



AMERICAN ACADEMY *of* ACTUARIES

April 16, 2004

Mr. Davin Cermak, Economist
National Association of Insurance Commissioners
2301 McGee
Suite 800
Kansas City, Missouri 64108

Dear Mr. Cermak:

This letter is written to clarify a reference made in your April 2004 draft report on “Medical Malpractice Insurance, A Study of Market Conditions.” which mentions testimony given to Congress by the American Academy of Actuaries¹ Medical malpractice Subcommittee. This testimony was delivered February 23, 2003 to the U.S. House Energy and Commerce Committee regarding collateral source rule reform. Specifically, your draft report notes that two important elements of reform under California’s Medical Injury Compensation Reform Act (MICRA) are the \$250,000 non-economic damage limitation and a mandatory collateral source reform.

These are mentioned on page three of your Executive Summary. Under MICRA, the defendant is permitted to introduce evidence of collateral source benefits as evidence during the trial and before any jury finding is made. When a defendant introduces such evidence, the plaintiff may introduce evidence of amounts paid by the plaintiff for such collateral coverage. Also, importantly, the source of collateral benefits may not recover any such amount from the plaintiff or be subrogated to the rights of the plaintiff to recover against a defendant in this regard.

Thus, the intent of my testimony was to emphasize that a collateral source provision is an important tort reform provision. Further, key elements to an effective collateral source reform are (1) that it be mandatory (MICRA’s allowance for introduction by the defendant, effectively, accomplishes this); (2) that the information on collateral source benefits be introduced during the trial as part of evidence before a jury decision is rendered; and (3) that the collateral source may not recover collateral source benefits from the plaintiff or be subrogated to the rights of the plaintiff to recover from the defendant.

¹ The American Academy of Actuaries is the public policy organization for actuaries practicing in all specialties within the United States. A major purpose of the Academy is to act as the public information organization for the profession. The Academy is non-partisan and assists the public policy process through the presentation of clear and objective actuarial analysis. The Academy regularly prepares testimony for Congress, provides information to federal elected officials, comments on proposed federal regulations, and works closely with state officials on issues related to insurance. The Academy also develops and upholds actuarial standards of conduct, qualification and practice, and the Code of Professional Conduct for all actuaries practicing in the United States.

Thank you for the opportunity to clarify this. Please let me know if I can answer questions related to it. Please feel free to contact myself or Greg Vass, Senior P/C Policy Analyst, at the Academy if we can be of further assistance.

Sincerely,

Jim Hurley, ACAS, MAAA, Chairperson
Medical Malpractice Subcommittee
American Academy of Actuaries

CC: Eric Nordman