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Prop 103 vs. MICRA: The Flawed Analysis by the Foundation for Taxpayer and Consumer Rights

The argument that Proposition 103, the insurance reforms passed by voters in 1988 targeted primarily at auto insurers, is directly or indirectly responsible for keeping malpractice liability premiums in California lower than in other states is based on convenience and coincidence rather than evidence. There is plenty of evidence, however, that California's Medical Injury Compensation Reform Act of 1975 has been the driving force that has kept premiums one-half to one-third below those in states without caps on non-economic damages and similar reforms. Here are some commonly held misconceptions about Prop. 103 and the facts to refute them.

MYTH: All malpractice liability in California is subject to Proposition 103.

FACT: Prop 103 only applies to regulated medical malpractice insurance companies. Only about half of medical providers in California are insured by these entities that are subject to Prop. 103. The other half are covered by a combination of risk retention groups and self-insured institutions, both public and private, not subject to Prop 103. To assert that Prop 103 is the reason for California's stable medical liability market is to ignore the fact that Prop 103 only applies to half of the liability market in California.

MYTH: Voters passed Prop 103, it was immediately implemented and began to impact premiums.

FACT: Prop 103 was mired in court challenges and regulatory hurdles well into the mid-'90s, which prevented it from having any effect before then. Even after these challenges were finally resolved, Prop. 103 still had no real effect on medical malpractice insurance premiums because it only bars those premiums that are "excessive or unfair." Prop. 103 does not prohibit increases but merely requires that they are justified. No malpractice insurer has ever been denied a premium increase under Prop. 103.

MYTH: Prop 103 required medical malpractice insurers to rollback rates 20% and refund millions to doctors.

FACT: California medical malpractice insurers were among the first to voluntarily refund excess premiums to their policyholders/owners because they were already doing so in the form of dividends to policyholders. They returned dividends in excess of 20% before Prop 103 was implemented and continued to do so after its implementation because the stable liability environment created by MICRA allowed them that luxury. Between 1991 and 1993, the Insurance Commissioner entered into agreements with California's major medical malpractice insurers blessing their policies of returning dividends to their policyholder/owners as being in compliance with the

law. For example, California's largest medical malpractice insurer, NORCAL Mutual Insurance Company, paid annual dividends as follows:

NORCAL Mutual Insurance Company Annual Dividends Paid

Year	Dividend Paid
1989	23%
1990	27%
1991	26%
1992	31%*
1993	37%
1994	34%
1995	23%

* Insurance Commission stipulation agreement with NORCAL accepting 1992 dividend as compliant to Prop 103.

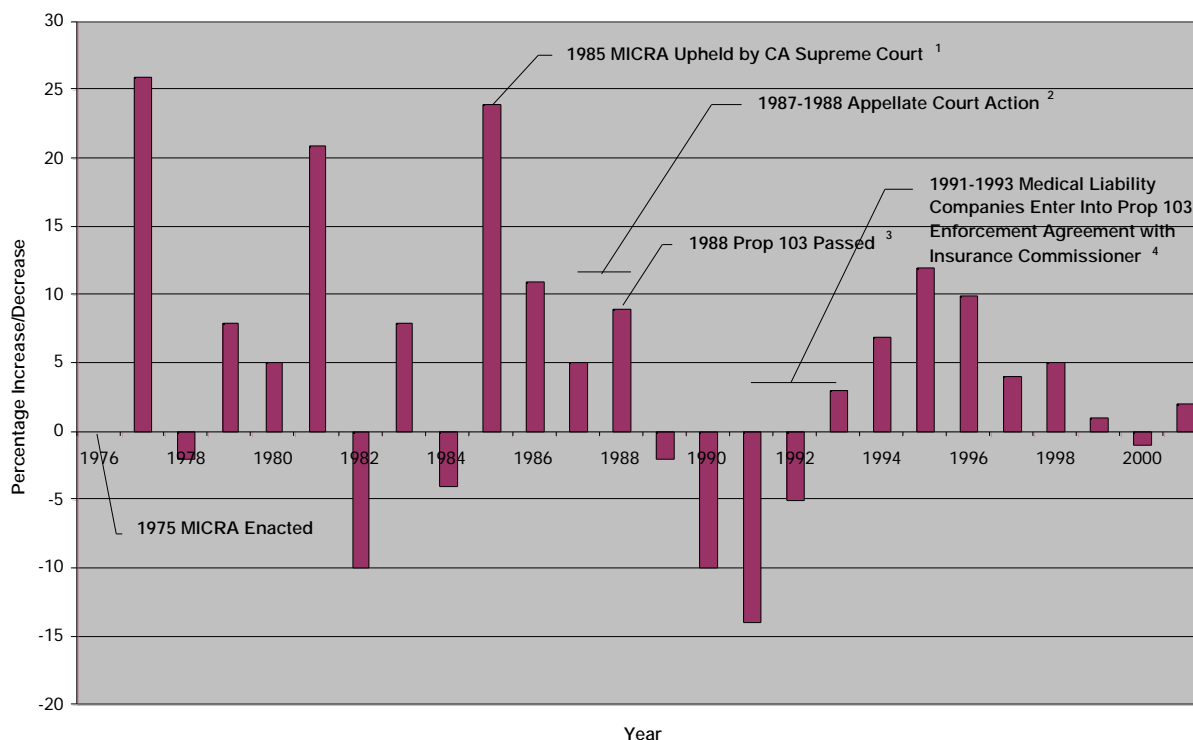
MYTH: California's medical malpractice premiums did not stabilize until Prop 103 imposed insurance regulation in California.

FACT: Premiums in California fluctuated following MICRA's passage due to a continuous stream of court challenges that lasted a decade¹. The final cases upholding MICRA's constitutionality were decided by the California Supreme Court in 1985. It took several years of further court action to clarify major questions about MICRA's application and determine its true cost savings². An analysis of actual per capita premiums shows premiums began to stabilize due to confidence that the courts were beginning to uniformly apply the MICRA law not the coincidence that Prop 103 was enacted. Non-regulated and regulated companies both showed the same trend of stabilized premiums and lower increases. See chart on following page.

¹ *Lawrence Fein v. Permanente Medical Group* (1985) 38 Cal.3d 137, *American Bank & Trust Co. v. Community Hospital of Los Gatos-Saratoga, Inc.* (1985) 36 Cal.3d 359, *Frank Roa, Jr. v. Lodi Medical Group, Inc.* (1985) 37 Cal. 3d 920, *Warren Barme, Jr. v. Gayanne Wood* (1984) 37 Cal. 3d 174

² See, e.g., *Jordan v. Long Beach Community Hosp.* (1988) 201 Cal. App. 3d 1402, *Yates v. Pollock* (1987) 194 Cal. App.3d 195 and *Aronson v. Superior Court* (1987) 191 Cal. App. 3d 294.

Average California Physician Medical Liability Premium
1976 - 2001



Source: CAPP Survey of CA medical malpractice insurers subject to Prop 103 regulation. Sample represents 49% of CA medical malpractice insurance market.

¹ *Lawrence Fein v. Permanente Medical Group* (1985) 38 Cal.3d 137, *American Bank & Trust Co. v. Community Hospital of Los Gatos-Saratoga, Inc.* (1985) 36 Cal.3d 359, *Frank Roa, Jr. v. Lodi Medical Group, Inc.* (1985) 37 Cal. 3d 920, *Warren Barme, Jr. v. Gayanne Wood* (1984) 37 Cal. 3d 174

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³ November 1988 general election

⁴ Stipulation and Consent Orders between the Insurance Commissioner of the State of California and California physician owned medical liability companies. In the Matter of the Rate Rollback and Refund Obligation 1991-1993.

MYTH: California medical liability premiums increased 450% in the 13 years following MICRA and have decreased 2% since Prop 103 passed.

FACT: Again, the FTCR misrepresents the National Association of Insurance Commissioners (NAIC) data. FTCR uses total gross earned premium data, not per capita or per insured. It simply indicates the total number of dollars paid and fails to determine whether year-to-year increases represent higher premiums, an increased in the number of insured who are paying premiums, or a combination of the two. Per capita premiums, on the other hand, show increases and decreases on an individual basis year to year. When per insured premium data is used from the NAIC, California medical malpractice premiums show an increase of 168% since MICRA was enacted, while the nation increased 505%.