



April 5, 2011

Chairman Fred Upton  
Ranking Member Henry Waxman  
House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Upton and Ranking Member Waxman:

California is the only state in the nation where the impact on doctors' medical malpractice insurance premiums of both strong insurance rate regulation and strict medical liability limits can be directly compared.

H.R. 5 would severely limit the rights of patients who are victims of medical negligence. Arguments for the bill rely on incontrovertible errors in the understanding of California's experience. We are writing to set the record straight. Insurance reform, not liability limits, lowered malpractice insurance premiums in California.

The October 2009 Congressional Budget Office letter on medical malpractice predicts that limits on patients' legal rights will lower health care costs by 0.5%, and that 40% of those savings will come from direct reductions in medical malpractice insurance premiums. California's experience reflects the failure of such limits to produce the anticipated premium reductions.

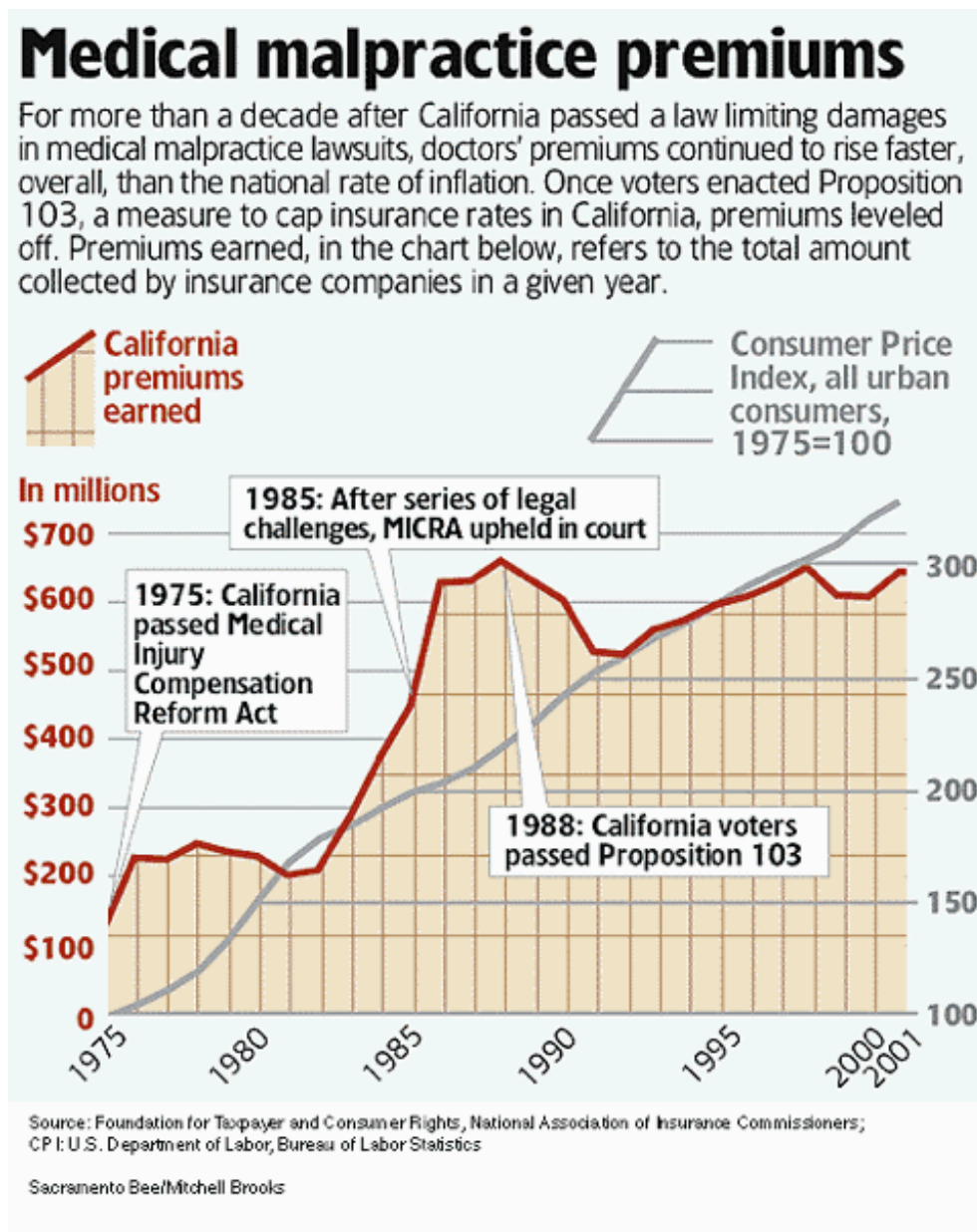
In 1975 the California legislature approved the Medical Injury Compensation Reform Act (MICRA). MICRA imposed most of the medical liability limits proposed in H.R. 5, including a \$250,000 cap on non-economic damages, modification of the collateral source rule, sliding scale limits on attorney fees and periodic payments of damages.

For the 13 years following the enactment of MICRA, medical malpractice insurance premiums in California rose 450% to an all-time high, according to premium data provided to the National Association of Insurance Commissioners.

In 1988 voters approved the insurance reform ballot measure known as Proposition 103. The law required a 20% rollback of insurance premiums for virtually all property and casualty insurers, including medical malpractice insurers, and subjected insurance rates to "prior approval" regulation that requires insurance companies to open their books and get approval for any rate change before it takes effect. It prohibits insurance companies from passing on to policyholders excessive executive salaries, profits, and administrative expenses.

In the first three years after Proposition 103 was enacted malpractice premiums fell 20%, then stabilized even as premiums across the country continued to fluctuate.

These savings are illustrated in an analysis of California medical malpractice premiums by the Sacramento Bee:



Property-casualty insurance companies in California eventually issued over \$1.4 billion in refund checks under Proposition 103's rebate provision, and medical malpractice insurance companies were the first in the state to voluntarily comply. The state's top three medical malpractice insurance companies paid more than \$60 million in refunds.

Proposition 103 also allows any member of the public to intervene and challenge excessive rate increases. Consumer Watchdog has used this intervenor process to prevent \$66 million in unjustified rate hikes for doctors and other medical professionals since 2003.

In the years prior to enactment of Proposition 103, California's severe malpractice liability limits did nothing to limit doctors' ever-inflating malpractice insurance premiums. Only when strong insurance reform was enacted did malpractice premiums fall, then stabilize.

Consumer Watchdog has worked for decades with California patients who are twice injured: first by medical negligence, and again by a legal system that denies them justice. These facts about the experience in California should make clear that efforts to lock patients out of the courtroom will ultimately fail to provide the reductions in health care costs proponents seek.

I can be reached at (202) 629-3043 to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Carmen Balber". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Carmen Balber  
Washington DC Director  
Consumer Watchdog