HEALTH POLICY IN THE COURTS
California Medical Association Lawsuits—1986 – January 2007

The following summarizes the litigation filed and resolved between 1986 and the present to influence health policy in which the California Medical Association was a named plaintiff.

ACCESS TO CARE

Clementina Doe v. Wilson — Lawsuit filed: June 1997
(challenge to constitutionality of PWORA)

Issue: This lawsuit challenges on federal constitutional grounds the Wilson Administration's efforts to severely limit or terminate benefits (reimbursement from state funds) for public health services to undocumented women seeking prenatal care in California. In August 1996, Congress passed the 1996 Welfare Reform Act. Section 411(a) of this law (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PWORA")) provides that certain indigent women who are not "qualified aliens" may not receive state or local public benefits. Section 411(d) allows states to provide such services through state funded programs, but only if the state legislature and governor enact legislation after the effective date of PWORA and only if the legislation affirmatively provides for eligibility of such unqualified emigrants. California already has such legislation which was sponsored by CMA in 1987. In this case, CMA, in conjunction with other advocates, claimed that in requiring each state to reenact legislation in a specified manner to allow continued benefits to undocumented women, Congress unconstitutionally intruded upon the authority of the states.

Outcome: Consistent with CMA's success on the merits in the legislature, on August 17, 1999, the United States Court of Appeal for the Ninth Circuit dismissed this case as moot. The Federal District Court in San Francisco had ruled for the state and federal governments, holding that the challenged provision could not be enjoined without attacking the entire section. The case was dismissed and CMA appealed. On July 22, 1999, California Governor Gray Davis signed Assembly Bill (AB) 1107 into law. Section 33 of AB1107 (ch. 146, Statutes of 1999) enacts a new Welfare & Institutions Code §14007.7 which provides for indigent women's eligibility to receive "medically necessary pregnancy-related services" regardless of immigration status. Because this lawsuit challenged the validity of a federal law requiring re-enactment of an unrepealed and unexpired state law, AB 1107's re-enactment of the prenatal care program rendered moot the claims alleged by CMA.

CMA v. Shalala — Lawsuit filed: May 1998
(California's Healthy Families program and federal Vaccines for Children program)

Issue: CMA filed a lawsuit in U.S. District Court against the Department of Health and Human Services (HHS) to force the agency to provide free vaccines—under the federal Vaccines for Children (VFC) program—to children in California's Healthy Families program. In CMA v. Shalala, CMA charged that HHS is obligated to provide no-cost vaccines to children covered under the state's Child Health Insurance Program, which in California is known as Healthy

Families. Subsidized with federal and state funds, the program, which CMA helped enact, is designed to provide health care coverage to many of California's low-income, uninsured children. CMA further charged that by not providing free vaccines to children, HHS violated several federal laws, including the children's constitutional right to equal protection.

Outcome: On April 30, 1999, the U.S. District Court ruled in favor of Secretary Shalala. The Court concluded that because the Secretary's interpretation of the statute was a "permissible" one, the Court was obligated to uphold it. Thus, in the absence of congressional action or a decision by the Secretary to reconsider her interpretation, Healthy Families children will not be eligible for immunizations funded by the Federal Vaccines for Children Program. While CMA was disappointed by this decision, it is gratified that the Court acknowledged the merit of CMA's argument and is hopeful the Secretary will reconsider her position in light of the Court's decision. Judge Karlton's decision provides strong authority supporting the Secretary's discretion to reconsider, authority which the Secretary previously felt she lacked.

AIDS AND HIV

<u>CMA, et al. v. March Fong Eu, Secretary of State</u> Lawsuit filed: July 1988
(AIDS initiative not enjoined)

Issue: CMA, with several other plaintiffs, filed suit to have Proposition 102 (the Dannemeyer Initiative) removed from the November 1988 statewide ballot. Prop. 102 would have required that the names of individuals testing positive for the HIV antibodies be reported to public health authorities, as well as the names of their sexual partners. It also would have repealed provisions in state law that prevent employers from requiring employees to take HIV tests and prevent insurance companies from requiring the tests as a condition for issuing policies. CMA and other plaintiffs alleged that the initiative violated the single subject rule and that the title and summary prepared by the Attorney General were misleading.

Outcome: The court ruled in favor of the defendant on all counts, stating that the initiative was in substantial compliance with the single subject rules and was not misleading. However, the initiative failed passage.

ALLIED HEALTH PROFESSIONALS

<u>CMA v. Board of Chiropractic Examiners</u> Lawsuit filed: September 1987
(enjoined BCE regulation expanding chiropractors' scope of practice)

Issue: This case challenged the validity of a regulation adopted by the Board of Chiropractic Examiners (Section 302), which purported to permit chiropractors to undertake a wide range of treatment modalities which clearly exceed their lawful scope of practice as authorized by section 7 of the Chiropractic Act. Specifically, the regulation would have authorized chiropractors to provide, among other things, "chiropractic prenatal and postnatal care" and colonic irrigations.

Outcome: The court, after granting CMA's motion for summary adjudication of the central issues in the case, on February 1, 1990, entered a Stipulated Judgment and approved a Settlement Agreement entered into by CMA and BCE and signed an order in favor of CMA's position. Among other things, the Court's order "collaterally estops" (prevents) forever the BCE from

readopting Section 302, declares that the provision of obstetrical care, including, but not limited to monitoring or managing a pregnancy, is outside the legal scope of chiropractic practice, and declares that a chiropractor may not hold himself or herself out as being licensed as anything other than a chiropractor or as holding any other healing arts license in advertising unless he or she holds another license. In addition to the favorable order, the BCE agreed to propose a new scope of practice regulation which, as CMA requested, more accurately reflects a chiropractor's scope of practice.

BUSINESS PROHIBITIONS – CORPORATE PRACTICE OF MEDICINE BAR

CMA v. Regents of the University of Calif. (UCLA Healthcare) Lawsuit filed: December 1998
(Challenge to UCLA Medical Center's Violation of the Corporate Practice of Medicine)

Issue: On December 10, 1998, CMA joined Santa Monica physicians as a plaintiff in a suit against the University of California Regents. The suit charged that UCLA Medical Center's aggressive plan to establish a network of medical facilities in southern California was disrupting patients' continuity of care and restricting patients' choice of physicians. This plan went beyond the school's historical role as a teaching and research institution to form a network of for-profit facilities that engage in the unlicensed corporate practice of medicine, forcing community-based physicians into unlawful employment fee-splitting and referral schemes. CMA alleged that such schemes were forcing many physicians out of private practice and into UC employment. It also required that staff physicians refer patients to UCLA medical staff only, thus depriving patients' access to their physicians of choice. Further, CMA contended that UCLA falsely advertised that its facilities were staffed by "assistant clinical professors" and "faculty members." However, many new UCLA physicians have no such teaching experience and perform little or no teaching or research. These designations suggest to the public that these physicians in fact have higher qualifications than other physicians in the community, and are engaged in teaching activities on behalf of the University.

CMA regretted having to join this suit because of CMA's strong belief that UC's teaching and research missions are extremely important to California and must be supported. However, CMA explained that the University should not act illegally in order to sustain itself from its financial difficulties.

Outcome: On June 23, 1999, the Honorable Judge Chirlin, California Superior Court Judge in Los Angeles, issued a ruling granting a preliminary injunction against UCLA and authorizing the California Medical Association and the Santa Monica Anesthesiology Medical Group to proceed in their lawsuit against the Regents of the University of California. In granting the Preliminary Injunction, Judge Chirlin's ruling saw merit in most causes of action in the suit, and she found that "there is a likelihood that plaintiffs will prevail on the merits of one or more of the causes of action," including state laws banning the corporate practice of medicine and unfair competition. Judge Chirlin stated, "The Regents' argument with respect to its claimed exemption from the corporate practice ban, essentially that all activity in its facilities are 'teaching activities' strains credulity."

The Regents successfully appealed the injunction and on November 3, 1999, the Court of Appeal issued a Writ of Supersede as staying execution of the Preliminary Injunction pending appeal and expediting the appeal on the merits. CMA and the plaintiff physicians filed a petition for rehearing with the Court of Appeal on November 12, 1999. After the rehearing petition was denied, CMA

and the physicians sought review before the Supreme Court. Review was denied on December 23, 1999. On March 29, 2000, the Court of Appeal ruled against CMA finding that the Regents are exempt from the corporate practice bar and the unfair practices law when they are engaged in providing health care services, even if they only potentially involve teaching. CMA believes this ruling is incorrect and on May 5, 2000 filed a Petition for Review before the California Supreme Court urging that the Court review the Court of Appeal's decision overruling the trial court's issuance of a preliminary injunction. Unfortunately, on June 21, 2000, the California Supreme Court denied the Petition for Review.

This case was settled and dismissed in October, 2001.

FRAUD AND ABUSE

American Association of Medical Colleges, CMA, et al. v. Shalala Lawsuit filed: October 1997 (PATH audit challenge)

Issue: CMA was a named plaintiff in a lawsuit filed on October 29, 1997 by the American Medical Association, the American Association of Medical Colleges, the American Hospital Association, the University of California, and a number of other organizations, against the federal government regarding the way in which PATH audits are pursued. The Office of the Inspector General's PATH initiative is a nationwide review of bills of teaching hospitals submitted to the government for medical services provided to Medicare patients between 1990 and 1995. Unfortunately, the government applied unclear and retroactive standards upon the academic medical community, and entered into a number of "voluntary settlements" which have been perceived to be grossly unfair throughout the nation.

Outcome: In April 1998, the District Court granted the government's motion to dismiss, determining that this matter was not ripe for adjudication at this time. The Court felt that other available options had not been fully exhausted by the plaintiffs. On July 11, 2000, the Ninth Circuit Court of Appeal reversed in part and affirmed in part the District Court's order, ruling that the issues were not "ripe" enough for review at the time the complaint was filed because the government had not taken final action on the audits. The Court also ruled, however, that the providers could refile their cases once the government seeks to settle or litigate the claims under the False Claims Act. These ruling leaves the door open for affected providers to refile their case if the government takes more formal action on its audits.

MANAGED CARE

CMA v. Zingale **Initial CMA Participation: September 2001**

(Action to Challenge Dept of Managed Care's Regulations Requiring Public Disclosure of Financial and Proprietary Information from Medical Groups)

Issue: The issue presented in this case is whether regulations adopted by the Department of Managed Health Care (DMHC) mandating public disclosure of confidential and proprietary

financial information provided by unlicensed physician groups violates the law. The regulations at issue, 28, C.C.R. §§1300.75.4, 1330.75.4.2 and 1300.75.4.4 require that physician groups disclose to the DMHC which, in turn, will disclose to the public, confidential matters such as profit and loss rates, patient mix, "customer lists," the reimbursement methodology used to pay treating physicians, cash flow statements, etc, which are of the most sensitive and proprietary nature, setting forth valuable insights into the group's operational strengths and weaknesses and contracting arrangements. These disputed regulations were adopted purportedly to implement Health & Safety Code § 1375.4, a law passed in the wake of the bankruptcy of two "limited license" Knox-Keene plans which disrupted the care to millions of patients and left millions of dollars of unpaid claims to treating physicians.

On September 5, 2001, CMA filed an action to immediately and permanently enjoin the DMHC from releasing this information. On September 26, 2001, the Sacramento Superior Court issued a temporary stay order prohibiting the release of this information to anyone outside of the DMHC. The hearing on whether or not the DMHC will be permanently enjoined from implementing these regulations took place on November 30, 2001. The court kept the temporary stay in place and took the matter under submission. On February 28, 2002, the Court issued a ruling declaring the disputed regulations invalid.

Outcome: The court issued a Notice of Entry of Judgment in favor of CMA on June 5, 2002. By this notice, the court confirmed its ruling declaring the disputed regulations invalid, stating that DMHC had failed to address the affects that financial data disclosure would have on the contract negotiation process.

Thereafter, CMA requested the trial judge to award CMA its attorney fees under the private attorney general statute allowing such recovery. On September 11, 2002, the Superior Court Judge awarded CMA over $58,000 in attorney fees. In response to CMA's request for attorney fees, the judge ruled that the lawsuit was brought to protect an important right, that it conferred a significant benefit to the public, and that the cost of the litigation should not be borne by CMA. The DMHC has appealed this order. On May 9, 2003, CMA filed it opposition brief to DMHC's appeal. The Court heard oral argument on November 17, 2003 and on February 5, 2004, issued its ruling reversing the trial court's awarding of attorneys fees. The court ruled that because, in its view, CMA had a financial interest in bringing the lawsuit and only an incidental interest in protecting the continuity of care for patients, the trial court abused its discretion in awarding attorneys fees.

MEDICAL BOARD: DISCIPLINE & LICENSING

<u>CMA v Hayes</u> Lawsuit filed: May 1993
(enjoined transfer of MBC funds)

Issue: This case dealt with the Budget Act of 1992 (Ch.587, Stats. 1992) which provided for the transfer of 10% of all monies from each of the state agency special funds to the General Fund so that the monies could be used to pay for the state's welfare programs and general state expenses. CMA contended that §§3.70, 14.50, and 14.75 of the Act, which provided for such a transfer, violated the State Constitution insofar as they required the transfer of monies from the Contingent Fund of the Medical Board (CFMB) to the General Fund.

Outcome: The Superior Court ruled in February 1994 that the diversion of funds from the MBC to the General Fund was unconstitutional. The Court granted CMA's request that the Finance Department return to the MBC more than $2.5 million already transferred. The refund was passed on to physicians by a one-time reduction in license fees of $25. CMA also recovered its attorneys fees.

CMA v. MBC — Lawsuit filed: November 1993
(enjoined MBC disclosure policy)

Issue: CMA brought suit against the Medical Board to stop public disclosure of the fact that the MBC had requested the Attorney General's office to file an accusation against a physician. Not all requests result in a filing, and the time delay for those Accusations that are filed can take anywhere from 9-18 months. A physician whose name was so disclosed would be left with no avenue to clear his or her name, unless and until the accusation is filed.

Outcome: After obtaining a preliminary injunction prohibiting the MBC from disclosing pre-accusation information and engaging in extensive settlement negotiations with the MBC, the MBC modified its public disclosure policy to eliminate these disclosures. CMA also recovered most of its attorneys fees.

MEDICAL STAFFS

CAPP v. Rank — Lawsuit filed: March 1986
(failed to maintain regulation requiring physician oversight of mentally ill patients)

Issue : This lawsuit resulted from the clinical psychologists' challenge of a DHS regulation which required that psychiatrists have overall responsibility for mentally ill patients in acute-care hospitals. When the DHS lost the case, and decided not to appeal, CMA, the California Psychiatric Association and the California Hospital Association intervened and moved to vacate the judgment and have the decision reversed.

Outcome: In September 1990, the California Supreme Court invalidated the regulation, ruling 4-3 that hospitals with clinical psychologists on their medical staffs may permit clinical psychologists to take primary responsibility for the admission, diagnosis, treatment, and discharge of hospitalized patients, within their scope of practice. The Court's decision may be found at California Ass'n of Psychology Providers v. Rank (1990) 51 Cal.3d 1, 270 Cal.Rptr. 796.

Greene v. Bowen — Lawsuit filed: May 1986
(enjoined PRO sanction)

Issue: In this case, CMA, on behalf of a member physician, challenged the constitutionality of the Medicare PRO sanctioning process. The defendant, Department of Health and Human Services (DHHS), decided to exclude the physician from participating as a Medicare provider for two years. The physician contended that the California Medical Review, Inc. (CMRI) review, upon which DHHS' decision was based, was defective on several counts and deprived him of his due process rights.

Outcome: CMA obtained a preliminary injunction in July 1986, which decision was published at (ED Cal. 1986) 639 F.Supp. 554. While the civil case proceeded, an Administrative Law judge exonerated the physician and nullified the penalty. Although CMA felt that the case should proceed because of the larger issues at stake, the judge concluded that the lawsuit had become moot due to the physician's success before the ALJ. Notwithstanding this setback, CMA was ultimately successful in having the "bounty system," pursuant to which OIG officials received bonuses based on how many sanctions were imposed and how much money was collected in monetary penalties, outlawed. In Melashenko v. Bowen, another federal district court, based on information obtained in Dr. Greene's case, issued a nationwide injunction prohibiting the OIG from maintaining such a system.

CMA v. Kizer — Lawsuit filed: February 1987
(Medi-Cal rate reduction enjoined)

Issue: This case involved an order issued by DHS to reduce Medi-Cal rates to physicians and certain other providers of health care services by 10% effective February 1, 1987. This order was made without any meaningful analysis of the impact that these cuts would have on the quality and availability of health care services for Medi-Cal beneficiaries, in violation of federal Medicaid law.

Outcome: After CMA won a TRO and preliminary injunction prohibiting the reduction, the court issued an order in October 1989 implementing a Settlement Agreement which permanently enjoined the DHS from imposing the 10% reduction in Medi-Cal reimbursement rates to physicians and other Medi-Cal providers. CMA also received its attorneys' fees and costs expended in pursuing this litigation.

CMA, et al. v. Belshe — Lawsuit filed: April 1996
(Medicare crossover payments)

Issue: CMA filed its complaint on behalf of CMA members against the state for damages resulting from the state's failure to pay the full amount of Medicare Part B cost-sharing payments (deductible and coinsurance) on behalf of Qualified Medicare Beneficiaries (QMBs) who meet certain Medicaid eligibility standards. CMA succeeded before a federal court in securing prospective Medicare payment of these amounts, which were paid to physicians for claims filed from September 1996 to August 1997. Unfortunately, the federal Balanced Budget Act of 1997 authorizes states to forgo those cost-sharing payments.

Outcome: In December 1997, the Ninth Circuit Court of Appeals reversed the district court's judgment. The Court stated that in light of "clarifying" amendments to the Medicare Act in the Balanced Budget Act of 1997, prior law authorized a state to limit payments for Qualified Medicare Beneficiaries (QMBs) to the amount by which California's Medi-Cal rate or exceeds what Medicare has paid (in the vast majority of cases, this amount is zero). Although CMA filed a petition for review before the U.S. Supreme Court, the Supreme Court unfortunately denied review. On March 22, 2000, the 9th Circuit ordered CMA to refund the attorneys fees it collected after it won the district court case. CMA is requesting waiver of a return of the fees.

PUBLIC HEALTH

<u>CMA, American Academy of Pediatrics, et al. v. Van de Kamp</u> Lawsuit filed: January 1989
(enjoined minor abortion statute)

Issue: This case sought to have declared unconstitutional a statute which purported to prohibit pregnant minors from obtaining an abortion without parental consent or judicial authorization.

Outcome: The California Supreme Court agreed, 4-3, with CMA and struck down the law, holding that the statute violated the state constitutional right of privacy. The Court's decision may be found at <u>American Academy of Pediatrics, et al. v. Lungren</u> (1997) 16 Cal.4th 307, 66 Cal.Rptr.2d 210.

<u>Corlin v. Eu</u> Lawsuit filed: March 1992
(protected integrity of Prop. 166 ballot arguments)

Issue: This case involved the material to be printed in the ballot pamphlet concerning CMA's Affordable Basic Health Care Initiative of 1992, Proposition 166.

Outcome: The Superior Court ruled in favor of CMA and removed virtually all of the misleading statements in the opposition's arguments, which arguments suggested there was certainty with respect to highly exaggerated claims of increased costs to taxpayers and employers. The Court also clarified the ballot label to remove any implication that revenue losses to the State were definite. In a companion case, <u>Consumers Union, et al. v. CMA</u>, CMA successfully defended the language in the title and summary prepared by the Attorney General, which was generally favorable. Notwithstanding these successes in the courts, Prop. 166 was not passed by the electorate.

<u>People v. Philip Morris, et al.</u> Lawsuit filed: September 1996
(challenge to tobacco industry's marketing practices)

Issue: CMA, the Heart, Lung, and Cancer Associations, and the California District of the American Association of Pediatrics joined a number of Counties as parties in this lawsuit, claiming that the tobacco industry violated Business and Professions Code §17200 which prohibits "unlawful, unfair, or fraudulent business acts for practices and unfair, deceptive, untrue, or misleading advertising", and other laws.

Outcome: This case was settled pursuant to an agreement reached between 46 state attorneys general and the tobacco industry on November 23, 1998. The settlement provides for the payment of more than $206 billion to the states over the next 25 years. California's share is $25 billion, with half of that to go to the cities and counties. The settlement agreement also: 1) requires disbanding of the Tobacco Institute and other Tobacco Trade Associations; 2) prohibits the industry from lobbying against proposed state or local laws or administrative rules intended to limit minor's access to and use of tobacco or lobbying in favor of the diversion of the settlement money to non-tobacco or non-health related uses or lobbying in favor of legislation which would eliminate or diminish state rights under the settlement; 3) requires public access to all tobacco documents which are not privileged; 4) creates a $250 million charitable foundation to support the study of programs to reduce teen smoking and substance abuse and prevention of diseases associated with tobacco uses; and 5) creates a $1.45 billion National Public Education

Fund to conduct anti-tobacco advertising and education. The settlement also prohibits the industry from all of the following:

a. targeting youth in advertising, promotions, or marketing;
b. taking any action to initiate, maintain, or increase youth smoking;
c. using cartoons in advertising, promotion, packaging, or labeling of tobacco products;
d. placing tobacco brand names or stadium or arenas;
e. doing more than one brand name sponsorship per year;
f. using outdoor advertising;
g. using transit advertising;
h. distributing or selling non-tobacco merchandise with brand name logos (t-shirts, caps, etc.)

CMA did not join in the settlement due to concerns with the breadth of the "release" language in the settlement agreement. CMA will continue to monitor the implementation of the settlement agreement with the goal of maximizing its impact on reducing tobacco consumption and funding health care.

REIMBURSEMENT: FROM HMOS AND OTHER PRIVATE PAYORS

Anesthesia Care Associates, et al. v. Blue Cross **Initial CMA Participation: May 1997**
(Challenge to Blue Cross Fee Reduction)

Issue: CMA filed a class action suit (with four CMA members as named plaintiffs) on behalf of CMA members only against Blue Cross, claiming that the 1993, 1994 and 1995 retroactive reductions in fees constituted a breach of contract and a breach of the implied covenant of good faith and fair dealing.

Outcome: After a lengthy mediation process, in September 2003, CMA reached a settlement with Blue Cross. The $4.2 million settlement covers both CMA's lawsuit and a similar one filed by the California Podiatric Medicine Association. The case is separate from CMA's RICO lawsuit.

Blue Cross aggressively defended the case, but CMA ultimately obtained two crucial rulings: 1) that disputes over physician provider contracts with health plans are not preempted by ERISA, and 2) that the case could be arbitrated on a class-action basis. Blue Cross has denied any wrongdoing in connection with the alleged conduct in this case.

To be able to participate in this Settlement, physicians must: 1) have been a member of CMA on May 9, 1997; 2) have had or have been a member of a group that had a 1983, 1984 or 1991 Blue Cross Provider Contract; and 3) have suffered damages as a result of being paid between May 1, 1993 and April 30, 1996 at lower rates than were paid pursuant to the prior Blue Cross Provider contracts. Qualified physicians had until December 4, 2003 to submit their settlement proof-of-claim forms.

CMA v. Aetna U.S. Healthcare, et al. Initial CMA Participation: July 1999
(Challenge against Health Plans for failure to pay for Physicians' Claims)

Issue: This case involves the health plans' failure to assume responsibility for the payment of physicians' claims for the provision of medically necessary services to Knox-Keene enrollees. On July 15, 1999, CMA filed a lawsuit in the Superior Court of California, County of San Diego, against numerous health care service plans operating in California. Among the claims, CMA asserted that the health plans violated Health & Safety Code §1371 by failing to pay physicians for covered medical services rendered to enrollees and subscribers of the plans within the statutorily defined time frames. CMA stressed that payment to contracting physicians and other health care providers is a fundamental component of a health plan's obligation to provide health care to patients. Without this payment, physicians would be unable to maintain their practices in an environment that has increasingly become dominated by managed care. As a result, this non-payment detrimentally impacts on continuity of care from physicians to patients, a matter of sound medical practice and a matter of law under the Knox Keene Act.

Outcome: In a ruling issued Friday, January 6, 2000, the Honorable Janis Sammartino granted and denied in part a demurrer (dismissal motion) filed by the health plans in the CMA v. Aetna lawsuit the lawsuit challenging the health plans' refusal to pay for medically necessary services. In the ruling, the Court dismissed the claims based on the health plans' violation of Health & Safety Code §1371, the statute requiring plans to pay claims within a certain time frame, principally due to the Department of Corporations' decision denying CMA's request for a regulation on this issue. In that denial, the Department of Corporations inappropriately interpreted §1371 as an obligation to pay timely, but not an underlying obligation to pay.

Unfortunately, after CMA amended the complaint, on May 31, 2000, the Court dismissed the entire case and CMA appealed. On December 5, 2001 the Court of Appeal ruled that physicians have no legal recourse when they get paid nothing for millions of dollars of necessary medical care they have provided to health plan enrollees when the health plans' intermediaries go bankrupt.

The court concluded that physicians have no remedy even when health plans force an intermediary IPA or other physician group into insolvency through inadequate capitation rates, continue to pay these intermediaries despite knowledge of such insolvency, and continue to accept premiums that were intended to pay for these services. The court concluded that managed care arrangements in which physicians sign contracts requiring that they look solely to the intermediaries for payment were authorized by the Legislature and are thus immune from judicial scrutiny.

Because this opinion eviscerates the Knox-Keene Act, violates the basic maxim of jurisprudence that for every wrong there is a remedy and will perpetuate the instability and widespread patient disruption that have marked the health care delivery system for some time, CMA filed a request for rehearing, which was denied. CMA filed a petition for review with the California Supreme Court on January 21, 2002, which was denied on March 27, 2002.

CMA v. Bonta **Initial CMA Participation: November 2003**

(CMA Protects Access to Health Care by Blocking the 5% Medi-Cal Cut)

Issue: In late 2003, the California state government announced that, effective January 2004; there would be a 5% Medi-Cal cut, amounting to $237 million. On November 7, 2003, CMA and more than a dozen other plaintiffs filed a lawsuit against the State of California to stop these cuts. The lawsuit and request for a preliminary injunction, filed in U.S. District Court in Sacramento, alleges that the 5% cut authorized in the fall 2003 budget is in violation of the Social Security Act because the Department of Health Services ignored how those reductions would affect access to care for the more than 6 million poor, disabled, elderly and children who get their health care through the Medi-Cal system. Federal law requires that provider payments be sufficient to ensure patients equal access to medical care.

On December 23, 2003, the U.S. District Court in Sacramento issued a preliminary injunction in favor of CMA and the other plaintiffs and against the state DHS to prevent the proposed cuts for fee- for-service physicians. On February 10, 2004 the Court denied the State's request for reconsideration and on March 8, 2004, the State appealed the Court's granting of the preliminary injunction. On July 6, 2004, CMA filed its brief supporting the U.S. District Court's order granting the injunction. The case is now pending in Ninth Circuit of the U.S. Court of Appeals. The Court heard oral argument on December 8, 2004.

Outcome: On August 2, 2005, in an unpublished opinion, the Ninth Circuit U.S. Court of Appeal issued a ruling reversing the lower court's ruling that prevented a 5% Medi-Cal rate cut in 2004-05. The Court found that "neither Medicaid recipients nor providers have a private right to challenge California's compliance with Medicaid."

On August 24, CMA filed a request for rehearing, which has been denied by the Court.

<u>In re: FPA Medical Management, Inc.</u> Initial CMA Participation: July 1998
(CMA advocates for physician payment in Chapter 11 bankruptcy of health plan)

Issue: This case involved the chapter 11 case filed by FPA Medical Management, Inc. (FPA) on July 19, 1998 in the U.S. Bankruptcy Court for the District of Delaware. When FPA filed, millions of dollars were owed to California physicians for medical services provided to patients of FPA and various health plans affiliated with FPA. On May 21, 1999, the CMA and the American Medical Association (AMA) filed a supplemental objection to the Bankruptcy Court's confirmation of the joint plan of reorganization of FPA and its subsidiaries and affiliates. CMA and AMA sought an order denying the confirmation to the extent that the reorganization plan would permit the release of, or enjoin any member physicians' claims for payment against health plans. In the brief, CMA and AMA cited Health & Safety Code §1371 which states that health plans are ultimately responsible for ensuring that contracting physician providers' claims are paid, even if the payment responsibilities have been contractually delegated by the plans to intermediaries. If the reorganization plan had been confirmed as proposed, it would have the effect of frustrating California's comprehensive legislative scheme designed to provide efficient and adequate provision of necessary medical services to patients. CMA and AMA also objected to the reorganization plan's proposed effort to prevent prosecution of the D&O case (*see* <u>CMA v. Lizerbram, et al.</u>)

Outcome: CMA and AMA were victorious on both counts and the objectionable language was removed from the plan.