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August 20, 2008

VIA HAND DELIVERY

Hon. Michael N. Nowakowski
Circuit Court Judge, Branch 13
Dane County Circuit Court
215 S Hamilton St
Madison, WI 53703-3285

Re: *Wisconsin Medical Society, Inc. et al. v. Michael L. Morgan*
Case No. 07-CV-4035

Dear Judge Nowakowski:

I am writing in response to Assistant Attorney General Blythe's August 18, 2008 letter to you. I agree with Attorney Blythe's statement that the reference to Assembly Amendment 2 having been passed on October 23, 2003 in the Reply Brief, pp. 14-15, was an error. The reference on the first page of Exhibit E to the Buchko Affidavit to the entry on October 23, 2003, "[r]ead a third time and concurred in, Ayes 29, Noes 3," was to a reading and concurrence in the Senate and not by the Assembly. I overlooked the "S" following the entry and mistakenly thought that was the reading of, and concurrence in, the Assembly Amendment 2. I apologize for any inconvenience this factual error caused the Court and appreciate Attorney Blythe's pointing it out.

Nonetheless, except for indicating that it was the Assembly Amendment 2 that had strengthened the purpose language of the new legislation, the substance of the argument remains the same. The purpose language was strengthened by the original 2003 A.B. 487, which was not changed by Assembly Amendment 1. Buchko Aff., ¶¶ 4 and 7, Exhibits C and F. It also appears that all the 2003 A.B. 487 references to the amendment to Wis. Stat. § 655.27(6) were not included in Exhibit C to the Buchko Affidavit and, accordingly, a replacement Exhibit C is included herewith.

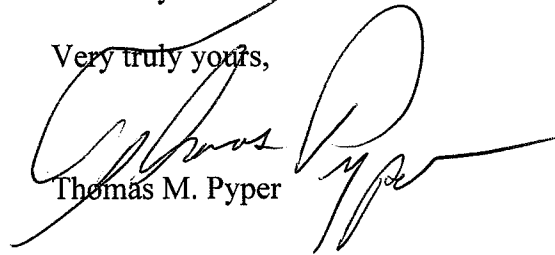
Thus, the substance of the argument set forth on pages 14-15 of the Reply Brief remains the same with the exception that it applies only to 2003 A.B. 487 and Assembly Amendment 1,

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rather than Assembly Amendment 2, which we agree was not passed. Wis. Stat. § 655.27(6) contains the language of 2003 A.B. 487 and Assembly Amendment 1.

Very truly yours,



Thomas M. Pyper

TMP/das

cc: Christopher J. Blythe, Esq.
Ruth Heitz, Esq.

2003 ASSEMBLY BILL 487

August 29, 2003 – Introduced by Representatives LADWIG, GIELOW, WEBER, ALBERS, BIES, J. FITZGERALD, FREESE, GUNDERSON, JENSEN, JESKEWITZ, KERKMAN, KRAWCZYK, KREIBICH, M. LEHMAN, LEMAHIEU, LOTHIAN, MCCORMICK, D. MEYER, MONTGOMERY, NISCHKE, OLSEN, PETROWSKI, PETTIS, SERATTI, STONE, SUDER, TOWNS, TOWNSEND, VAN ROY, VUKMIR, WASSERMAN and OWENS, cosponsored by Senators SCHULTZ, ROESSLER, BROWN, DARLING, S. FITZGERALD, KANAVAS, KEDZIE, A. LASEE, PANZER, REYNOLDS, STEPP, ZIEN and WELCH. Referred to Committee on Insurance.

1 **AN ACT to amend** 13.94 (1) (de), 15.405 (7) (c), 20.145 (2) (title), 20.145 (2) (q),
 2 20.145 (2) (u), 20.145 (2) (um), 20.145 (2) (v), 25.14 (1) (a) 9., 25.17 (1) (kp), 25.17
 3 (3) (a), 50.37 (intro.), 165.25 (6) (a), 619.04 (5) (b), 619.04 (5m) (b), 619.04 (9),
 4 chapter 655 (title), 655.001 (7), subchapter IV (title) of chapter 655 [precedes
 5 655.27], 655.27 (title), 655.27 (1), 655.27 (3) (a) 2m., 655.27 (3) (am), 655.27 (3)
 6 (bg) 2., 655.275 (title), 655.275 (1), 893.55 (4) (b), 893.82 (2) (d) 3., 895.46 (4) and
 7 895.70 (5); and **to repeal and recreate** 655.27 (6) of the statutes; **relating to:**
 8 the purpose and integrity of the patients compensation fund and changing its
 9 name to the injured patients and families compensation fund.

Analysis by the Legislative Reference Bureau

The health care liability provisions of the statutes require certain health care providers to carry health care liability (medical malpractice) insurance with liability limits of at least \$1,000,000 for each occurrence and at least \$3,000,000 for all occurrences in a policy year. Any portion of a medical malpractice claim that exceeds the policy limits is paid by the patients compensation fund (fund) for health care providers that are subject to the health care liability provisions. Money for the fund comes from annual assessments paid by those health care providers.

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Current law provides that the fund is to be held in trust for the purposes of the chapter of the statutes containing the health care liability provisions and may not be used for purposes other than those of that chapter, but does not specifically provide what the purposes of the chapter are. This bill provides: 1) that the purposes of the fund are to curb rising health care costs by financing part of the liability incurred by health care providers from medical malpractice claims and to ensure that medical malpractice claims are satisfied; 2) that the health care providers and claimants have contractual rights in all assets of the fund for those purposes; and 3) that, instead of being held in trust for the purposes of the chapter, the fund is held in trust exclusively for the benefit of health care providers and claimants and may not be spent for any other purpose of the state. The bill also changes the name of the fund to the injured patients and families compensation fund.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.94 (1) (de) of the statutes is amended to read:

2 13.94 **(1)** (de) At least once every 3 years, perform a financial audit of the state
3 life insurance fund, the local government property insurance fund, and the patients
4 injured patients and families compensation fund.

5 **SECTION 2.** 15.405 (7) (c) of the statutes is amended to read:

6 15.405 **(7)** (c) The chairperson of the patients injured patients and families
7 compensation fund peer review council under s. 655.275 shall serve as a nonvoting
8 member of the medical examining board.

9 **SECTION 3.** 20.145 (2) (title) of the statutes is amended to read:

10 20.145 **(2)** (title) ~~PATIENTS~~ INJURED PATIENTS AND FAMILIES COMPENSATION FUND.

11 **SECTION 4.** 20.145 (2) (q) of the statutes is amended to read:

12 20.145 **(2)** (q) *Interest earned on future medical expenses.* From the patients
13 injured patients and families compensation fund under s. 655.27 a sum sufficient
14 equal to the interest earned by the patients injured patients and families
15 compensation fund that is attributable to future medical expense payments held by

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1 provided, under s. 655.275 (7), for the health care provider to comment or prior to the
2 expiration of the time period under s. 655.275 (5) (a).

3 **SECTION 22.** 655.27 (3) (am) of the statutes is amended to read:

4 655.27 (3) (am) *Assessments for peer review council.* The fund, a mandatory
5 health care liability risk-sharing plan established under s. 619.04, and a private
6 health care liability insurer shall be assessed, as appropriate, fees sufficient to cover
7 the costs of the ~~patients~~ injured patients and families compensation fund peer review
8 council, including costs of administration, for reviewing claims paid by the fund,
9 plan, and insurer, respectively, under s. 655.275 (5). The fees shall be set by the
10 commissioner by rule, after approval by the board of governors, and shall be collected
11 by the commissioner for deposit in the fund. The costs of the ~~patients~~ injured patients
12 and families compensation fund peer review council shall be funded from the
13 appropriation under s. 20.145 (2) (um).

14 **SECTION 23.** 655.27 (3) (bg) 2. of the statutes is amended to read:

15 655.27 (3) (bg) 2. The rule shall provide that the automatic increase does not
16 apply if the board of governors determines that the performance of the ~~patients~~
17 injured patients and families compensation fund peer review council in making
18 recommendations under s. 655.275 (5) (a) adequately addresses the consideration set
19 forth in par. (a) 2m.

20 **SECTION 24.** 655.27 (6) of the statutes is repealed and recreated to read:

21 655.27 (6) **PURPOSE AND INTEGRITY OF FUND.** The fund is established to curb the
22 rising costs of health care by financing part of the liability incurred by health care
23 providers as a result of medical malpractice claims and to ensure that proper claims
24 are satisfied. Health care providers and claimants have contractual rights in all
25 assets of the fund for those purposes. The fund, including any net worth of the fund,