a retired judge, retired justice, or other qualified person on limited assignment for the purpose of invoking nonbinding alternative dispute resolution methods, including settlement conference and mediation. By agreement, the parties may select the person to conduct the settlement conference or to serve as the mediator. If the parties are unable to agree, they may advise the court of their recommendations, and the court shall then appoint a person to conduct the settlement conference or to serve as the mediator. A settlement conference or mediation may be conducted in accordance with procedures prescribed by the person conducting the settlement conference or mediation. A mediation also may be conducted in accordance with the following recommended rules of procedure:

(1) Prior to the session, the mediator may require confidential ex parte written submissions from each party. Those submissions should include each party's honest assessment of the strengths and weaknesses of the case with regard to liability, damages, and other relief, a history of all settlement offers and counteroffers in the case, an honest statement from plaintiff's counsel of the minimum settlement authority that plaintiff's counsel has or is able to obtain, and an honest statement from defense counsel of the maximum settlement authority that defense counsel has or is able to obtain.

(2) Prior to the session, a commitment must be obtained from the parties that their representatives at the session have full and complete authority to represent them and to settle the case. If any party's representative lacks settlement authority, the session should not proceed. The mediator may also require the presence at the session of the parties themselves.

(3) The mediator may begin the session by stating the objective, which is to seek a workable resolution that is in the best interests of all involved and that is fair and acceptable to the parties. The parties should be informed of statutory provisions governing mediation, including provisions relating to confidentiality, privilege, and immunity.

(4) Each party or attorney may then make an opening statement stating the party's case in its best light, the issues involved, supporting law, prospects for success, and the party's evaluation of the case.

(5) Each party or attorney may then respond to the other's presentation. From time to time, the parties and their attorneys may confer privately. The mediator may adjourn the session for short periods of time. After a full, open discussion, the mediator may summarize, identify the strong and weak points in each case, point out the risks of trial to each party, suggest a probable verdict or judgment range, and suggest a fair settlement of the case. This may be done in the presence of all parties or separately. If settlement results, it should promptly be reduced to a writing executed by the settling parties. The mediator may suggest to the parties such reasonable additions or requirements as may be appropriate or beneficial in a particular case.

(c) *Registry of names.* — The clerk of the supreme court shall maintain a registry of the names of retired judges and justices and other qualified persons who are available to accept limited assignments of cases under this rule.

(d) *Fees and costs.* — For those cases filed in court and assigned for settlement conference or mediation, the parties shall pay no additional fee or costs. A person other than an active judge conducting a settlement conference or serving as a mediator shall be compensated from available public funds for services performed in a particular case at a rate of not less than $50.00 per hour. The person to be compensated shall submit to the clerk of the supreme court a statement of fees for services rendered, together with the report required by subdivision (e).

Settlement conference or mediation is available under this rule to persons regardless of whether suit has been filed. For those cases not filed in court, but having been assigned and accepted for settlement conference or mediation, a filing fee of $15.00 shall be paid to the clerk of the supreme court. Compensation for services in these cases shall be arranged by agreement between the parties and the person conducting the settlement conference or serving as the mediator, and that person's statement shall be paid within 30 days of receipt by the parties.

(e) *Report of disposition of cases.* — A report as to whether a settlement conference or mediation pursuant to this rule resulted in settlement shall be submitted by the person conducting the settlement conference or serving as the mediator to the clerk of the supreme court within 15 days of final disposition.

(f) *Other forms of alternative dispute resolution.* — Nothing in this rule is intended to preclude the parties from agreeing to submit their dispute to other forms of alternative dispute resolution, including arbitration and summary jury trial.

(Amended August 9, 1991, effective October 29, 1991; amended January 11, 1995, effective April 11, 1995.)

Source. — Subdivision (a) of this rule is similar to Rule 40 of the Federal Rules of Civil Procedure.

Cross References. — As to trial docket generally, see chapter 8 of title 1. As to docketing fee, see § 5-3-206. As to keeping of trial docket, see § 5-3-211.

Without valid reason for recusal, judge has duty not to recuse himself. Cline v. Sawyer, 600 P.2d 725 (Wyo. 1979).

"Prejudice" involves prejudgment with insufficient knowledge. — For purposes of disqualifying a judge, "prejudice" involves a prejudgment or forming of an opinion without sufficient knowledge or examination. Cline v. Sawyer, 600 P.2d 725 (Wyo. 1979).

"Bias," which is ground for disqualification of judge, must be personal, and it must be such a condition of the mind which sways judgment and renders the judge unable to exercise his functions impartially in a given case or which is inconsistent with a state of mind fully open to the conviction which evidence might produce. Cline v. Sawyer, 600 P.2d 725 (Wyo. 1979).

Bias not shown. — The affidavit of appellant in support of the motion for change of judge does not state sufficient facts to show the existence of bias or prejudice against appellant where it alleges that the judge and appellee attended the same university at the same time where "they may have" belonged to the same fraternities or associations, and where it further alleges that the judge and appellee have been close personal friends throughout the greater part of their lives and have had and continue to have close political affiliations and social relationships in the community. Cline v. Sawyer, 600 P.2d 725 (Wyo. 1979).

Cited in Kendrick v. Barker, 15 P.3d 734 (Wyo. 2001).

Law reviews. — For article, "Mediation and Wyoming Domestic Relations Cases — Practical Considerations, Ethical Concerns and Proposed Standards of Practice," see XXVII Land & Water L. Rev. 435 (1992).

Am. Jur. 2d, ALR and C.J.S. references. — Alternative dispute resolution: sanctions for failure to participate in good faith in, or comply with agreement made in, mediation, 43 ALR5th 545.

88 C.J.S. Trial §§ 18 to 35.

Rule 40.1. Transfer of trial and change of judge.

(a) *Transfer of trial.* —

(1) The court upon motion of any party made within 15 days after the last pleading is filed shall transfer the action to another county for trial if the court is satisfied that there exists within the county where the action is pending such prejudice against the party or the party's cause that the party cannot obtain a fair and impartial trial, or that the convenience of witnesses would be promoted thereby. All parties shall have an opportunity to be heard at the hearing on the motion and any party may urge objections to any county. If the motion is granted the court shall order that the action be transferred to the most convenient county to which the objections of the parties do not apply or are the least applicable, whether or not such county is specified in the motion. After the first motion has been ruled upon, no party may move for transfer without permission of the court.

(2) When a transfer is ordered the clerk shall transmit to the clerk of the court to which the action has been transferred all papers in the action or duplicates thereof. The party applying for the transfer shall within 10 days pay the costs of preparing and transmitting such papers and shall pay a docket fee to the clerk of court of the county to which the action is transferred. The action shall continue in the county to which it is transferred as though it had been originally filed therein.

(3) The presiding judge may at any time upon the judge's own motion order a transfer of trial when it appears that the ends of justice would be promoted thereby.

(b) *Change of judge.* —

(1) Peremptory Disqualification. — A district judge may be peremptorily disqualified from acting in a case by the filing of a motion requesting that the judge be so disqualified. The motion designating the judge to be disqualified shall be filed by the plaintiff within five days after the complaint is filed; provided, that in multi-judge districts, the plaintiff must file the motion to disqualify the judge within five days after the name of the assigned judge has been provided by a

