

Dollars Outweigh Sense

Insurers' Business Practices, and Not Lawsuits, Increase Doctors' Med-Mal Coverage Expense

By Michael S. Fields

Calling the relationship between doctors and attorneys in California adversarial would be a mistake. It has warmed up since Dan Zohar, a member of the Consumer Attorneys Association of Los Angeles who is representing the Foundation for Taxpayer & Consumer Rights, challenged medical-malpractice insurance rate increases.

The state Department of Insurance denied a request by the state's second-largest medical-malpractice insurer, SCPIE Holdings Inc., for an \$18 million rate increase. The premium increase was scaled back by a third.

According to projected estimates, doctors will save \$16 million to \$24 million. And patients in the state stand to gain from the department's decision, because it means that affordable health care has a brighter future.

Realizing these savings took a lot of muscle. The taxpayers organization led the challenge to SCPIE's attempts to justify a 15.6 percent premium increase.

Voters in 1988 passed Proposition 103, which helps to regulate the state's insurance industry. Zohar and the organization, the original proponents of Proposition 103, investigated the rate increase proposed by SCPIE in order to stop its financial bloodletting of physicians.

During hearings resulting from the challenge and appeal process, a SCPIE executive, James Robertson, provided documentation to the Insurance Department that the state's 1975 Medical Insurance Compensation Reform Act damage caps have not substantially restrained premium increases in the state.

This admission, however, contrasts directly with what insurance companies have told state legislatures and the public in the past.

Insurers' strategies to increase their immunity and lower their payouts has been to pit doctors against lawyers by blaming an explosion of lawsuits for higher medical-malpractice insurance premiums.

These claims have never been substantiated. Most recently, in fact, they have been refuted statistically in a new study by the National Center for State Courts.

The center's extensive analysis reveals a per capita decrease from 1992 to 2001 in the number of medical-malpractice court filings.

While medical-malpractice court



filings have been declining, premium prices have spiraled. Insurers are pricing doctors out of practice, particularly obstetricians, gynecologists and emergency-room professionals.

The far-reaching impact has the potential to decrease access to health care for those most in need: pregnant women, emergency-room patients and the uninsured.

Keeping medical care available and affordable has united the worlds of medicine and law, in spite of insurers' best efforts to drive a wedge between them.

Insurers promised that the 1975 medical reform act would keep insurance rates low.

But after its passage, California doctors saw their liability rates rise.

The upward trend continued for 13 years even after a second round of patient restrictions was enacted.

With the passage of Proposition

103, written by consumer advocate Harvey Rosenfield, the state's medical-malpractice rates were brought under some control.

When the legislation first passed, medical-malpractice insurers were forced to return \$75 million directly to physicians.

In the years since, Proposition 103 has proved an effective measure protecting the state's doctors from triple-digit increases experienced by their colleagues in New Jersey, Connecticut and Missouri.

But Proposition 103 has not prevented insurers from continuing their strategy of deception about damage caps.

In dog and pony shows brought to state legislatures across the country, the insurance industry extols the supposed virtues of damage caps while covering up the fact that the industry's own bad business practices, not lawsuits, neces-

sitate higher premiums for doctors.

Luckily for both consumers and doctors in the state, the truth about the dismal and destructive state of damage caps was forced into the open during Insurance Commissioner John Garamendi's probe into SCPIE's excessive request.

This newly successful Proposition 103 challenge against SCPIE was the first time it had been applied to a medical-malpractice insurer.

This significant decision by the Insurance Department should be seen as a harbinger to the other companies underwriting medical-malpractice policies in our state.

Michael S. Fields is a sole practitioner in Artesia and president of the Consumer Attorneys Association of Los Angeles.