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NEWS RELEASE

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Med Mal Insurer Dumping States with Severe “Tort Reforms”: More Evidence that Caps Do Not Work

As further proof that lawsuit limits, such as caps, will not result in affordable insurance for doctors, Farmers Insurance Group announced this week that it is pulling out of several states that have had longstanding caps and tort reforms in place. In fact, Farmers, which is closing its medical malpractice line, has most of its liability exposure in states that have had caps and other severe “tort reforms” in place for years.

“If there was ever any doubt that tort reform will not solve doctors’ insurance problems, this should remove all doubt. One-third of Farmer’s medical malpractice business is in California, which has had a severe \$250,000 cap on damages since the 1970s and is considered the ‘gold standard’ by insurance companies and organized medicine. Farmers’ actions add to what has become mounting evidence that capping damages will do nothing to keep insurers writing affordable policies for doctors,” said Geoff Boehm, Legal Director of Center for Justice & Democracy.

In addition to a \$250,000 cap on non-economic damages that hasn’t been adjusted for inflation since it was imposed 28 years ago, California also has limits on attorneys’ contingency fees, reductions of awards for collateral sources, elimination of joint and several liability, and periodic payments of future damages.

In fact, every one of the states where Farmers says it had more than 10% market share – Hawaii, Idaho, Missouri and Oregon – have enacted numerous “tort reforms” and all four capped damages in the 1980s. Oregon’s cap was found unconstitutional in 1994, after being on the books for 7 years, but even Oregon has passed much of the tort reformers’ agenda by taking away joint and several liability, reducing awards for collateral sources, and limiting attorneys’ contingency fees in punitive damage cases.

Farmers' pull-out of California comes shortly after the second largest med mal insurer in that state, SCPIE, testified that caps and other extreme "tort reforms" do not work. In their unsuccessful effort to get approval for a 15.6% rate hike, SCPIE testified: "While MICRA was the legislature's attempt at remedying the medical malpractice crisis in California in 1975, it did not substantially reduce the relative risk of medical malpractice insurance in California."

"Lawmakers who want to improve the availability and affordability of insurance for doctors will never succeed by taking away patients' rights," said Center for Justice & Democracy Executive Director Joanne Doroshow. "The only way to help doctors is by more strongly regulating the insurance industry."

The following is the list of principal "tort reforms" enacted in states where Farmers has most medical malpractice liability exposures:

California: (1/3 of Farmers' med mal premiums):

- Cap on non-economic damages: 1975
- Limits on contingency fees: 1975
- Eliminated joint and several liability: 1986
- Periodic payments of future damages: 1975
- Repealed collateral source rule: 1975

Hawaii (Farmer's largest market share--almost 24 percent):

- Cap on pain & suffering damages: 1986
- Limits on contingency fees: 1986
- Restricted joint and several liability: 1986

Idaho (Over 10 percent of market):

- Cap on non-economic damages, adjusted for inflation: 1987; cap lowered in 2003.
- Restricted joint and several liability: 1987
- Periodic payments: 1987
- Repealed collateral source rule: 1990

Missouri (Over 10 percent of market):

- Cap on non-economic damages, adjusted for inflation: 1986
- Restricted joint and several liability: 1987
- Repealed collateral source rule: 1987

Oregon (Over 10 percent of market):

- Cap on non-economic damages: 1987, until ruled unconstitutional in 1994
- Limits on contingency fees in punitive damage cases: 1995
- Restricted joint and several liability: 1987; further restricted in 1995
- Repealed collateral source rule: 1987
- Eliminated punitive damage awards against health care providers: 1987