

THE COALITION TO PRESERVE MICRA



Californians
Allied for
Patient
Protection

1215 K Street, Suite 2015 • Sacramento, CA 95814
Tel. 916.448.7992 / FAX 916.448.0234
www.micra.org

TESTIMONY OF
DANIELLE J. WALTERS
ON BEHALF OF
CALIFORNIANS ALLIED FOR PATIENT PROTECTION

BEFORE THE
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
OF THE
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
JUNE 12, 2002

Mr. Chairman and members, thank you for inviting me to testify before your committee on this important issue. My name is Danielle Walters. I am the Executive Vice President of Californians Allied for Patient Protection, or “CAPP.” Californians Allied for Patient Protection is a broad-based coalition of health professionals, health care institutions and insurers that are dedicated to preserving California’s landmark medical liability law, the Medical Injury Compensation Reform Act of 1975 – better known as MICRA.

I am here this morning to share with you California’s 27-year history with medical liability reform that began as an experiment and now is a bona fide success story. Let me start by reading you some headlines that provide perspective on where we began:

“Insurance Rates Peril Medical Care” – San Jose Mercury News

“Doctors Face Insurance Crisis – May Affect 8,000 in Southland” –The Los Angeles Times

“Physician Strike May be Widened” – New York Times

“New Bay Area Crisis in Medical Care: Doctors Might Halt Practice” –San Francisco Chronicle

These were typical headlines in 1975, when California was a state in crisis.

In the early 1970s, a medical liability insurance crisis gripped the state. Liability premiums soared more than 300 percent, numerous medical liability carriers left the state completely and many physicians – particularly high-risk specialties such as obstetrics and neurosurgery – were forced to close their doors because they were either unable to get insurance or unable to afford the inflated rates.

California in the early 1970s, in effect, answered the question this hearing is asking. The unlimited liability providers faced created an acute access to care crisis, to the point that California patients, health care professionals and the media demanded action.

In 1975, Governor Jerry Brown called a special session of the California Legislature to address the medical liability crisis. The state Legislature engaged in its own independent investigation of the crisis and hired its own actuaries to get to the bottom of the problem and to determine if a “crisis” actually existed. Indeed it did.

For the record, I am submitting a first-hand account of MICRA’s creation from the perspective of Fred Hiestand, CAPP’s CEO and General Counsel (Attachment A). Mr. Hiestand was an advisor to Governor Brown and to Henry Waxman, then a state Assemblyman and Chair of the Committee charged with examining and developing a solution to California’s medical liability crisis.

The efforts of Governor Brown and Assemblyman Waxman culminated in the bi-partisan passage of MICRA. MICRA addressed the medical liability insurance problem by instituting measures designed to fix a broken system and assure that medical malpractice insurance would be available at realistic and affordable rates.

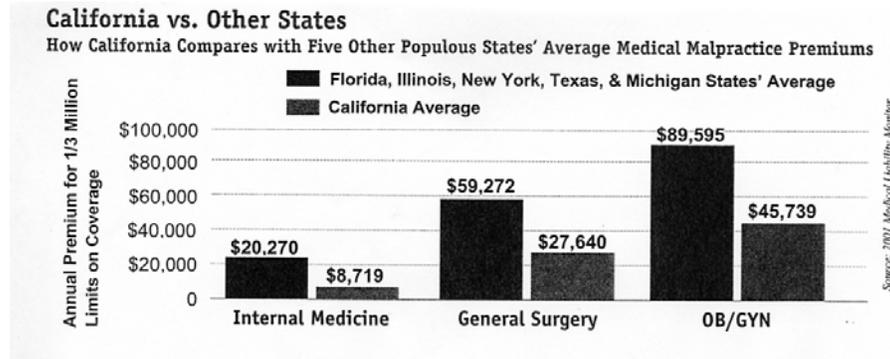
The main provisions of the MICRA reforms include:

- A \$250,000 limit on non-economic damages;

- Ensuring compensation for economic damages such as medical bills, lost wages, future earning, custodial care and rehabilitation;
- Providing a statute of limitations on claims;
- Ensuring the bulk of the award goes to the plaintiff by limiting attorney contingency fees on a sliding scale;
- Requiring advance notice of a claim;
- Allowing for binding arbitration of disputes; and
- Providing for periodic payment for future damages.

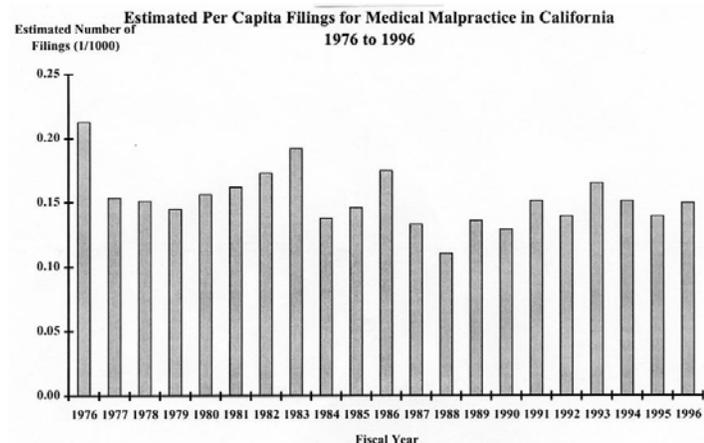
More than a quarter of a century later, MICRA’s provisions enable health care professionals to focus on providing high-quality care without engaging in costly defensive medicine practices just to protect themselves against being sued. Because of MICRA, California has a healthy and competitive medical liability insurance market and now has some of the lowest malpractice premiums in the United States. When you

compare California to other large, diverse states, physicians in California pay one-half to one-third of what their colleagues pay for the same liability coverage.



In addition, medical liability claims are resolved on average faster in California. This of course translates into savings, but more importantly provides injured plaintiffs with their desperately needed compensation sooner.

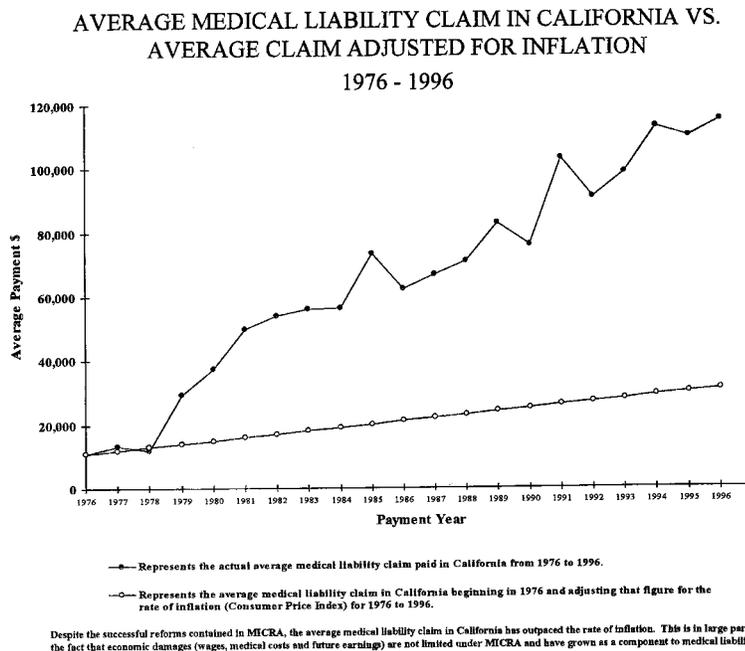
The evidence also shows that MICRA has in no way inhibited



access to our court system; California is still very litigious. Historical data of per capita medical malpractice filings in Los Angeles County shows a consistent pattern of filings.

We have also examined the average awards since MICRA's inception. Awards have grown in excess of the rate of inflation. This is due to the fact that most liability awards consist of both economic and non-economic damages.

So while non-economic damages are limited to \$250,000, the economic side of the awards reflects increases in the cost of living, the cost of medical care, rehabilitation, lost earnings, and other factors.



According to retired California Supreme Court Justice Cruz Reynoso, who upheld MICRA's constitutionality: "MICRA has reached a balance between the interest that plaintiffs have and the interest of providing reasonable insurance and medical attention."

The Legislature indeed had the very difficult task of finding the balance between ensuring that Californians would have access to care and protecting individuals who are harmed through an act of medical negligence. Subsequent legislatures have also re-examined MICRA on numerous occasions, with the debate focusing on the impact upon access to care, particularly for the millions of Californians with limited or no health coverage. The front-line providers who serve this population – including rural and urban clinics, public health care professionals and others – have repeatedly made it clear to the

Legislature that preserving MICRA is an essential element of their continued ability to offer medical services to people who often cannot find care elsewhere.

MICRA now has a 27-year legacy of preserving access to care, utilizing health care dollars efficiently and providing appropriate compensation to injured patients. MICRA has immunized California from the medical liability crisis that is currently sweeping the nation.

Over the past year, my organization has increasingly served as a resource to elected officials, health care professionals and the media in states reeling with the melt-down of their medical liability systems. We are proud that this law is now being viewed as a model for addressing medical liability problems throughout the nation.

Thank you again for this opportunity to testify. I will do my best to answer any questions you may have.

ATTACHMENT A

Declaration of Fred J. Hiestand, CEO and General Counsel, Californians Allied for Patient Protection (“CAPP”)
June 12, 2002

Introduction

Thank you for the invitation to share with you highlights of the story of how California learned, and has so far continued, to control what was once a runaway medical liability and litigation crisis.

From 1974-76 I was immersed in California’s medical liability insurance crisis; first as the consultant to the Legislative Committee that studied its causes and predicted its occurrence; then as advisor to the Governor and the Legislature forced to come to grips with it through the enactment of legal reforms. Now and for the past three years I have served as CEO and General Counsel to CAPP, a broad based organization of health care providers, professional medical associations, medical liability carriers and community clinics dedicated to preserving and protecting those very legal reforms that took effect in 1976 and solved our state’s medical liability crisis. This almost thirty year journey of biography as history underscores that what we learn from the past can enable us to avoid repeating its unfortunate excesses. Here, in a “nutshell” is what that history teaches.

The California Experience, or Deja Vu All Over Again

In late 1974 California physicians and hospitals were shocked by announcements from the major insurance companies writing medical liability coverage for them that their premiums needed to be raised 400%. This calamity was predicted by the Assembly Select Committee on Medical Malpractice in a report issued earlier that summer by its chairman, Assemblyman Henry A. Waxman, which warned that:

[M]edical malpractice group insurance rates for doctors have increased more than four hundred percent (400%) in just two brief years between 1968 and 1970; [moreover,] [t]he medical malpractice insurance market is a highly unstable one and, if

rates continue to escalate as they have in the past few years, malpractice insurance carriers may be priced outside the market. (*PRELIMINARY REPORT*, Assembly Select Committee on Medical Malpractice, June 1974, Pp. 3-4.)

Waxman's warning was prescient, though it did not anticipate the suddenness or severity of California's medical malpractice insurance crisis. Alarmed hospitals and physicians responded to it by restricting medical care to emergencies. Access to needed health care was jeopardized for Californians in the same way it is today threatened for citizens in Florida, New York, Nevada, Ohio, Pennsylvania, West Virginia and other states undergoing their own medical malpractice insurance crises. Within a few months newly elected Governor Jerry Brown called an extraordinary session of the Legislature in which he proclaimed:

The cost of medical malpractice insurance has risen to levels which many physicians and surgeons find intolerable. The inability of doctors to obtain such insurance at reasonable rates is endangering the health of the people of this State, and threatens the closing of many hospitals. The longer term consequences of such closings could seriously limit the health care provided to hundreds of thousands of our citizens.

(Proclamation of Governor Edmund G. Brown, Jr. to Leg. (May 16, 1975) Stats. 1975 (Second Ex. Sess. 1975-1976) p. 3947.)

Not everyone agreed at the time that there was a real crisis in California. Personal injury attorneys charged, as they do today about the catastrophes sweeping other states, that California's malpractice insurance emergency was "contrived," a result of bad stock market losses by insurers. To separate fact from fantasy California's Joint Legislative Audit Committee ordered the Auditor General to undertake a study to determine if the crisis was real or not. In December 1975 that study, contracted by the Auditor General to Booz-Allen Consulting Actuaries, reported that "premiums paid by California doctors for medical malpractice insurance have increased significantly over the past fifteen years, but have not kept pace with increasing claim costs; [and] the average premium in 1976 is expected to be

about five times higher than the 1974 average.” (*CALIFORNIA MEDICAL MALPRACTICE INSURANCE STUDY*, Report by Booz, Allen & Hamilton, Inc. For the Office of the Auditor General, State of California, Dec. 5, 1975, Pp. 1-2.).

By the time the Auditor General reported that California’s malpractice insurance crisis was indeed “real,” the Legislature enacted the Medical Injury Compensation Reform Act of 1975 (“MICRA”). MICRA’s purpose is stated in its preamble:

The Legislature finds and declares that there is a major health care crisis in the State of California attributable to skyrocketing malpractice premium costs and resulting in a potential breakdown of the health delivery system, severe hardships for the medically indigent, a denial of access for the economically marginal, and depletion of physicians such as to substantially worsen the quality of health care available to citizens of this state. The Legislature, acting within the scope of its police powers, finds the statutory remedy herein provided is intended to provide an adequate and reasonable remedy within the limits of what the foregoing public health and safety considerations permit now and into the foreseeable future. (Stats. 1975, Second Ex. Sess. 1975-1976, ch. 2, §

12.5, p. 4007.)

The “Key Legal Reforms” for Taming Runaway Malpractice Litigation and Liability Premiums

The “statutory remedy” that tamed runaway malpractice premium costs was comprehensive and dealt with major changes in the regulation of the medical profession, insurance and legal reforms. Most of these reforms were recommended by the Assembly Select Committee on Medical Malpractice that Henry Waxman chaired in 1974 and Governor Jerry Brown urged be adopted in his proclamation calling the Legislature into a special session to solve the crisis. MICRA’s legal reforms curbed unfair practices and inefficiencies in our system for resolving medical malpractice disputes. It put a ceiling of \$250,000 on exploitive non-economic “pain and suffering” damages, and assured full

compensation for economic losses: wages, medical bills, rehabilitation and custodial care for as long as necessary.

MICRA also permits arbitration, lets the jury know of other payments a plaintiff is receiving for the same injuries his suit is based on, marshals and preserves resources for ongoing care of the plaintiff by allowing periodic payment of future damages, and assures that the most severely injured plaintiffs get a proper share of any recovery by requiring that attorneys' contingency fees be paid on a sliding scale — the larger the recovery the smaller the lawyer's percentage.

MICRA has achieved for California some of the lowest malpractice premiums in the country. States without MICRA reforms are now experiencing their own version of California's mid-1970s medical liability crisis. Since 1975, California's premiums have risen 168 percent, while U.S. premiums has increased 420 percent (National Association of Insurance Commissioners 1999 Profitability Study). Today the average annual liability premium for an Ob/Gyn in California is \$ 45,000, half of the average physicians pay in other large states without MICRA (Medical Liability Monitor, 2001).

Numerous scholarly studies show that the \$250,000 ceiling on non-economic damages accounts for the principal difference between California's stability and the chaos of other states in professional liability coverage costs. Despite these savings, the average malpractice settlement and award in California, adjusted for post-MICRA inflation, is greater today than it was before MICRA. Without MICRA, pay outs by California carriers on behalf of health care providers sued for professional liability would mirror the claims experience of other states and send corresponding coverage costs through the roof.

California's medical malpractice disputes are settled 23 percent faster. The cost of settlements is 53 percent lower than the national average (The Doctors' Company). The Congressional Budget Office stated that medical malpractice reform like California's would result in savings of \$1.5 billion over ten years (CBO Analysis of H.R. 4350, July 24, 1998). The congressional study does not include the hidden costs of defensive medicine. A Stanford University study shows that California's medical liability reform would save the national health care system \$50 billion a year in defensive medicine costs (Kessler DP, McClellan M. Do doctors practice defensive medicine? Q J Econ. 1996. 111:353-390).

Reducing health care costs safeguards access to medical care for those who lack basic health coverage.

Medical liability is not one of California's many problems with health care. MICRA is a proven success. Other states now look to the California experience as they try to fashion solutions to their growing emergency with medical liability insurance. MICRA continues to prove that providing fair and equitable compensation for those negligently injured can be achieved in ways that preserve an orderly insurance marketplace and maintain access to quality health care. It is a success for Californians, and will be for patients, governments and taxpayers across the country.

#