

STATE OF ILLINOIS



Department of Financial and Professional Regulation Division of Insurance

IN THE MATTER OF
THE MEDICAL MALPRACTICE
RATE INCREASE OF:

HEARING NO. 06-HR-0804

CHICAGO INSURANCE COMPANY
33 WEST MONROE STREET
CHICAGO, ILLINOIS 60603
RATE FILING #CGIL-MTP-IL-05-06-RA

ORDER

I, Michael T. McRaith, Director of the Illinois Department of Financial and Professional Regulation, Division of Insurance hereby certify that I have read the entire Record in this matter and the hereto attached Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, Timothy M. Cena, appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter. I have carefully considered and reviewed the entire Record of the Hearing and the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, attached hereto and made a part hereof.

I, Michael T. McRaith, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as my own, and based upon said Findings, Conclusions and Recommendations enter the following Order under the authority granted to me by Sections 155.18, 401, 402 and 403 of the Illinois Insurance Code (215 ILCS 5/155.18, 5/401, 5/402 and 5/403) and Article X of the Illinois Administrative Procedure Act (5 ILCS 100/10-5 et. seq.).

This Order is a Final Administrative Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1 et. seq.). This Order is appealable pursuant to the Illinois Administrative Review Law (735 ILCS 3/101- et. seq.).

NOW IT IS THEREFORE ORDERED THAT:

- 1) Chicago Insurance Company's Filing #CGIL-MTP-IL-05-06-RA is approved;
- 2) Chicago Insurance Company shall pay as costs of this proceeding, within 35 days of the date of this Order, the sum of \$210.00, directly to the Illinois Division of Insurance, Tax and Fiscal Service Unit, 320 W. Washington, 4th Floor, Springfield, Illinois 62767.

DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION of the
State of Illinois;

DIVISION OF INSURANCE

Date: March 5, 2007



Michael T. McRaith
Director

STATE OF ILLINOIS



Department of Financial and Professional Regulation Division of Insurance

IN THE MATTER OF:
THE MEDICAL MALPRACTICE RATE
INCREASE OF:

HEARING NO. 06-HR-0804

CHICAGO INSURANCE COMPANY
33 WEST MONROE STREET
CHICAGO, ILLINOIS 60603
RATE FILING #CGIL-MTP-IL-05-06-RA

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING OFFICER

Now comes Timothy M. Cena, Hearing Officer in the above captioned matter and offers his Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

FINDINGS OF FACT

- 1) On January 6, 2006, Chicago Insurance Company (Company) filed with the Illinois Division of Insurance (Division) its Allied Health Purchasing Group Association Rate/Rule Filing #CGIL-MTP-IL-05-06-RA (Filing) (see Division Exhibit # 1, Packets #1-3).
- 2) On November 2, 2006, the Illinois Director of Insurance, Michael T. McRaith, issued a Notice of Hearing requiring the Company to participate in an Administrative Hearing regarding the Filing. The Hearing was scheduled for November 16, 2006 at the Division's Offices in Springfield, Illinois (Hearing Officer Exhibit # 2).

- 3) Joseph T. Clennon filed a Notice of Appearance in this matter as Counsel for the Division (Hearing Officer Exhibit # 2).
- 4) On November 2, 2006, the Director appointed Timothy M. Cena as Hearing Officer in this matter (Hearing Officer Exhibit # 1).
- 5) Kirk Petersen filed an Appearance in this matter as Counsel for the Company (Hearing Officer Exhibit # 3).
- 6) The Hearing in this matter was convened on November 15, 2006 at the Division's Offices in Springfield, Illinois at 11:00 AM at which time were present Timothy M. Cena, Hearing Officer; Joseph T. Clennon, on behalf of the Division; Kirk Petersen on behalf of the Company; Jayme Stubitz, Patricia M. Houlihan, Daphne T. Crockett, and Timothy Kovac, all with the Company; Michael T. McRaith, Julie Anderson, Judy Pool-Boutchee, John Gatlin and Gayle Neuman, all with the Division; Rob Kane, with ISMIE Mutual Insurance Company and Craig Lounsberry with the Illinois Trial Lawyers Association.

The purpose of this Hearing is to receive information regarding the Company's Filing in order to determine whether the Filing is in compliance with Section 155.18 of the Illinois Insurance Code.

- 7) After the Company's Filing was received the Division's Product Evaluation Unit and the Casualty Actuarial Section conducted intensive reviews of the Filing. Discussions were had with the Company regarding the Quarterly Premium Payment Section of the Filing. Changes were made in the Filing pursuant to those discussions. Actuarial indications with supporting documentation were reviewed along with the Company's ratemaking methodology, ultimate loss and allocated loss adjustment expense selection, loss development triangles, profit load, and permissible loss ratios. Additional information was requested, and was supplied by the Company, regarding the aforementioned items and was used to complete the actuarial analysis of the Filing.

The Complete Filing was offered and accepted into the Record in this matter as Division Exhibit # 1. The Division stated that it had no objections to the Filing pending further questioning at the Hearing.

- 8) This Filing requests approval for new rates designed for the use with the Company's Miscellaneous Therapists Professional Liability Insurance Program. The overall rate effect of the changes is an increase in rates of 11.3%; comprised of a 20% increase for self-employed optometrists, a 20% increase for self-employed medical technologists, and a 7% increase for all occupational therapists. It is a continuation of a moderate rate action by the Company which began in 2004. The Company's last rate action was taken in

1998. Over the period of the last eight years the Company believes that its rate action is minimal. The rate increase will affect approximately 1,000 policyholders in Illinois with average rate increases from \$10 to \$100.

- 9) The Filing indicates a rate for self-employed optometrist and medical technologists which is 20% higher than the rate for an employed optometrist and employed medical technologist. This higher rate is derived from the Company's actuarial indications. The Company testified that the indications suggest that, because self-employed practitioners practice their livelihoods independently, higher rates are justified. Self-employed hire themselves out as independent contractors to hospitals, physician groups and health care facilities. Self-employed have legal requirements and responsibilities to conduct and manage their own business which are not present with an employed insured. The self-employed could be held vicariously liable for their employee's misdeeds, as well as, bear responsibility for hiring and supervising their employees properly. The Company proposes a stand-alone ratio for self-employed individuals. Employed individuals would be charged as a part of a group rate. Employees of a self-employed individual would be charged the group rate while the self-employed employer would be charged the self-employed rate.
- 10) Exhibit # 1, Sheet 1 of DOI Exhibit # 1, Packet # 1 lists indicated changes (113.7%) which are much higher than the proposed rate increase. These rates were based on the Company's experience, especially in the self-employed optometrist and medical technologist area. The Company opted for a much lower rate increase in an attempt to strike a balance between business that was unprofitable and its desire to retain that business. In order to ensure the profitability of this line the Company is also taking steps in addition to the rate increase. The Company is reviewing the program on an annual basis. The Company is watching the claims data carefully to make sure that it is the self-employed sector of the population which is driving the rate increase. The Company is tightening up the application for insurance process by making sure that self-employed insureds who hire independent contractors require that those contractors have insurance and that the contractors' policy limits are at, or above, those of the policy the Company offers. Inadequately insured independent contractors have increased claim pressure for the Company under its policies.
- 11) The profit load, listed in this filing, as 13.6% (see Division Exhibit # 1, Packet # 3, Exhibit # 6 and # 7) is a function of its targeted After Tax Return on Equity (ROE) and is dictated by its parent company, Allianz. The parent company requires that the Company make a 15% after-tax return on the surplus amounts allocated to it by the parent. The calculations listed in the above-referenced Exhibits indicate how the Company arrived at the 13.6% profit figure. Exhibit # 7 uses the terms Capital and Surplus interchangeably.

- 12) The Division asked how the parent company determined the amounts of capital allocated to the professional liability line of business. The Company indicated the required capital amounts are difficult to predict and the parent company allocates additional capital amounts for professional liability insurance because it is an inherently riskier line of business than a short-tail line of business. Professional liability insurance is long-tail coverage with some claims taking up to 15 years to identify and finally settle.
- 13) Division Exhibit # 1, Packet 3, Exhibit # 5 indicates the Company's country-wide experience for this line of business. Exhibit # 5 indicates that the claims' severity has been increasing by an 8% rate country-wide over the last six or seven years. Claim frequency actually shows a 1% decrease over the same time period and a total loss cost trend of 6.8%. The Company believes that the 8% annual severity increase is the result of a number of factors including that the professionals insured under these policies are performing riskier procedures than done in the past. The Company also points to what it describes as an increasingly litigious climate in the United States. While the figures listed in Exhibit # 5 are county-wide, the Company sees similar results in Illinois only figures. The Company sees no reason why the severity trend will not continue to rise. Tort reform in Illinois is too new to see any changes at this point in claim severity, nor has the Company changed its approach to claim or litigation handling in Illinois because of the reform. The Company testified that in its opinion, it will need to collect two to four years worth of data before the impact of Illinois tort reform efforts can be gauged.
- 14) The Hearing Officer left the Record in this matter open at the close of the Hearing in order to provide the Company an opportunity to provide additional information for the Record. On November 21, 2006, the Hearing Officer issued a letter to the Company (see Hearing Officer Exhibit # 4) asking the Company with what frequency, as a percentage of total policies covered by the Filing, are policyholders in Illinois sued for malpractice. The letter also asked the Company to provide a break out of both frequency and severity trends for Illinois for policies covered by the Filings.

On December 4, 2006, the Company provided a written Response to the additional questions (see Hearing Officer Exhibit # 5). In 2004, the Company wrote 3,519 policies in Illinois, had 5 reported claims, 1 of which was litigated. The percentage of total claims litigated was therefore 20% and the percentage of Illinois policyholders sued was .02%. The Company also attached to its Response an Exhibit which provided information regarding frequency and severity trends in Illinois for 1995-2004.

- 15) Upon receipt and after review of the Company's responses, the Division stated to the Hearing Officer that it had no concerns with the Company's Responses and no reason to revise its original statement that it had no reason to object to the Filing.

- 16) Capital Reporting Service, Inc. recorded the testimony taken in this matter and charged the Division \$210.00 for the court reporter's attendance and a transcript of the proceedings (Hearing Officer Exhibit # 6).

CONCLUSIONS OF LAW

Based upon the above stated Findings of Fact and the entire Record in this matter the Hearing Officer offers the following Conclusions of Law to the Director of Insurance.

- 1) Timothy M. Cena was duly appointed as Hearing Officer in this matter by the Director of Insurance pursuant to Sections 402 of the Illinois Insurance Code (215 ILCS 5/402).
- 2) The Director of Insurance has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 155.18, 401, 402 and 403 of the Illinois Insurance Code (215 ILCS 5/155.18, 5/401, 5/402 and 5/403).
- 3) The purpose of this proceeding is to determine if the Chicago Insurance Company Rule/Rate Filing # CGIL-MTP-IL-05-06-RA is in compliance with Section 155.18 of the Illinois Insurance Code.

Section 155.18 of the Insurance Code provides, in part, as follows:

- (a) This Section shall apply to insurance on risks based upon negligence by a physician, hospital or other health care provider, referred to herein as medical liability insurance.
- (b) The following standards shall apply to the making and use of rates pertaining to all classes of medical liability insurance:
 - (1) Rates shall not be excessive or inadequate nor shall they be unfairly discriminatory. . .
 - (2) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this State, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses both countrywide and those especially applicable to this State, and to all other factors, including judgment factors, deemed relevant within and outside this State.

Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed

premium deposits allowed or returned by companies to their policyholders, members or subscribers.

- (3) The systems of expense provisions included in the rates for use by any company or group of companies may differ from those of other companies or groups of companies to reflect the operating methods of any such company or groups with respect to any kind of insurance, or with respect to any subdivision or combination thereof.
 - (4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which established standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Such classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations and shall apply to all risks under the same or substantially the same circumstances or conditions. The rate for an established classification should be related generally to the anticipated loss and expense factors or the class.
- (c)
- (1) Every company writing medical liability insurance shall file with the Secretary of Financial and Professional Regulation the rates and rating schedules it uses for medical liability insurance. A rate shall go into effect upon filing, except as otherwise provided in this Section.
 - (2) If (i) 1% of the company's insureds within a specialty or 25 of the company's insureds (whichever is greater) request a public hearing, (ii) the Secretary at his or her discretion decides to convene a public hearing, or (iii) the percentage increase in a company's rate is greater than 6%, then the Secretary shall convene a public hearing in accordance with this paragraph (2). A public hearing under this paragraph (2) must be concluded within 90 days after the request, decision, or increase that gave rise to the

hearing. The Secretary may, by order, adjust a rate or take any other appropriate action at the conclusion of the hearing.

- (3) A rate filing shall occur upon a company's commencement of medical liability insurance business in this State and thereafter as often as the rates are changed or amended.
 - (4) For the purposes of this Section, any change in premium to the company's insureds as a result of a change in the company's base rates or a change in its increased limits factors shall constitute a change in rates and shall require a filing with the Secretary.
 - (5) It shall be certified in such filing by an officer of the company and a qualified actuary that the company's rates are based on sound actuarial principles and are not inconsistent with the company's experience. The Secretary may request any additional statistical data and other pertinent information necessary to determine the manner the company used to set the filed rates and the reasonableness of those rates. This data and information shall be made available, on a company-by-company basis, to the general public.
- (d) If after a public hearing the Secretary finds;
- (1) that any rate, rating plan or rating system violates the provisions of this Section applicable to it, he shall issue an order to the company which has been the subject of the hearing specifying in what respects such violation exists and, in that order, may adjust the rate; . . . ”

The information presented in this matter to the Hearing Officer does not indicate that the Company's Filing is excessive or inadequate or that it is unfairly discriminatory. The Hearing Officer, therefore, concludes that Chicago Insurance Company Filing # CGIL-MTP-IL-05-06-RA is in compliance with Section 155.18 of the Illinois Insurance Code.

The Hearing in this matter was required by Section 155.18 of the Code by virtue of the greater than 6% rate increase filed by the Company. The Hearing Officer, therefore, concludes that the costs of this Hearing be assessed against the Company. The costs of the Hearing consist entirely of the costs charged to the Division by the court reporting for the preparation of the transcripts of the testimony taken in this matter.

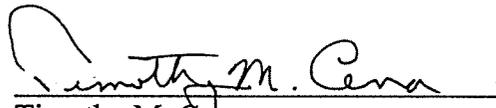
RECOMMENDATIONS

Based upon the above stated Findings of Fact, Conclusions of Law and the entire Record in this matter the Hearing Officer offers the following Recommendations to the Director of Insurance;

- 1) That Chicago Insurance Company Filing # CGIL-MTP-IL-05-06-RA, as that Filing is contained in this Record, be approved;
- 2) That Chicago Insurance Company be assessed the costs of this proceeding.

Respectfully submitted,

Date: 2/22/07



Timothy M. Cena
Hearing Officer