TESTIMONY OF PAMELA PRESSLEY
THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS

BEFORE THE CALIFORNIA DEPARTMENT OF INSURANCE

In the Matter of RH-01015532
Accident Verification
Hearing Regarding Proposed Changes to CCR § 2632.13
March 7, 2002

I. INTRODUCTION

My name is Pamela Pressley, and I am a staff attorney for The Foundation for Taxpayer and Consumer Rights (FTCR), a non-profit, non-partisan public interest corporation organized to represent the interests of taxpayers and consumers. One of FTCR's chief programs is the Proposition 103 Enforcement Project, which was formed in 1993 to represent the interests of insurance policyholders, particularly as they relate to the implementation and enforcement of Proposition 103 in matters before the Legislature, the courts, and the CDI. FTCR appreciates Commissioner Low allowing the opportunity to testify today on this important issue affecting all California drivers. FTCR's interest in this proceeding, as in RH-402 addressing the undefined persistency rating factor and the use of other optional rating factors to unfairly discriminate against the previously uninsured, is to ensure that insurance policyholders receive the lowest insurance rates permitted under Proposition 103. More specifically, FTCR has a strong interest in enforcing, as the voters intended, the provision of Proposition 103 which provides that "the absence of prior automobile insurance coverage, in and of itself, shall not be a

criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums or insurability." (Insurance Code § 1861.02(c) ["§ 1861.02(c)"].) On behalf of FTCR, I submit the following comments on the Commissioner's proposed amendment to Cal. Code Regs. § 2632.13.

II. OVERVIEW OF PROBLEM AND BACKGROUND

FTCR's Proposition 103 Enforcement Project first objected to the use of accident record verification procedures to circumvent the mandates of Proposition 103 in its petition for a hearing on Allstate's class plan filed on May 15, 1997, PA-97-007800, which was consolidated with its challenges to the class plans of State Farm and Farmers. Phase II of those proceedings was to determine, among other issues, the validity of Allstate's Rule 39, a "non-verifiable accident driving record surcharge." In raising this issue in its petition for a hearing on Allstate's 1997 class plan, FTCR argued that Rule 39 violated § 1861.02(c) by using the absence of prior insurance as a basis to charge previously uninsured motorists higher premiums. A hearing on Phase II of that proceeding has yet to be noticed by the Department.

In the interim, private litigation, to which consumer groups are not parties, was instituted to challenge Allstate's Rule 39. *Mitchell v. Allstate*, Los Angeles Superior Court Case No. BC 212492, is a class action filed on June 24, 1999, alleging that the defendant's Rule 39 violated § 1861.02(c); plaintiffs sought damages and injunctive relief.

By mutual agreement of the parties, the litigation was stayed pending a hearing and decision by the CDI on the concurrently filed administrative complaint, (*In the Matter of the Complaint of Mitchell et al. v. Allstate*, IH-00-0097-91), on the question of

whether Rule 39 violated the statute. The CDI held an informal hearing on March 14, 2000, although the Department and Allstate failed to notify the parties in Phase II of the prior Class Plan challenges of that fact. The parties in *Mitchell v. Allstate* filed post-hearing briefs and comments with the Department in April and May 2000, but the Department has never entered a final ruling in that matter.

Most recently, on February 20, 2002, FTCR filed a petition for hearing on Allstate's class plan filing as amended on January 22, 2002, purportedly filed pursuant to a settlement agreement reached by the parties in the *Mitchell* class action. That filing leaves in place Allstate's Rule 39 non-verifiable driving record surcharge. As currently written,[1] Allstate's Rule 39 continues to require some form of proof of prior insurance to avoid the surcharge. The imposition of Allstate's Rule 39 surcharge violates Insurance Code § 1861.02(c) because it imposes the surcharge on all drivers who were previously uninsured, regardless of their driving safety record or other characteristics, since they will never be able to produce the requested verification.

Allstate is certainly not an isolated example. FTCR has since discovered that several other companies are using similar accident verification requirements that act to impose surcharges on individuals who were previously uninsured in violation of §

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[1] While Allstate has proposed to the CDI that it will instruct its agents to accept another means of accident record verification not currently listed in its current Rule 39, there is nothing set forth in writing in Allstate's amended class plan filing dated January 22, 2002 that allows any member of the public to appropriately evaluate whether the amended rule will, in reality, continue to violate § 1861.02(c). Certainly, an unwritten rule will be subject to the very abuses recognized by the CDI in its notice of the accident verification rulemaking proceeding, RH-01015532, where it stated that insurers are using accident verification procedures "in ways that arguably impose a 'prior insurance' requirement on new applicants" as prohibited by § 1861.02(c). (CDI, "Initial Statement of Reasons," RH-01015532, December 21, 2001.)

1861.02(c). These accident verification surcharges continue longstanding insurer practices, in one form or another, of imposing surcharges on the previously uninsured. Previously, FTCR and other groups have challenged violations of § 1861.02(c) in *Proposition 103 Enforcement Project v. Quackenbush*, San Francisco Superior Court Case No. 982646 and *Consumers Union and Southern Christian Leadership Conference v. Quackenbush*, San Francisco Superior Court Case No. 982181. Those actions evolved from former Commissioner Quackenbush's denials of requests for hearings by the Project to challenge Safeco's Class Plan (PA-96-0070-00) and by Consumers Union and Southern Christian Leadership Conference to challenge the Class Plan of the Interinsurance Exchange of the Automobile Club. Both insurers were implementing a surcharge on drivers who could not verify compliance with the state's financial responsibility law. The San Francisco Superior Court issued writs in both cases that prohibit the Commissioner from approving the use of any rating factor requiring proof of compliance with the mandatory insurance laws (prior insurance coverage). In FTCR's view, the subsequent approval of non-verifiable accident record surcharges which require proof of prior insurance to avoid the surcharge, or any other companies' rating plans and rating factors that violate § 1861.02(c), violates the writs of mandate issued by the superior court.

The Commissioner has agreed with FTCR, stating that:

> ...insurers have begun to use [accident record verification procedures] and other provisions in ways that arguably impose a 'prior insurance' requirement on new applicants. For example some insurers require that applicants provide written documentation from the applicant's current insurer regarding prior accident history or a renewal offer from the applicant's current insurer indicating accident record experience. Insurers have required applicants to have previously been insured with a subscribing loss underwriting exchange carrier, e.g., C.L.U.E. Because

> some insurers are currently requiring verifiable driving record information from another insurer, consumers who lack prior insurance and seek coverage from one of those insurers do not receive the protections sought to be afforded by the voters when they enacted California Insurance Code Section 1861.02(c) as part of Proposition 103.

(CDI, "Initial Statement of Reasons," RH-01015532, December 21, 2001.)

As FTCR has previously pointed out in its testimony submitted in RH-402, because affordability remains a key barrier to insured status[2] for the close to 25% of motorists who remain uninsured[3] and because the uninsured motorist rate is closely linked to higher premiums,[4] even a 10-15% surcharge on previously uninsured motorists has an enormous negative impact on the number of drivers who are unable to afford auto insurance. Higher initial rates imposed on previously uninsured drivers keeps the door to insured status perpetually closed to these drivers. Moreover, the imposition of surcharges on the previously uninsured negatively impacts the over 20 million drivers who are currently insured through higher uninsured motorist coverage premiums.

III. PROPOSED AMENDMENT TO CCR § 2632.13

In light of the foregoing and the Commissioner's stated reasons for adopting the proposed regulation, FTCR heartily approves of the Commissioner's language providing

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[2] *See* Lyn Hunstad, CDI, *Characteristics of Uninsured Motorist*, February 1999, p.1. According to this study, the majority of uninsured motorists surveyed indicated that they would probably purchase insurance if premiums were even 10% lower than the current level.

[3] *See* Bernstein, CDI, *California Uninsured Vehicles as of June 1, 1997*, February 1999, p. iii [5.3 million of 23.5 million potentially insurable vehicles]. Of course, the uninsured motorist rate ranges much higher in low-income and minority communities—up to 51% in underserved communities overall and up to 75-80% in certain low-income Los Angeles County communities. (1998 Commissioner's Report on Underserved Communities.)

[4] *See* Berstein, p. iv ["each $22 increase in annual premiums increases the average uninsured rate by 1 percent"].

that "a driver's declaration, under penalty of perjury, attesting to his or her at-fault accident history, shall be sufficient proof of that accident history in the absence of contrary information from an independent source." With this endorsement, FTCR offers the following recommendations for the Commissioner's consideration in further refining the regulation:

1) Explicitly provide that the driver's declaration can be in any form. (as long as it contains a statement that the driver is attesting to his at-fault accident history under penalty of perjury)
2) Adopt a separate standard to determine the sufficiency of evidence an insurer would be required to show to support its conclusion that the driver's declaration contains a fraudulent or material misrepresentation justifying a change in rating of the driver or cancellation of the policy. (should at least be substantial evidence)
3) Require the insurer's notice to the driver of contrary information to disclose from *what independent source* the insurer obtained the information disputing the driver's declaration.

IV. CONCLUSION

In closing, FTCR again wishes to thank Commissioner Low for acknowledging and taking substantial steps to address insurers' abuses of accident verification procedures to unfairly discriminate against the previously uninsured in violation of § 1861.02(c). We believe the proposed self-verification regulation, if properly implemented, will be the means to ending these abuses.

DATED: March 7, 2002

Respectfully Submitted,

THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS

BY: _____
Pamela Pressley