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3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

Nevada State Legislature
Senate Committee on Judiciary
401 S. Carson Street
Carson City, NV 89701-4747

February 24, 2015

Sent via electronic transmission to committee at:
SenJUD@sen.state.nv.us

RE: SB 162, Disclosure of Medical Records by a Personal Injury Claimant - NAMIC's Letter *in Support* of Proposed Legislation

Dear Senator Brower, Chair; Senator Harris, Vice-Chair, and members of the Senate Committee on Judiciary:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 26, 2015, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than $196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 139 members who write property/casualty and workers' compensation insurance in the State of Nevada, which represents 40% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC supports SB 162, because it is *necessary* to resolve a current "practical reality" problem relating to how certain personal injury attorneys fail to comply with the letter and spirit of NRS 690B.042, which establishes statutory guidelines for the insurer to timely disclose policy information pertaining to coverage issues and for the personal injury claimant's attorney to timely disclose to the insurer medical records relating to the insurance claim.

Insurers need personal injury claimant medical records, supplemental medical bills, and medical treatment information to be disclosed in a timely manner consistent with NRS 690B.042, so that insurers may be able to comply with important state mandated regulatory requirements imposed on insurers; so that insurers may be able to properly honor their duties to their policyholders; and to help facilitate a fair, efficient, and timely resolution of the personal injury insurance claims. The current practice of certain personal injury attorneys playing "hide the ball" regarding medical records needlessly delays the claims adjusting and settlement process, which is detrimental to all interested parties and creates an unnecessary insurance rate cost-driver for insurance consumers.

Specifically, insurers need timely personal injury claimant medical records in order for them to comply with Division of Insurance mandated claims reserve requirements, which are in place to makes sure that insurers have adequate funds on-hand to pay all insurance claims and to assist regulators in protecting the public against insurer insolvency. Without timely personal injury claimant medical records, insurers are seriously hindered in their ability to accurately establish claims reserves to the detriment of all insurance consumers. Moreover, insurers also have regulatory duties to adjust and settle claims in a timely manner, so insurers need personal injury claimant medical records and information in order to thoroughly evaluate settlement demands. Insurance claims cannot be settled without medical records and information pertaining to the claimant's health, the scope of medical treatments received, and the medical prognosis relating to the claimant's condition.

Additionally, plaintiff attorney delays in disclosing statutory required medical records adversely impact an insurer's ability to efficiently provide its policyholder with an important part of the insurance contract, the timely resolution of liability claims asserted against the policyholder. It is only natural, that an insurance policyholder would want a personal injury claim asserted against him/her settled in a fair and timely manner so the policyholder can move past this unsettling experience. Having to continually worry about when the case will be amicably resolved or scheduled for a trial that may require the policyholder's participation is emotionally stressful for insurance consumers. Therefore, needless delays in the settlement of cases should be prevented.

Further, trial attorney "disclosure delay tactics" really don't benefit personal injury claimants either, because they prevent insurers from being able to timely review and evaluate the claimant's medical records. Often times, insurers may have follow-up questions relating to specific aspects of a medical report, which necessitate additional inquiry and assessment. By delaying the initial disclosure of medical records essential to the claims settlement process, personal injury claimant attorneys are needlessly prolonging the insurance claims process to the detriment of claimants.

Finally, NAMIC is concerned that the current personal injury claimant attorney practice of not disclosing medical records in a timely manner pursuant to state law is harmful to all insurance consumers and civil litigants. Claims adjusting is an expensive part of the insurance business so the longer a claims file is needlessly left open and an insurer's legal counsel has to be engaged in the ongoing claims settlement process, the higher the insurer's operating costs. Like all business endeavors, increased operating costs become consumer price cost-drivers. Additionally, insurance claims that inappropriately drag-on, because the insurer doesn't have the medical

information required to settle the case, are more likely to end up in protracted legal disputes that needlessly congests court trial dockets. Fair and timely settlements of personal injury claims are efficient and cost-effective for all interested parties. In contrast, misuse or abuse of the disclosure requirements of NRS 690B.042 are detrimental to everyone.

Consequently, NAMIC supports SB 162 as being a reasonable and appropriate legal approach to motivate personal injury claimant attorneys to disclose medical records to insurers in a timely manner. NAMIC specifically supports the provision in the bill that authorizes an insurer to secure a court order compelling timely disclosure of medical records, because this will make the current disclosure requirements of NRS 690B.042 more than just a mere statutory suggestion that can be ignored by a personal injury claimant's attorney, it will infuse the "force of law" into the statute and make it something that must be complied with by all parties. NAMIC also supports the provision authorizing an award of costs and attorney's fees to an insurer who is forced to spend policyholder premium money to secure claimant medical records that should be timely disclosed pursuant to state law. Sometimes in life, especially in the litigation world, economic encouragement, via imposition of legal sanctions, is necessary to facilitate compliance with the law.

For the aforementioned reasons, NAMIC respectfully requests that this committee VOTE YES on SB 162, because insurance consumers need and deserve personal injury claimant attorneys to be required to comply with the law specifying timely disclose of medical information to insurers necessary for them to settle insurance claims.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

Christian John Rataj, Esq.
NAMIC Senior Director – State Affairs, Western Region