Americans for Insurance Reform
"PROTECTING RIGHTS, NOT WRONGS"

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(A project of the Center for Justice & Democracy)

LOWERING INSURANCE COSTS FOR DOCTORS REQUIRES INSURANCE INDUSTRY REFORM

The property/casualty insurance industry, of which medical malpractice insurance is a part, is one of the least regulated an most anti-competitive industries in the country.

- In 1944, the insurance industry strong-armed Congress into enacting the McCarran-Ferguson Act, which allows insurance companies to fix prices, an anti-competitive practice that for other industries can be punishable by jail time.

- Federal law also prohibits federal regulation of insurance or Federal Trade Commission scrutiny over the industry.

- Many state insurance departments have neither the authority nor the funding to exercise proper control over insurance industry pricing.

The job of regulating insurance companies is up to the states, and although state regulation has generally been weak, some states have enacted excellent pro-consumer laws that have kept rates under control.

- In 1988 California voters passed a stringent insurance regulatory law, Proposition 103, which "reduced California doctors' premiums by 20 per within three years," and stabilized rates. Foundation for Taxpayer and Consumer Rights, "How Insurance Reform Lowered Doctors' Medical Malpractice Rates in California and How Malpractice Caps Failed" (March 7, 2003).

- In the twelve years after Prop. 103 (1988-2000), malpractice premiums dropped eight percent in California, while nationally they were up 25 percent. Foundation for Taxpayer and Consumer Rights, "Insurance Regulation, Not Malpractice Caps, Stabilize Doctors' Premiums."

- Prop. 103 led to public hearings on recent rate requests by medical malpractice insurers in California, which resulted in rate hikes being lowered three times. Foundation for Taxpayer and Consumer Rights, "California Group Successfully Challenges 29.2% Rate Hike Proposed by California's Ninth Largest Medical Malpractice Insurer; Proposition 103 Invoked to Slash Medical Protective Company's Requested Increase by 60%," Sep 16, 2004

Congress should not regulate insurance rates and override state laws, but it should take limited steps to help control rates.

- Federal regulation of the property/casualty insurance industry is a bad idea because it would likely lead to deregulation and thus "override important state consumer

protection laws, sanction anticompetitive practices by insurance companies and incite state regulators into a race to the bottom' to further weaken insurance oversight." Letter from consumer groups to the Honorable Michael G. Oxley and the Honorable Richard H. Baker, Re: "State Modernization and Regulatory Transparency Act" Draft Will Harm Consumers, Undermine Competition and Gut Insurance Regulation April 18, 2005.

- Congress can, however, take responsible, remedial steps to reign in the power and control the abuses of insurance companies, including:

    - **Remove the antitrust exemption** that insurers currently enjoy under the McCarren-Ferguson Act, which allows insurance companies to fix prices. A law repealing this exemption would ensure that all domestic and foreign insurers and reinsurers that do business in the United States are subject to federal anti-trust prohibitions applicable to other industries. This would prohibit the insurance industry from acting in concert to raise prices and would prohibit tying arrangements, market allocation among competitors and monopolization. Increased competition would bring lower prices and would increase the availability of insurance.

    - **Lift congressional restrictions** that prevent the Federal Trade Commission from investigating deceptive or fraudulent acts in the insurance industry.

    - **Encourage uniformity** in state insurance regulation as long as high consumer protection standards are met, instead of overriding strong state laws. Improved state regulation could include:

        - Instituting "prior approval" of insurance rates and the right to challenge rate hikes in public hearings, as under California under Prop. 103.

        - Requiring all medical malpractice insurers to use claims history as a rating factor, and giving that factor significant weight; requiring insurers to offer all "good" doctors– *i.e.,* all doctors meeting an objective definition of eligibility based on their claims history, their amount of experience and perhaps other factors – the lowest rate.

        - Ending the practice of charging rates based on specialty, not a doctor's malpractice experience. This can be unfair not only to the majority of good doctors who must pay for the malpractice of the few bad apples, but it is also unfair to the higher risk specialties (OB-GYN's, neurosurgeons) who are paying vastly higher rates than, say, dermatologists, and therefore shoulder the burden of most rate hikes.