

# STATE OF ILLINOIS



## *Department of Financial and Professional Regulation Division of Insurance*

IN THE MATTER OF  
THE MEDICAL MALPRACTICE  
RATE INCREASE OF:

HEARING NO. 07-HR-0642

CHICAGO INSURANCE COMPANY  
33 WEST MONROE STREET  
CHICAGO, ILLINOIS 60603  
RATE FILING #CGIL MT IL 0807 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.).

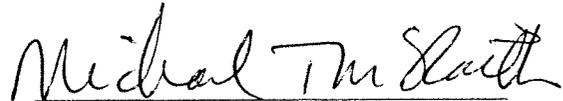
**NOW IT IS THEREFORE ORDERED THAT:**

- 1) Chicago Insurance Company Filing # CGIL MT IL 0807 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 \$108.75, 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: September 25, 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. 07-HR-0642

CHICAGO INSURANCE COMPANY  
33 WEST MONROE STREET  
CHICAGO, ILLINOIS 60603  
RATE FILING #CGIL MT IL 0807 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 hereby offers his Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

#### **FINDINGS OF FACT**

- 1) On April 9, 2007, Chicago Insurance Company (the Company) filed with the Illinois Division of Insurance (the Division) a Miscellaneous Therapists Professional Liability Rate Filing # CGIL MT IL 0807 RA (the Filing) (see Division Exhibit # 1).
- 2) On July 12, 2007, the Illinois Director of Insurance, Michael T. McRaith (the Director) issued a Notice of Hearing requiring the Company to participate in an Administrative Hearing regarding the Filing (Hearing Officer Exhibit # 2).
- 3) On July 12, 2007, the Director appointed Timothy M. Cena as Hearing Officer in this matter (Hearing Officer Exhibit # 1).

- 4) Kirk H. Petersen filed an Entry of Appearance in this matter on behalf of the Company (Hearing Officer Exhibit # 3).
- 5) Joseph T. Clennon appeared in this matter on behalf of the Division (T.5).
- 6) The Hearing in this matter was convened on August 22, 2007 at 1:00 PM at the Division's Offices in Springfield, Illinois at which time were present Timothy M. Cena, Hearing Officer; Joseph T. Clennon, on behalf of the Division; Kirk H. Petersen, on behalf of the Company; Jayme Stubitz, Patricia Houlihan, Katelin Pelrakovitz; and Diane H. Sowell, all with Chicago Insurance Company; Heather Libby and Michelle Smith, both with American Insurance Company; and Judy Pool Boutchee, John Gatlin and Gayle Neuman, all employees of the Division (T.5-6).
- 7) The purpose of this Hearing is to receive information from the Company and/or the general public or other interested parties in order to determine whether the Filing is in compliance with Section 5/155.18 of the Illinois Insurance Code (215 ILCS 5/155.18). This Filing seeks an overall Illinois premium increase for insureds covered under the Filing of 17.3%. The Director is required to conduct a Hearing for all Filings that contain a rate filing greater than 6%.
- 8) Prior to the start of the Hearing the Division performed an extensive review of the proposed Filing. This review determined that the Filing was complete and contained all required documentation, transmittal forms and certifications. The review included an examination of the Rules Section of the Company's Rate Manual.

In addition to reviewing the Filing itself, correspondence was exchanged between the Division and the Company in order to clarify certain aspects of the Filing. Additional information and submissions were made by the Company at the Division's request.

The Division performed an analysis of the actuarial indications in the Filing, as well as, supporting documentation in order to determine whether the proposed rates were excessive, inadequate, or unfairly discriminatory and to determine if the rate filing is justified in accordance with actuarial standards and methodologies. Consideration was given to rate making methodologies, ultimate loss and allocated loss adjustment expense selection, loss development triangles, profit loads and permissible loss ratios.

The Company provided to the Division all information requested subsequent to the additional Filing. After considering the Filing and the information filed subsequently, the Division indicated that it had no objection to the Filing pending review of the Company's answers to questions posed by the Division at the Hearing.

- 9) The Division offered for submission into this Record the Company's Filing # CGIL MT IL 0807 RA. Hearing no objection, the Hearing Officer accepted the Filing and entered it into the Record as Division Exhibit # 1.
- 10) The Filing requests approval for increased rates designed to be used with its Miscellaneous Therapists Professional Liability Program and includes:
  - a) a 20% base rate increase for all Optometrists;
  - b) a 5% base rate increase for all Employed Occupational Therapists;
  - c) a 19% base rate increase for all Self-employed Occupational Therapists;
  - d) the elimination of the group size credit currently offered to Self-employed Occupational Therapists;
  - e) a 10% base rate increase for all Respiratory Therapists;
  - f) a reduction of the part-time Respiratory Therapists credit; and
  - g) a 10% base rate increase for all Medical Technologists.

The overall rate effect of these changes is an countrywide rate increase of 17.5%, and an Illinois rate increase of 17.3%. The Company's overall indicated rate increase is 39.9%.

- 11) Jayme Stubitz, the Pricing Director for Medical Related Professional Liability Business for the Company, provided testimony in this matter as follows:
  - a) He is familiar with the Filing at issue in this matter having executed, as a duly authorized Company actuary, the Illinois Certification for Medical Malpractice Rates required by statute;
  - b) He has discussed this Filing with Division employees and to his knowledge there are no issues in dispute in this matter. There are approximately 2,300 policyholders in Illinois that will be affected by this proposed rate increase. His actuarial opinion is that the proposed increases are moderate and are justified based on the Company's actuarial data. The Company's indicated need is 39%, the overall proposed increase in Illinois is 17.3%.

- 12) Mr. Stubitz responded to questions from the Division as follows:

- a) For medical technologists the proposed rate increase will increase the policyholders yearly premiums from \$10-\$50;
  - b) For occupational therapists the yearly premium increase will be from \$20-\$30 per year;
  - c) For optometrists the yearly premium increase will be from \$30-\$80 in certain geographical areas and up to \$220.00 in other areas;
  - d) All of the trends examined by the Company in making its determinations were country-wide. There is not enough specific Illinois only data to discern an Illinois trend;
  - e) The Company would consider lower rates for policyholders that live in states that have in place statutory caps on non-economic damages. However, there is not enough state by state data at this time to vary rates by states and the Filing's proposed rate increases are therefore based on county-wide data;
  - f) The Company has seen severity of loss trends increase by 3.5% and while that is considered moderate relative to other insurers, the Company expects the trend to continue. Severity trends may decrease because of the tort reform legislation.
- 13) Patricia Houlihan, an employee of Chicago Insurance Company, responded to questions from the Division as follows:
- a) The Company defines 'a claim' as "any negligent providing of professional services on behalf of that practitioner;"
  - b) Policies subject to this proposed rate filing include defense costs for professional disciplinary action which are provided via a supplementary payment defense reimbursement coverage;
  - c) The nature of the claims seen in Illinois are for misdiagnosis, negligent treatment and/or inappropriate delivery of services;

- d) Company policy is to review each claim within 90 days of filing in order to determine if settlement is appropriate;
  - e) The Company utilizes claim representatives and management personnel to make settlement determinations, but uses no individuals actually licensed in the particular specialty. The Company also utilizes alternative dispute resolution as claims, settlement method. The Company's policies contain "consent to settle clauses." requiring insured involvement in a decision to settle. One consideration in early settlement is defense cost savings;
  - f) The Company is aware of the caps for non-economic damages and other tort reform effective in Illinois but has not changed it's strategy for handling new claims because of those reforms. She expects it to take five to six years before any positive effect on claims attributable to the reforms;
  - g) The Company has available to insureds risk management premium credits where appropriate. The credits typically do not exceed 10% of the total premium.
- 14) The Division asked certain questions of the witnesses during the proceeding that, pursuant to agreement with the Division, were to be answered in writing after the hearing. On September 5, 2007, the Hearing Officer was served with the written responses providing the following additional information (see Hearing Officer Exhibit # 4).
- a) In Illinois for Miscellaneous Therapists, 54.2% of the total claims reported were being litigated;
  - b) Of those claims in litigation 97% are settled prior to trial;
  - c) For Miscellaneous Therapists, 69% of the total allocated Loss Adjustment Expenses (ALAE) were attributable to defense costs;
  - d) For Miscellaneous Therapists the Company has seen an annual increase of 9% in defense costs for those cases handled pursuant to contracts with preferred law firms; and

- e) No Miscellaneous Therapists in Illinois are currently receiving a risk management credit in their policy.

#### DISCUSSION AND ADDITIONAL FINDINGS

- 15) The purpose of this proceeding is to determine if the Chicago Insurance Company's Medical Malpractice Rule/Rate Filing # CGIL-MT IL 0807 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.

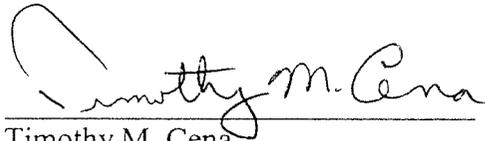
- 2) The Director of Insurance has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 5/155.18, 5/401, 5/402, 5/403 of the Illinois Insurance Code (215 ILCS 5/155.18, 5/401, 5/402 and 5/403).
- 3) Chicago Insurance Company Filing # CGIL MT IL 0807 RA is not excessive, inadequate or unfairly discriminatory and therefore does not violate Section 5/155.18 of the Illinois Insurance Code.
- 4) Chicago Insurance Company should be assessed the costs of this proceeding in the amount of \$108.75. The Hearing was statutorily required by virtue of the Company's greater than 6% rate filing.

**RECOMMENDATIONS**

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

- 1) That Chicago Insurance Company Filing # CGIL MT IL 0807 RA be approved; and
- 2) That Chicago Insurance Company be assessed the costs of this proceeding.

Respectfully submitted,



Timothy M. Cena  
Hearing Officer

Date: \_\_\_\_\_

9/21/07