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June 30, 2008

Eric R. Dinallo, Superintendent
State Of New York
Insurance Department
One Commence Plaza
Albany, New York 12257

Dear Superintendent Dinallo:

With the July 1st deadline for new medical malpractice rate hikes looming, we write to express our urgent concerns about what some media sources have reported as potential actions that the Department may undertake. Our organizations believe that insurance payouts (verdicts and settlements) should not be used as the principle justification for a rate hike. To do so only would perpetuate the myth that medical malpractice costs are inflating at extraordinary, unaffordable rates, when in truth when trended over time they appear to closely track overall rates of medical care cost inflation.

Instead, we would urge you to concentrate on remedies that address what we would argue are the two major causes of whatever current financial difficulties (if any) that medical malpractice carriers will likely argue justify a rate increase. The first is the past regulatory failure to soundly oversee the industry, including years when annual premium rate adjustments were either forgone entirely and/or failed to keep pace with medical care cost inflation. The second is the inexcusable past invasion to the tune of \$700 million “borrowed” from the so-called high-risk doctors insurance pool to cover state budget deficits.

To support our two contentions raised above, neither of which have anything to do with industry’s loss experience, we provide two charts. The following chart shows insurers’ direct losses paid comparing 1993 and 2006. The chart compares the actual increase in medical malpractice insurers’ direct losses paid during that period as well as how much would have been paid adjusting for medical inflation. Attached to this letter is a second table that presents data using a much more detailed analysis examining the medical malpractice insurance experience over the past 30-plus years.

**ACTUAL MEDICAL MALPRACTICE DIRECT LOSSES PAID COMPARED WITH
PROJECTED INFLATION-ADJUSTED MEDICAL MALPRACTICE DIRECT LOSSES
PAID, 1993 AND 2006¹**

Year	Malpractice Direct Losses Paid
1993 <i>Actual</i> Insurers' Direct Losses Paid	\$615,013,468
2006 <i>Projected</i> Malpractice Direct Losses Paid; Adjusted for Medical Care inflation with 1993 as Base	\$1,026,785,443
2006 <i>Actual</i> Insurers' Malpractice direct Losses Paid	\$1,008,063,000

This trend analysis shows that, when considered over time, there has been little change in New York insurers' malpractice loss experience. The number of doctors making payments has hardly changed over the last 14 years, despite an enormous increase in the number of physicians practicing in the state (nearly 30 percent). And while the aggregate, unadjusted amount paid out for insurers' direct losses have increased, it has done so only at roughly the rate of medical inflation. If there is a need for a malpractice premium increase it is the result of the overall increases in medical care costs, which are what the bulk of payouts recompense, and *not* any intrinsic "flaws" in the medical malpractice system.

The second chart is from the report "The Current New York State Medical Malpractice Situation, (December 17, 2007) by J. Robert Hunter, Director Of Insurance, Consumer Federation Of America. As you can see, not only has malpractice payments been remarkably consistent, but insurers have received revenues from premiums that are far more than they have paid out. Hunter's analysis concluded that: "today, there is no crisis in terms of payouts ... To the extent there are problems, they are of recent vintage and it is in the deficits projected to be paid out over many future years, not immediately." He goes on to state, "precipitous action is not warranted."

In September 2007, then-Governor Spitzer asked you to chair the newly-formed Medical Malpractice Liability Task Force. Your charge was to craft recommendations to deal with what you described as an ever-growing threat of insolvency (initially \$700 million but escalating to \$1-1.5 billion) hanging over the head of carriers.

We have previously expressed our lack of confidence in the task force that has not met since December 2007. Since then, consumer groups have not been involved in what we are led to believe are ongoing discussions about what to do about medical malpractice insurance issues. We are disappointed in this lack of transparency.

We are also concerned with what we would characterize as a less than rigorous vetting of the claims of self-interested medical malpractice insurance carriers and professional and provider trade associations about the causes, dimensions and available solutions to what they argue is, and you have characterized, as an affordability and sustainability crisis affecting New York's

¹ Insurers' Malpractice Direct Losses Paid from report by J. Robert Hunter (see attached) For the "projected" category, using the 1993 actual figures as a base, the authors calculated how medical care inflation would have increased the 1993 costs through 2006. Medical care inflation source: Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers 1993 – 2006. Calculations by authors. Totals rounded off to the nearest dollar.

medical malpractice insurance markets. We therefore ask that before taking any further action, you establish a process to permit an open, public debate of these issues so that the best interests of the vast majority of good doctors who practice in New York State, as well as the rights of patients, are protected.

Sincerely yours,

Joanne Doroshow
Center for Justice & Democracy

Arthur Levin
Center for Medical Consumers

Bob Cohen
Citizen Action of New York

John Guyette
CURE-NY (Consumers United for Research and Education, a coalition of 13 groups)

Blair Horner
NYPIRG (New York Public Interest Research Group)

Ilene Corina
PULSE (Persons United Limiting Substandards and Errors in Health Care)

**NEW YORK MEDICAL MALPRACTICE EXPERIENCE DEVELOPMENT
OF INFLATION-ADJUSTED PER DOCTOR WRITTEN PREMIUM
AND PAID LOSSES FROM 1975 TO DATE**

YEAR	Direct Premiums Written (DPW)	Direct Losses Paid (PL)	Loss Ratio	Number of Doctors In NY	Med. Inflation (cpi-u)	DPW Per Doctor	PL Per Doctor	YEAR	DPW per doctor 2001 \$	PL per doctor 2001 \$
1975	\$112,651,522	\$31,039,310	27.6%	46,393	47.5	\$2,428	\$669	1975	\$17,187	\$4,735
1976	\$127,679,765	\$30,018,024	23.5%	46,935	52	\$2,720	\$640	1976	\$17,588	\$4,135
1977	\$160,860,475	\$41,003,255	25.5%	47,478	57	\$3,388	\$864	1977	\$19,984	\$5,094
1978	\$166,062,891	\$58,520,232	35.2%	48,020	61.8	\$3,458	\$1,219	1978	\$18,813	\$6,630
1979	\$189,000,515	\$85,184,416	45.1%	48,563	67.5	\$3,892	\$1,754	1979	\$19,384	\$8,737
1980	\$212,169,479	\$107,385,433	50.6%	49,105	74.9	\$4,321	\$2,187	1980	\$19,394	\$9,816
1981	\$252,103,328	\$112,760,851	44.7%	50,562	82.9	\$4,986	\$2,230	1981	\$20,221	\$9,044
1982	\$271,923,193	\$148,956,326	54.8%	52,020	92.5	\$5,227	\$2,863	1982	\$18,999	\$10,407
1983	\$293,240,995	\$188,977,759	64.4%	53,477	100.6	\$5,483	\$3,534	1983	\$18,326	\$11,810
1984	\$283,861,417	\$205,377,839	72.4%	54,935	106.8	\$5,167	\$3,739	1984	\$16,266	\$11,769
1985	\$530,787,017	\$230,263,811	43.4%	56,392	113.5	\$9,412	\$4,083	1985	\$27,881	\$12,095
1986	\$660,307,449	\$272,951,926	41.3%	57,262	122	\$11,531	\$4,767	1986	\$31,777	\$13,136
1987	\$712,816,848	\$332,134,833	46.6%	58,133	130.1	\$12,262	\$5,713	1987	\$31,687	\$14,764
1988	\$865,125,258	\$383,778,736	44.4%	59,003	138.6	\$14,662	\$6,504	1988	\$35,566	\$15,778
1989	\$884,623,310	\$402,302,269	45.5%	59,874	149.3	\$14,775	\$6,719	1989	\$33,270	\$15,130
1990	\$854,403,798	\$362,843,038	42.5%	60,744	162.8	\$14,066	\$5,973	1990	\$29,047	\$12,336
1991	\$793,879,724	\$409,388,834	51.6%	62,745	177	\$12,652	\$6,525	1991	\$24,033	\$12,393
1992	\$811,974,970	\$559,175,764	68.9%	64,746	190.1	\$12,541	\$8,636	1992	\$22,179	\$15,274
1993	\$870,300,422	\$615,013,468	70.7%	66,748	201.4	\$13,039	\$9,214	1993	\$21,766	\$15,381
1994	\$923,163,546	\$576,724,483	62.5%	68,750	211	\$13,428	\$8,389	1994	\$21,395	\$13,366
1995	\$905,070,538	\$544,403,418	60.2%	70,751	220.5	\$12,792	\$7,695	1995	\$19,505	\$11,732
1996	\$822,075,016	\$591,710,868	72.0%	72,314	228.2	\$11,368	\$8,183	1996	\$16,748	\$12,055
1997	\$816,663,055	\$598,744,431	73.3%	73,877	234.6	\$11,054	\$8,105	1997	\$15,842	\$11,615
1998	\$886,935,822	\$634,166,913	71.5%	75,440	242.1	\$11,757	\$8,406	1998	\$16,327	\$11,674
1999	\$900,034,082	\$795,112,336	88.3%	77,003	250.6	\$11,688	\$10,326	1999	\$15,681	\$13,853
2000	\$849,687,717	\$700,772,374	82.5%	78,566	260.8	\$10,815	\$8,920	2000	\$13,942	\$11,498
2001	\$881,194,813	\$698,555,720	79.3%	80,129	272.8	\$10,997	\$8,718	2001	\$13,553	\$10,744
2002	\$992,924,544	\$732,555,312	73.8%	80,667	285.6	\$12,309	\$9,081	2002	\$14,490	\$10,690
2003	\$1,107,374,159	\$781,788,782	70.6%	81,199	297.1	\$13,638	\$9,628	2003	\$15,433	\$10,895
2004	\$1,284,228,574	\$980,901,472	76.4%	81,716	310.1	\$15,716	\$12,004	2004	\$17,038	\$13,014
2005	\$1,372,467,390	\$935,093,278	68.1%	82,301	323.2	\$16,676	\$11,362	2005	\$17,347	\$11,819
2006	\$1,500,463,000	\$1,008,063,000	67.2%	83,000	336.2	\$18,078	\$12,145	2006	\$18,078	\$12,145

Sources: Premiums Written (Net), A.M. Best and Co., special data compilation for AIR, reporting data for as many years as separately available; Number of Total NonFed Doctors: U.S. Bureau of the Census; 2006 estimated as the data are not due for publishing until 12/07. Inflation Index: Bureau of Labor Statistics.