

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-0734

CINCINNATI INSURANCE COMPANY
RATE FILING # CDEN-06-7503-IL

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) Cincinnati Insurance Company's Filing #CDEN-06-7503-IL is approved;
- 2) All future filings in Illinois made by Cincinnati Insurance Company shall be filed as recommended by the Hearing Officer as regards to the profit and contingency factor data listed in the actuarial information included in the filing;
- 3) Cincinnati Insurance Company shall pay as costs of this proceeding, within 35 days of the date of this Order, the sum of \$125.00, 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 13, 2007


Michael T. McRaith
Director

STATE OF ILLINOIS



Department of Financial and Professional Regulation Division of Insurance

IN THE MATTER OF
THE MEDICAL MALPRACTICE
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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 hereby offers his Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

FINDINGS OF FACT

- 1) On or about May 15, 2006, the Cincinnati Insurance Company (the Company) filed with the Illinois Division of Insurance (Division) revised Rules and Rates regarding its Commercial Lines Dentist's Package Policy, Filing # CDEN-06-7503-IL (the Filing) (see Division Exhibit # 1).
- 2) On September 15, 2006, the Illinois Director of Insurance, Michael T. McRaith (Director) issued a Notice of Hearing in this matter pursuant to Section 155.18 of the Illinois Insurance Code (215 ILCS 5/155.18). The Notice required the Company to appear at a Hearing at the Division's Offices in Springfield, Illinois in order to determine if the Filing was in compliance with Section 155.18 (Hearing Officer Exhibit # 2).

- 3) On September 15, 2006, Joseph Clennon filed a Notice of Appearance as Counsel for the Division (see Hearing Officer Exhibit # 2).
- 4) The Notice of Hearing was received by the Company on September 18, 2006 at the Company's address of record with the Division (see the U.S. Postal Service, Domestic Return Receipt Card attached to Hearing Officer Exhibit # 2).
- 5) On September 15, 2006, the Director appointed Timothy M. Cena as Hearing Officer in this matter (see Hearing Officer Exhibit # 1).
- 6) The Hearing in this matter was convened on November 14, 2006 at 10:00 AM, at the Division's Offices in Springfield, Illinois at which time were present Timothy M. Cena, Hearing Officer; Joseph Clennon, on behalf of the Division; Gregory D. Schmidt and Richard J. Taphorn, on behalf of the Company; Judy Poole Boutchee, Julie Anderson, Pam Donnewald, 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.
- 7) After the completion of Opening Statements by the Parties, the Hearing Officer received into the Record in this matter the Company's complete Filing # CDEN-06-7503-IL (see Division Exhibit # 1). Upon receipt of the initial Filing in May of 2006 the Division began its review. During the Division's review process the Division requested that the Company make modifications in its statutorily required Quarterly Premium Plan. The Division also requested that additional actuarial information be provided by the Company. The requested changes were made by the Company and the actuarial information provided to the Division. The Division's actuarial review of the Filing encompassed but was not limited to, an analysis of the Company's rate making methodology, losses, ALAE selection, loss development triangles, profit load and permissible loss ratios. As a result of this review the Division staff responsible for the review of the Filing offered at the Hearing their conclusion, pending the Company's responses to questioning at the Hearing, that the premium rates contained in the Filing were not inadequate, excessive, or unfairly discriminatory and were otherwise in compliance with Section 155.18 of the Code.
- 8) The Company's Filing involves their dentist's professional liability program offered in the State of Illinois. This Filing adds a new class of dentists to the program (Class 2B) who perform removals of impacted third molars other than soft tissue and other than partial bony. Prior to this Filing the Company did not offer coverage for this type of removal. The Filing also increases premium rates for Classes 2 and 2a under the program due to poor loss experience. The Company found that there were many Class 2 and 2a dentists who were doing removal, other than soft tissue or partial bony, especially in

rural areas of Illinois. The Company wants an opportunity to write insurance policies for those dentists. The Company views the change in the Plan as a response to specific marketplace conditions. The Company has limited experience writing policies for these types of removals, but does offer this coverage to oral and maxillofacial surgeons outside of this special preferred program for dentists.

- 9) Actuarial information submitted by the Company for the combined experience for the dentists in this program indicates that a 95.8% rate increase is appropriate. The Company has proposed a 7.18% rate increase. The Company does not consider the rate increase to be inadequate to meet their financial responsibilities under the policy for several reasons. Company officials in charge of the program, in consultation with the Company agent force, believed that the 7.18% increase would be adequate to meet the company's needs without raising premiums to such an extent that the company would become uncompetitive in the Illinois marketplace. The Company is also of the opinion that the recent tort reform legislation enacted in Illinois will continue the downward trend in claims experience by the Company in 2005. Further, the Company writes other insurance coverage in addition to this dentist program. Profitability in those coverages will offset problems with this program should the 7.18% increase not be sufficient. The Company will be monitoring the situation and if future losses require, the Company will adjust the rate upward as appropriate.
- 10) At the Division's request the Record in this matter was left open in order that the Company be able to provide additional answers to questions presented to the Company but which Company representatives attending the Hearing were unable to answer. On November 16, 2006, the Division, through its Counsel, sent a letter to the Company requesting information regarding the development of Class 2B, contingency factors, frequency and severity factors, and ULAE factors (Hearing Officer Exhibit # 3). On November 22, 2006, Connie Peteronjes, Senior Filings Specialist for the Company submitted a letter to the Hearing Officer containing responses to the Division's unanswered questions. The November 21, 2006 letter is entered into the Record in this matter as Hearing Officer Exhibit # 4.
- 11) On November 29, 2006, the Division indicated that it had reviewed the responses contained in Hearing Officer Exhibit # 4 and had no issue with the Company's response that would cause an objection to the filing (see Hearing Officer Exhibit # 5).
- 12) The Division asked why a contingency factor of zero was listed by the Company in its actuarial information packet under Multiple Peril, Cincinnati Insurance Group, Based on Year-End 2003-2005 Statistics for Illinois (see second to last page of Division Exhibit # 1, Packet # 2). The Company responded, in Hearing Officer Exhibit #4, that it calculates the profit and

contingency factor based on a return on equity calculation. The factor varies by State and line of business due to factors like payment patterns, expenses and investment income potential. The contingency row in the company's actuarial exhibit is always zero because the company calculates the profit and contingency factors as a single factor and includes it in the profit row.

- 13) The Division asked the Company if it could describe the assumptions used in determining the Unallocated Loss Adjustment Expenses (ULAE). In Division Exhibit # 3 the Company opined that it develops its ULAE factors based upon county-wide information which it believes is more credible than state by state information. The company compared its ULAE to the paid loss and allocated Loss Adjustment Expense (ALAE) for their multiple peril line of business. The ratios were then used to adjust the Company's ultimate loss and ALAE amount. The Company used ISO Circular AS-PR-2005-142 to calculate dentist professional loss trends in the State of Illinois.
- 14) Capitol Reporting Service Inc. transcribed the testimony taken in this matter and charged the Division \$125.00 for a transcript of the proceeding and the court reporter's attendance (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 Order of the Director pursuant to Section 403 of the Illinois Insurance Code (215 ILCS 5/403).
- 2) The Director of Insurance has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 155.18, 155.19, 401, 402 and 403 of the Illinois Insurance Code (215 ILCS 5/155.18, 5/155.19, 5/401, 5/402 and 5/403).
- 3) The purpose of this proceeding is to determine if the Cincinnati Insurance Company's Medical Malpractice Rule/Rate Filing # CDEN-06-7503-IL 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 to the Hearing Officer in this matter indicates that the proposed Filing is not excessive or inadequate nor is it unfairly discriminatory and that it otherwise fully complies with Section 155.18 of the Insurance Code. However, one concern exists in the manner in which the Company presents information in its filings regarding profits and contingency factors. As indicated in the Findings Section of this Report, the Company in its actuarial exhibit indicating contingencies, uses a methodology that always lists the contingencies as zero. The Company explained that it does so because profit and contingency factors are calculated as one factor and is included in the profit information contained in the exhibits. While there is no concern with the actual derivation of profit and contingencies as one factor, the Company's procedure of listing profits and contingencies as separate columns or rows in an exhibit is confusing. The Company should alter its procedure in future filings to label the profit column as containing a figure derived from both profits and contingencies and delete entirely the contingency column or row in their filing. Based upon the above, the Hearing Officer concludes that Cincinnati Insurance Company's Rule/Rate Filing # CDEN-06-7503-IL should be approved as filed.

Finally, the Hearing Officer concludes that the Company should be assessed the costs of this proceeding, which costs consist entirely of the fees charged to the Division in the preparation of the transcript of the proceeding.

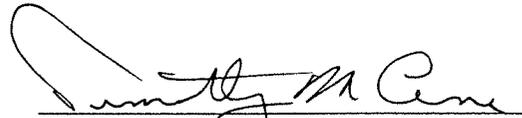
RECOMMENDATIONS

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 Cincinnati Insurance Company's rate/rule filing, as submitted in this Record, be approved;
- 2) That future filings in Illinois be made consistent with the discussion contained in the Conclusion Section of this Report regarding the proper presentation in the filing of information regarding profit and contingency factors; and
- 3) That Cincinnati Insurance Company be assessed the costs of this proceeding in the amount of \$125.00

Respectfully submitted,

Date: 2/20/07

A handwritten signature in black ink, appearing to read "Timothy M. Cena". The signature is written in a cursive style with a large initial "T" and "C".

Timothy M. Cena
Hearing Officer