



STATE OF VERMONT
GENERAL ASSEMBLY
STATE HOUSE

June 27, 2008

Kevin McCarty, Commissioner
Florida Office of Insurance Regulation
J. Edwin Larson Building, Room 101A
200 East Gaines Street
Tallahassee, FL 32399-0301

Thomas R. Sullivan, Commissioner
State of Connecticut Insurance Department
153 Market Street, 7th Floor
Hartford, CN 06103

Re: Medical Professional Liability Closed Claim Reporting Model Law

Dear Commissioner McCarty:

We are writing to express our concerns on behalf of the Vermont delegation of the National Conference of Insurance Legislators ("NCOIL") with respect to the NAIC's proposed Medical Professional Liability Closed Claim Reporting Model Law ("Model Law"). It is our understanding that the Model Law has been precipitously placed on the agenda of the Executive Committee and the Plenary Committee for vote and adoption on a telephone conference call on July 8, 2008. We respectfully request that the NAIC postpone consideration of the Model Law until either the recommendation of amendment proposed by Vermont Commissioner Paulette J. Thabault relating to captive insurance companies and risk retention groups has been satisfactorily addressed, or until NCOIL has had an opportunity to consider the Model Law.

We expect that NCOIL's membership will be very interested in this Model Law, but as you may know NCOIL in general requires at least 30 days notice prior to taking formal action; consequently, we cannot assure you that NCOIL will be able to formally review and consider the Model Law during our Summer meeting from July 10th through 13th, 2008.

Our concerns relate both to the substance of the proposed Model Law, as well as to the process utilized by the NAIC in connection with the development and consideration of the Model Law.

As to matters of substance, while we appreciate the need for state regulatory agencies and policy makers to have access to accurate data to guide their decisions relating to medical malpractice, we share Commissioner Thabault's concerns that the language proposed in the Model Law to accomplish those legitimate public policy goals may have unintended adverse consequences. Captive insurance companies (including risk retention groups and more traditional captive companies) are legally subject to the regulatory jurisdiction of the domicile state only. Furthermore, the risk of disclosure of sensitive data (with potentially severe consequences for hospitals and other health care providers) is especially high where the owners of the captive company are individual or discrete groups of health care entities. We believe that the amendment proposed by Commissioner Thabault in her letter of June 16, 2008 is a good solution that accomplishes the fundamental purposes of the Model Law, while addressing the legitimate interests of captive insurers, risk retention groups, and domicile state regulators.


As to the process used to develop and consider the Model Law, we are concerned that this is yet another example of hasty action by the NAIC, without adequate effort to notify affected interests, to hear the legitimate concerns of the various parties, and to consult with legislators and NCOIL on a matter of significant interest to the Legislative Branches of the states. Clearly, insufficient attention was given to the legitimate interests of captive insurance companies; we are very disappointed that after making a commitment during the June NAIC meeting to solicit and consider additional comments and suggestions from captive domicile regulators, it appears that there may have been an inadequate effort to follow through on that commitment.

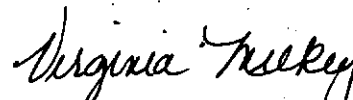
In conclusion, we respectfully request that the NAIC postpone consideration of the Model Law until the recommendation of amendment proposed by Vermont Commissioner Paulette J. Thabault relating to captive insurance companies and risk retention groups has been satisfactorily addressed. In the alternative we request that the matter be postponed until the Fall NAIC meeting in September, 2008 so that we will have an opportunity to bring this matter to the attention of our NCOIL colleagues.

Yours truly,


Rep. Kathleen C. Keenan *s/ae*


Rep. Warren Kitzmiller *s/ae*


Sen. Ann E. Cummings


Rep. Virginia Milkey *s/ae*

cc: Rep. Brian Kennedy, Rhode Island
Commissioner Sandy Praeger, Kansas
Commissioner D. Kent Mitchie, Utah
Commissioner Paulette J. Thabault, Vermont
Andrew Beal, Chief Legal Office, NAIC
Eric C. Nordman, NAIC Director of Research