MPL | MEDICAL PROFESSIONAL LIABILITY ASSOCIATION

December 6, 2019

The Honorable Xavier Becerra
California Office of the Attorney General
300 South Spring Street, First Floor
Los Angeles, CA 90013

ATTN: Privacy Regulations Coordinator

Subject: Comments on Proposed CA Consumer Privacy Act Regulation

Dear Attorney General Becerra:

On behalf of the Medical Professional Liability Association and our medical professional liability (MPL) insurers that conduct business in California, I would like to thank you for giving us the opportunity to share our perspective on the potential impact of the proposed California Consumer Privacy Act (CCPA) Regulations on the MPL insurance industry.

The Medical Professional Liability Association ("MPL Association") is the leading trade association representing insurance companies, risk retention groups, captives, trusts, and other entities owned and/or operated by their policyholders, as well as other insurance carriers with a substantial commitment to the MPL line. MPL Association members insure more than 2 million healthcare professionals worldwide—doctors, nurses and nurse practitioners, and other healthcare providers—including more than two thirds of America's private practice physicians. MPL Association members also insure more than 150,000 dentists and oral surgeons, 2,500 hospitals and 8,000 medical facilities around the world.

The MPL Association supports the adoption of consumer data privacy measures that enhance transparency and data protections related to consumers' personal information without restricting its member companies' ability to use consumer data that is necessary to conduct a full range of insurance services to its insureds. While the draft regulations clearly attempt to strike this balance, we would like to draw your attention to some aspects of the regulation which are still of concern to our industry.

To begin, Section 999.313, Subsection (d) of the draft regulation stipulates how businesses must respond to consumer requests for the deletion of personal information. Paragraph 2 provides a business with options for complying with a request to delete, including an option to "permanently and completely erase the personal information on its existing systems *with the exception of archived or back-up systems*." Paragraph 3, however, appears to require a business to require an entity to delete personal information stored on archived or backup systems when the archived or backup system is next accessed or used. These paragraphs seem to contradict

one another with respect to a business' obligations related to archived personal information. Given the "long-tail" nature of MPL insurance, you can understand how important it is for our members to be able to access historical data on claims. As such, we recommend modifying paragraph 3 to clarify that it only applies when an entity *voluntarily* chooses to delete archived or backup system information following a consumer request. This would maintain the intent of paragraph 2 while still clarifying the timeframe in which companies that choose to delete historical data choose to do so.

Relatedly, while the CCPA provides exceptions from the requirement for a business to delete consumer information, our members are concerned that several of the exceptions rely on the consumer's interpretation of how the data may be used. Given that all individuals who interact with an MPL insurer may not be aware of all the relevant uses of the information they provide during the claims process, and the need to access that information even after a claim is resolved, we believe clarification would be beneficial. As such, we advise adding to the draft Regulation, pursuant to your authority under section 1798.185(b) of the CCPA, to clarify when an entity may not be required to delete consumer data. Specifically, we recommend that the regulation explain that Section 1798.105(d)(9) applies to the lawful, internal use of data by an entity so long as the entity has explained to the consumer how the data may be used at the time it is provided. Otherwise, as applied to an MPL insurer, Section 1798.105(d)(9) currently could be interpreted to apply only to the "context" of a claimant's specific case, thus denying insurers the ability to retain data necessary for long-term underwriting and risk management purposes. With the clarification requested above, consumer data would still be protected as intended, but insurers could be sure of their ability to maintain historical data necessary for their ongoing business functions.

In closing, the MPL Association appreciates this opportunity to provide input regarding the proposed California Consumer Privacy Act Regulations. Please do not hesitate to contact me at 301.947.9000 should you need any further information.

Sincerely,

Brian K. Atchinson
President & CEO