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MINUTES

September 17, 2004

Room 137, State Capitol
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

COMMITTEE MEMBERS PRESENT

REP. KIM GILLAN, Chair

SEN. VICKI COCCHIARELLA
SEN. BRENT CROMLEY
SEN. DUANE GRIMES
SEN. JON TESTER
SEN. FRED THOMAS

REP. ROY BROWN
REP. GEORGE GOLIE
REP. JEFF LASZLOFFY
REP. DOUG MOOD
REP. DAVID WANZENRIED

COMMITTEE MEMBERS EXCUSED

SEN. BOB KEENAN

STAFF PRESENT

Lois Menzies, Executive Director, Legislative Services Division (LSD)
Dave Bohyer, Director, Office of Research and Policy Analysis, LSD
John MacMaster, Staff Attorney, Legal Services, LSD
Dawn Field, Council Secretary, LSD

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Legislative Council agreed to sponsor and introduce the following bill drafts:

- LC 5001 - Revise "Ostensible Agent";
- LC 5004 - Revise "Captain of Ship" Doctrine;
- LC 5005 - Revise "Loss of Chance" Doctrine; and
- LC 5007 - Make Expression of Sympathy Inadmissible In Court.

CALL TO ORDER AND ROLL CALL

REP. GILLAN called the meeting to order at 8:05 a.m. The secretary noted the roll, SEN. KEENAN was excused (ATTACHMENT #3).

REP. GILLAN thanked the Subcommittee members, LSD staff, and stakeholders for their input and efforts in studying the issues and working to formulate the recommendations made in the Subcommittee's final report.

REPORT OF SJR 32 SUBCOMMITTEE ON MEDICAL LIABILITY INSURANCE

Presentation of Findings and Recommendations -- Rep. George Golie, Chair

REP. GOLIE presented and briefly discussed *Diagnosing the Ailment -- Prescribing The Cure, Final Report of the SJR 32 Subcommittee on Medical Liability Insurance* (EXHIBIT #1). REP. GOLIE said the Subcommittee had gathered testimony from healthcare providers, healthcare facilities, insurance providers, patients, and legal professionals in order to accurately determine if a medical liability insurance problem exists in Montana, and if so, how to address the problem. The Subcommittee investigated existing Montana law, along with laws of other states. The Subcommittee contemplated various options, and the eight proposed bill drafts selected by the Subcommittee are the result of the months of work by the members and stakeholders.

SJR 32 Subcommittee Member Comments

REP. ROBERTS made the following points:

- Insurance rates in some medical specialties are rapidly increasing.
- Medical malpractice issues are impacting the quality and availability of medical care in many rural and urban communities of Montana.

- The number of insurance companies willing to provide medical liability insurance in Montana has dwindled to two, and these two companies have indicated their future in Montana is uncertain.
- Insurance companies have seen a tremendous increase in the number of insurance claims filed.
- Even physician-owned insurance pools companies experienced rate increases.
- Small hospitals have seen insurance rates increase dramatically.
- Tremendous improvements in medical technology have resulted in an increase in medical malpractice suits because of the increased expectation of survival. Patients who do survive, if left with lingering afflictions due to the injury, often file a malpractice suit to cover the costs of long-term treatment and care.

REP. ROBERTS said he was pleased with the work done by the Subcommittee, but suggested that LC 5000 - the Wisconsin model, is a very complex bill and perhaps should be considered as a specific interim study issue before further action is taken.

LC 5000 -- Insurance Reform - Healthcare Liability and Injured Persons Compensation Act - Wisconsin Model (EXHIBIT #2)

Dave Bohyer, Research Director, LSD, reviewed the general components of LC 5000 (EXHIBIT #2). Mr. Bohyer explained that LC 5000 would create a state-sponsored, state-mandated reinsurance program for medical malpractice liability insurance. Under this program, any amount of liability incurred for medical negligence exceeding \$500,000 would be a liability covered by the plan. A nine-member Board of Governors would administer and maintain the plan.

LC 5001 -- Revise "Ostensible Agent" Regarding Medical Liability (EXHIBIT #3)

John MacMaster, Staff Attorney, LSD, explained that LC 5001 would clarify that a non-employee doctor is not an agent - ostensible or otherwise - of the hospital and absolves the hospital from liability for an act of medical negligence or malpractice for which the doctor is responsible.

LC 5002 -- Revise Payment of Lost Wages/Medical Expenses Prior to Determining Liability (EXHIBIT #4)

Mr. MacMaster explained that LC 5002 provides that an insurer is not required to pay any type damages, including medical expenses and/or lost wages, prior to a final settlement or judgement of the case, even though liability for the act or omission and liability for the damages are reasonably clear.

LC 5004 -- Revise "Captain of Ship" Doctrine (EXHIBIT #5)

Mr. MacMaster explained that LC 5004 provides that a healthcare provider isn't liable for an act or omission by a person or entity that was not an employee or agent or otherwise under the control of that healthcare provider at the time the act or omission occurred.

LC 5005 -- Revise "Loss of Chance" Doctrine (EXHIBIT #6)

Mr. MacMaster said LC 5005 revises and clarifies the legal "loss of chance" doctrine. If an injured person is injured further as a result of medical malpractice and the injured person's chance of recovery is further diminished as a result of the malpractice, the person is awarded the full amount of damages attributable to the malpractice, plus the amount of damages due to the initial injury.

LC 5007 -- Making Expressions of Sympathy Inadmissible in Court (EXHIBIT #7)

Mr. MacMaster explained that LC 5007 provides that an act of benevolence from a medical provider cannot be used as evidence in a civil action for medical malpractice.

LC 5008 -- Establishing "Expert Witness" Qualifications (EXHIBIT #8)

Mr MacMaster explained that LC 5008 establishes statutory qualifications for medical malpractice expert witnesses and is considered necessary by some stakeholders because the Montana Legislature has not enacted a statute defining the qualifications of expert witness in medical malpractice cases.

LC 5009 -- Establishing a Joint Underwriting Association (EXHIBIT #9)

Mr. MacMaster said this bill requires every insurance company writing medical malpractice policies in Montana to join an association. The association would be governed by an eight-member board and its purpose would be to provide primary medical malpractice insurance to certain healthcare providers on a self-supporting basis. The association must operate whenever the Insurance Commissioner determines that medical malpractice liability insurance is not available for certain health care providers in the voluntary market. As medical malpractice liability insurance becomes available in the voluntary market, the association must discontinue its underwriting operations.

PUBLIC COMMENT

Mona Jamison, The Doctor's Company (TDC), said TDC supports all of the SJR 32 Subcommittee's proposed legislation, with the exception of LC 5000 - the Wisconsin Model. Ms. Jamison provided written testimony (EXHIBIT #10) regarding the position TDC has taken on LC 5000 and explained TDC's objections.

Larry Riley, Utah Medical Insurance Association (UMIA), stated that he was before the Council as a representative of both UMIA and the Montana Defense Trial Lawyers Association. Mr. Riley testified that UMIA is a doctor-owned insurance company which also opposes LC 5000. UMIA is in full support the remaining proposed legislation and agreed with REP. ROBERTS that, because of its potential impacts, LC 5000 - the Wisconsin Model - needs further study before adoption.

Pat Melby, Montana Medical Association (MMA), concurred with Mr. Riley's testimony that LC 5000 would be best handled as a separate interim study. He said while Wisconsin doctors

may be very supportive of the plan, Montana doctors are very leery of it and would like additional study.

Regarding LC 5009 - Establishing a Joint Underwriting Association, Mr. Melby stated for the record that it was his recollection that the original joint underwriting association law required all casualty insurers, not just medical malpractice insurance providers, to be members of that association. He said he would urge approval of LC 5009 but asked that the original language be restored to the bill in the legislative process.

John Flink, Montana Hospital Association (MHA), testified that the MHA supports all of the proposed legislation, with the exception of LC 5000 - the Wisconsin Model. The MHA feels that if it is adopted, medical malpractice premiums will increase even more. Mr. Flink urged segregation of LC 5000 for additional study.

Al Smith, Montana Trial Lawyers Association (MTLA), submitted the MTLA's position on the SJR 32 Subcommittee's proposed legislation (EXHIBIT #11). Mr. Smith explained the MTLA's position on the proposed bills and recommended that all of the eight proposed bills be segregated and voted on individually.

Tom Ebzery, Saint Vincent Healthcare, Holy Rosary Healthcare, and Saint James Healthcare, said the providers he represents support the proposed bill drafts. Regarding LC 5000 - the Wisconsin Model, Mr. Ebzery said he supports its approval but agreed it still needs additional work. He said if even if LC 5000 is not approved by the Council, it may still be introduced in one form or another and encouraged discussion of the concepts, at the very least.

Mike Foster, Saint Vincent Healthcare, Holy Rosary Healthcare, and Saint James Healthcare, said the cost factor alone is amazing in considering the dramatic increase in the cost of medical malpractice insurance. St. Vincent Healthcare's insurance premiums increased from \$300,000 a year to \$3 million a year within a three-year period. Mr. Foster also testified that other states, such as Texas, Wyoming, New Jersey, and others have addressed this same issue, indicating that this is a national problem. He said that the healthcare industry is appreciative of the effort put forth, and that the proposed legislation is a good first step. Mr. Foster said he is curious to learn more about how LC 5000 - the Wisconsin Model operates and supported segregation for further study.

Jani McCall, Deaconess Billings Clinic, stated she supports approval of the proposed package of legislation. Deaconess Billings Clinic does have concern regarding LC 5000 - the Wisconsin Model - because it is such a complex bill but would support it at this point. Ms. McCall explained that the Clinic is a non-profit corporation that employs all of its own physicians, that it became part of a captive insurance company in 2003 in order to manage insurance costs, and that premiums have begun to decrease.

LEGISLATIVE COUNCIL QUESTIONS AND COMMENTS

SEN. THOMAS asked Mr. Riley if the issue of defensive medicine has been addressed in the proposed legislation. Mr. Riley said it has been addressed to some degree but that it remains a

very serious issue. He said the costs of defensive medicine in the nation is estimated to be \$35 billion per year.

REP. ROBERTS agreed that the use of defensive medicine is a big factor in the increase of medical care costs for consumers, that the proposed bills do address this issue, and should mitigate the effects of defensive medicine somewhat. He added that Texas has changed its Constitution to include much of the proposed legislation being considered by Montana, such as the \$250,000 cap on noneconomic damages. He noted that even though the cap is law, it is not being enforced.

SEN. TESTER asked Mr. Smith to comment on LC 5002 - Revise Advance Payment of Lost Wages/Medical Expenses Requirements (EXHIBIT #4). Mr. Smith said this bill would allow that an insurer could not be forced to pay any damages until final resolution of the case. SEN. TESTER asked who determines what is "reasonably clear" in these types of cases. Mr. Smith said the courts would make that determination.

SEN. TESTER asked why LC 5008 - Establishing Expert Witness Qualifications (EXHIBIT #8), is needed in Montana. Mr. Riley said in a case where a jury is dealing with complex medical information, the court will allow experts to come in to explain the standard of care for that particular medical situation. The problem is that these experts are paid from \$200 - \$1,000 per hour and while most are ethical, honest, and well-qualified, there are others who take advantage. Current Montana law states that a person can testify as an expert if they are qualified by training or by experience and that the judge is to decide if the person meets those requirements. This bill adds more criteria to the requirements for training and experience and is an attempt to make certain that the expert witness is, in fact, qualified.

SEN. COCCHIARELLA asked Mr. Riley to respond to the REP. ROBERT's earlier testimony that the \$250,000 cap on noneconomic damages is not being enforced in Montana. Mr. Riley said the bill imposing a cap on noneconomic damages was passed in 1996. It is commonly felt throughout the legal community that the first time the Supreme Court has the opportunity to rule on this issue, it will be declared unconstitutional. Mr. Riley noted that the issue has not yet come before the Court and that he wished it would, because knowing whether or not the law would be upheld would bring provide stability to this issue.

SEN. COCCHIARELLA said LC 5002 - Revise Advance Payment of Lost Wages/Medical Expenses (EXHIBIT #4) is unfair to families who are struggling with this issue and wouldn't be allowed under workers' compensation laws. Mr. Riley said medicine is not a black and white issue, that many medical conditions are difficult to diagnose, and it often comes down to the physician's judgment. When a case is filed and there is uncertainty regarding the doctor's prescribed treatment, the doctor is often threatened with a bad faith suit if he or she refuses to make advance payments. Insurance companies know that defending a bad faith claim is very expensive and often opt to make the advance payments. Insurance companies are not interested in defending cases where liability is reasonably clear, but they want the freedom and the right to be able to defend a case without being threatened with a case of bad faith.

SEN. COCCHIARELLA asked for an explanation of the timing of the drafting of LC 5000 - the Wisconsin Model (EXHIBIT #2). Mr. Bohyer said the Wisconsin Model concepts were first presented to the Subcommittee in January 2004. At the March meeting, the Subcommittee

included it in the ten alternatives chosen to be drafted as legislation. It was drafted, posted to the Subcommittee website, and mailed to the Subcommittee members and stakeholders in mid-May to early June. Mr. Bohyer said SEN. COBB asked him to draft two amendments to LC 5000 the day before the June 24, 2004, meeting. The amendments were prepared and distributed at the next day's meeting. SEN. COBB's first amendment placed a threshold for liability at \$500,000, and the second amendment eliminated the requirement that medical providers purchase primary coverage. Mr. Bohyer said he believed SEN. COBB was attempting to alleviate the high medical malpractice premiums by giving doctors the option of not carrying primary coverage. The State would assume damages awarded in excess of \$500,000. Mr. Bohyer noted that there has been only four claims in excess of \$1 million since 1977.

SEN. THOMAS cautioned that care must be taken in discussing SEN. COBB's intent regarding the amendments to LC 5000, since he was not there to explain them in person.

SEN. COCCHIARELLA commented that in workers' compensation law, there is the guaranteed fund for self-insured employers that is not a government program. If that is what the Wisconsin Model is intended to be, the language doesn't reflect it. It appears to be more of a government program. Mr. Bohyer said the Wisconsin Model is a government reinsurance program for all the covered medical providers under the insurance plan.

REP. WANZENRIED asked Mr. Riley to explain why LC 5005 - Revise "Loss of Chance" Doctrine (EXHIBIT #6) would be beneficial and if it would affect premiums. Mr. Riley said under current law, a plaintiff can recover 100% of damages for a small amount of damage. For example, if a claim is filed that there was a delay in a diagnosis which caused 10% of the patient's problem, the plaintiffs can recover all of their damages. This law would establish that the patient would recover only the percentage of damages that the delay or misdiagnosis caused. Mr. Riley predicted that LC 5005 would make premiums more reasonable.

REP. WANZENRIED asked Mr. Smith why the MTLA opposes LC 5005. Mr. Smith said MTLA's position is that if there is over a 50% reduction of chance of recovery, the patient should be able to recover full damages.

REP. WANZENRIED asked, regarding LC 5002- Advance Payment of Medical Expenses/Lost Wages (EXHIBIT #4), what the average amount of time is that it takes to settle a claim or receive a judgment. Mr. Riley said it varies, depending on the nature of the liability. By statute, the claim must be heard before the Montana Medical Legal Panel (MMLP) within four months. If the Panel votes that there is clear liability, those claims are typically settled in three to six months after the Panel hearing. In claims where there is a legitimate question as to whether liability is clear, it may take two years or more to reach a settlement or judgment. REP. WANZENRIED asked if the MMLP keeps records of the Panel hearings. Mr. Riley said the MMLP does keep a record of each hearing.

Al Smith, MTLA, said LC 5002 would set up a black and white situation which would make it very clear that an insurer does not have to pay medical costs or lost wages ahead of settlement. Under current law, it is somewhat of a gray area and allows insurers the option to settle if they want to or to defend those gray suits.

REP. WANZENRIED asked, regarding LC 5000 the Wisconsin Model (EXHIBIT #2), if capping attorney fees would impact settlement amounts. Mr. Smith explained that capping attorney fees would not decrease the total costs and would affect an attorney's willingness to take on complicated cases, because those cases usually are expensive to defend, in terms of time and money.

SEN. GRIMES directed discussion to LC 5002 - Advance Payment for Lost Wages/Medical Expenses (EXHIBIT #4), and said it is not a prohibition on advance payments. It simply states that an insurer need not pay and may not be ordered to pay in advance of a settlement or judgment. This bill attempts to avoid bad faith claims for an insurer who does not want to pay in advance. Mr. Riley agreed with SEN. GRIMES' description of LC 5002, saying that the bad faith threat is a real problem for insurance companies. It is a complicated process to evaluate a claim. There may be a multitude of issues that must be reduced to a few key issues and most of the time, these issues are not black and white. Forcing advance payments complicates the issues even further and causes premiums to increase even more. Mr. Riley said a possible compromise would be to amend LC 5002 to say if the MMLP vote is not unanimously in favor of the claimant, going forward would not be bad faith.

SEN. GRIMES asked Ms. Jamison to restate the position of The Doctor's Company regarding LC 5000 - the Wisconsin Model (EXHIBIT #2). Ms. Jamison that TDC may be forced to withdraw from the Montana market if the Wisconsin Model is adopted. The problem with LC 5000 is in Sections 15 and 17, stating that the primary insurer may cancel policies for only two reasons: nonpayment of premiums by the doctor or revocation of the doctor's license. TDC may have to consider, if this bill is approved, sending nonrenewal notices to all its insured doctors in Montana, in order to allow time to evaluate the consequences of LC 5000. If TDC decides Montana is no longer a welcoming climate, it will not have violated those individual provisions and will be free to exit the Montana market. Ms. Jamison also pointed out that LC 5000 would force TDC to insure a physician who has had many malpractice claims filed against him.

SEN. THOMAS stated his concern about TDC's position on this bill and asked how much notice the doctors would be given that their policies were not being renewed. Ms. Jamison said most TDC nonrenewal notices require 90 days notice and some may require up to 180 days.

SEN. THOMAS asked Mr. Bohyer what current statutory requirements are for nonrenewal notices. Mr. Bohyer referred to 33-15-1102, MCA, and said that the statute lists two dates: one is a 60-day mid-term cancellation notice requirement and the other mandates a 45 -day notice for termination or cancellation on the anniversary date of an insurance policy. Mr. Bohyer said, as a point of clarification, Ms. Jamison is correct that there is a conflict between Sections 15 and 17. Under Section 15 in LC 5000, subsection (4)(b), it is clear that the current notification requirements must be given for cancellation and that it would allow even a medical malpractice insurer to cancel for the same reasons that they could cancel right now. The conflict comes in Section 17 because the same reference is not made to Title 33, chapter 15, part 11. Because Section 17 is more specific, it would likely prevail in a court challenge. Mr. Bohyer said it could be easily corrected, if the Council chose to move LC 5000 forward.

REP. MOOD stated that the purpose of the SJR 32 study was to ease the high cost of medical malpractice insurance premiums. He asked REP. ROBERTS if the proposed package of bills

would accomplish that. REP. ROBERTS said the proposed bills would do a great deal to improve the medical malpractice insurance situation in Montana.

REP. GOLIE **moved** to adopt the findings and recommendations of the SJR 32 Subcommittee on Medical Malpractice Liability Insurance. REP. WANZENRIED made a substitute motion to segregate all of the proposed bills. REP. GILLAN accepted the motion.

REP. WANZENRIED recommended, given the complexity and level of concern about LC 5000 - the Wisconsin Model, that it not be approved at this time.

SEN. THOMAS asked REP. WANZENRIED if he was agreeable to approving any of the proposed bills together as a package. REP. WANZENRIED said he wanted to make a specific motion on LC 5000 - the Wisconsin Model, to not adopt it. He said he would like to further move that the Council segregate LC 5002 - Advance Payment for Medical Expenses/Lost Wages. SEN. COCCHIARELLA said a motion is not necessary to segregate, that a request to segregate has been honored. She said what needed to be decided is if each one bill is to be segregated or if some may be left together. The Council should identify the bills to be segregated and then vote on the remaining bills.

REP. WANZENRIED requested to segregate LC 5000, LC 5002, LC 5005, and LC 5008, and **moved** the remaining bills (LC 5001, LC5004, LC 5007, and LC 5009) be approved for Legislative Council sponsorship and introduction.

REP. GOLIE agreed that LC 5001, LC 5004, LC 5007, and LC 5009 had the highest level of support from the Subcommittee members and stakeholders, and said he supported the adoption of those four bills.

Mr. MacMaster referred to LC 5009 - Establishing a Joint Underwriting Association (EXHIBIT #9), and said he supported Pat Melby/MMA's suggestion to go back to the exact language of the original bill to include all insurers, not just medical malpractice insurers.

SEN. TESTER said the only action the Council should take is to adopt some or all of the bills to be drafted. If there is a problem with a proposed bill, it should be segregated and let someone else pick it up and amend it. SEN. TESTER requested that LC 5009 be segregated.

Mr. Bohyer said it was his understanding that the bills would go into the system by request of the Legislative Council as a committee bill, and then a Council member would agree to carry it as the sponsor. Mr. MacMaster said at that point, the bill would be assigned to a drafter to work with the sponsor on the bill and could be adjusted at that point.

REP. GOLIE didn't think it prudent to send a bill forward that was approved by the Subcommittee and then make changes in the drafting process that had not been approved by the Subcommittee. He recommended either segregating LC 5009 or approving it as written, and amending it in the legislative process.

The **motion to adopt the Subcommittee report and approve LC 5001, LC 5004, and LC 5007 passed** on a unanimous voice vote. Voting by proxy: SEN. KEENAN, REP. LASZLOFFY (SEN. THOMAS), and REP. BROWN (SEN. GRIMES).

REP. GILLAN asked if the final version of the Subcommittee report would reflect the action taken by the Legislative Council. Mr. Bohyer said he would await direction from the Council on whether to include the full scope of the Subcommittee's work or just the bills approved by the Legislative Council. SEN. CROMLEY suggested amending the report to note the five bills segregated out and not approved by the Council. REP. GOLIE said the Subcommittee and staff worked diligently on the issue and he did not want the final report to be chopped up. A reasonable solution would be to place a paragraph at the beginning of the report explaining action taken by the Legislative Council. REP. GILLAN directed Mr. Bohyer and Mr. MacMaster to finalize the Subcommittee report, as requested by REP. GOLIE.

SEN. GRIMES **moved** to approve LC 5008 - Expert Witness Qualifications (EXHIBIT #8), for drafting. He said it would provide meaningful changes in Montana and would give some confidence to doctors that they will be reviewed by those knowledgeable to do so.

REP. GOLIE didn't support the motion. He referred to Page 44 of the Subcommittee final report (EXHIBIT #1), and said Montana's Supreme Court ruling on this issue was identical to the federal rule, and that Montana shouldn't deviate from that. SEN. THOMAS spoke in favor of adopting LC 5008, saying he had heard compelling testimony regarding the need. He urged the Council to adopt LC 5008 for consideration by the full Legislature.

REP. MOOD supported LC 5008, saying it compliments existing language and gives a judge some clarification in allowing expert witnesses.

REP. GILLAN stated that, for the record, her husband has served as an expert witness before the MMLP.

SEN. GRIME's **motion to approve LC 5008 failed** 6-6 on a roll call vote, with SEN. COCCHIARELLA, SEN. CROMLEY, SEN. TESTER, REP. GILLAN, REP. GOLIE, and REP. WANZENRIED voting no (ATTACHMENT #4).

SEN. GRIMES **moved** to approve LC 5002 - Advance Payment of Lost Wages/Medical Expenses (EXHIBIT #4) for drafting. He said it eliminates an opportunity to claim bad faith where advance payments have not been made prior to the settlement. This bill would not preclude that from being done; it would simply clarify that there can't be claim of bad faith if advance payments are not made.

SEN. COCCHIARELLA spoke against SEN. GRIMES motion to approve LC 5002, stating that most families could not survive very long in a situation in which expenses nor wages were not being paid and, in a situation where negligence is reasonably clear, there is no reason not to allow these families to collect damages in advance of a ruling. SEN. COCCHIARELLA said she could not support LC 5002 as written.

REP. GOLIE said LC 5002 would take rights from victims and patients and that this type of legislation has a great impact on them. He said he would not support the approval of LC 5002.

SEN. THOMAS asked Mr. MacMaster to give his interpretation of the bill's language. Mr. MacMaster said that language meant the defendant would not have to pay in any scenario, until the final settlement was reached or a court decision made.

SEN. CROMLEY provided background information on the issue. He said this situation arises from compulsory automobile insurance requiring drivers to have \$25,000 of insurance. In the Ridley case, the Supreme Court ruled that because this type of insurance is compulsory, in cases where liability is reasonably clear, then an insurance company has a duty to advance pay medical bills and wages. This ruling has not been expanded to other types of insurance yet, but this bill was intended to be a preemptive measure to prevent the Ridley decision from being applied to noncompulsory types of insurance in the future, such medical malpractice insurance. He said he would not support LC 5002.

SEN. GRIMES asked Pat Melby, MMA, to give comment. Mr. Melby said the synopsis provided by SEN. CROMLEY was accurate, except for Justice Trieweiler's admonition that the Ridley case would be applied to all insurance.

REP. GILLAN was concerned that a continual appeals process could drag on for an extended period of time, creating a great hardship for families and asked what, if any, recourse families would have under that circumstance.

SEN. GRIMES withdrew his motion to approve LC 5002.

SEN. GRIMES **moved** to approve LC 5005 - Revise "Loss of Chance" Doctrine (EXHIBIT #6) for sponsorship and introduction.

REP. GOLIE asked Al Smith, MTLA, to clarify his objections to LC 5005. Mr. Smith said this is an issue of whether a patient's chances of recovering from a certain injury has been reduced or lost because of negligence. The MTLA's position is that a patient who has experienced a loss of chance of recovery over 50% should be entitled to receive full damages, as in other civil actions.

The **motion passed** on 8-4 roll call vote, with SEN. CROMLEY, SEN. TESTER, REP. GOLIE, and REP. WANZENRIED voting no (ATTACHMENT #5).

REP. GILLAN stated that assigning sponsors will be deferred to the November 16, 2004, meeting of the Legislative Council.

REP. GILLAN asked if there was additional public comment. There was none.

REP. GILLAN asked when the final version of the Subcommittee report would be available. Mr. Bohyer said it would be completed by late October.

ADJOURNMENT

With no further business before the Legislative Council, REP. GILLAN adjourned the meeting as 12:15 p.m. The next meeting will be held on Tuesday, November 16, 2004.

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