

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
DIVISION OF INSURANCE

REPORT OF EXAMINATION OF THE
MASSACHUSETTS MEDICAL MALPRACTICE REINSURANCE PLAN

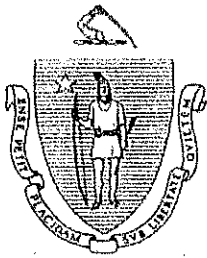
Southborough, Massachusetts

As of December 31, 2017

EMPLOYER ID NUMBER 04-3290451

MASSACHUSETTS MEDICAL MALPRACTICE REINSURANCE PLAN

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COMMONWEALTH OF MASSACHUSETTS
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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

December 7, 2018

The Honorable Gary D. Anderson
Commissioner of Insurance
Commonwealth of Massachusetts
Division of Insurance
1000 Washington Street, Suite 810
Boston, MA 02118-6200

Honorable Commissioner:

Pursuant to your instructions and in accordance with Section 10 of Chapter 330 of the 1994 Acts of the Massachusetts Legislature, and as promulgated in Article XV of the Plan of Operation of the Massachusetts Medical Malpractice Reinsurance Plan, an examination has been made of the financial condition and affairs of the

MASSACHUSETTS MEDICAL MALPRACTICE REINSURANCE PLAN

at its home office located at 106 Southville Road, Southborough, Massachusetts, 01722. The following report thereon is respectfully submitted.

SCOPE OF EXAMINATION

Massachusetts Medical Malpractice Reinsurance Plan (“MMMRP” or “Plan”) was last examined as of December 31, 2012 by the Massachusetts Division of Insurance (“Division”). The current examination was also conducted by the Division and covers the five-year period from January 1, 2013 through December 31, 2017, including any material transactions and/or events occurring subsequent to the examination date and noted during the course of this examination.

The examination was conducted in accordance with standards and procedures established by the National Association of Insurance Commissioners (“NAIC”) Financial Condition (E) Committee and prescribed by the current NAIC *Financial Condition Examiners Handbook*, the examination standards of the Division and with Massachusetts General Laws. The Handbook requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Plan by obtaining information about the Plan, including corporate governance, identifying and assessing inherent risks within the Plan, and evaluating system controls and procedures used to mitigate those risks.

All accounts and activities of the Plan were considered in accordance with the risk-focused examination process. This may include assessing significant estimates made by management and evaluating management’s compliance with Statutory Accounting Principles. The examination does not attest to the fair presentation of the financial statements included herein. If, during the course of the examination an adjustment is identified, the impact of such adjustment will be documented separately following the Plan’s financial statements.

This examination report includes significant findings of fact, and general information about the Plan and its financial condition. There may be other items identified during the examination that, due to their nature (e.g., subjective conclusions, proprietary information, etc.), are not included within the examination report but separately communicated to other regulators and/or the Plan.

The Plan is audited annually by Crowe Horwath LLP (“CH”), an independent certified public accounting firm. The firm expressed unqualified opinions on the Plan’s financial statements for the calendar years 2013 through 2017. A review and use of the Certified Public Accountants’ work papers were made to the extent deemed appropriate and effective.

SUMMARY OF SIGNIFICANT FINDINGS OF FACT

The prior examination report contained eight comments/observations primarily addressing administrative issues. Although certain issues were adequately addressed, others do not appear to have been properly remediated. The following observations were made during this current examination.

Compliance with Open Meeting Law

We note that since completion of the previous examination, the Investment Committee held deliberation and votes via email correspondence, which is in violation of the Open Meeting Law.

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Unclaimed Property

Based on the previous examination, the Plan prepared a policy pertaining to unclaimed property, yet this policy has been observed to fall short of the compliance requirements of the Abandoned Property Guidelines as promulgated by the State's Treasurers office. As a result, unclaimed funds were not remitted to the Treasurer's Office in a timely manner yet the Plan filed negative abandoned property reports.

PLAN HISTORY

General

MMMRP is a nonprofit entity established January 11, 1995 under Section 10, Chapter 330 of the 1994 Acts of the Massachusetts Legislature as amended by Chapter 372 of the Acts of 1998, for the purpose of making available reinsurance to the voluntary medical malpractice insurance market in covering certain health care providers in the Commonwealth of Massachusetts. This legislation required the establishment of a "Plan of Operation" which was submitted to the Commissioner of Insurance ("Commissioner") and approved on August 1, 1996.

The Plan's enabling legislation as amended requires every medical malpractice insurer licensed in Massachusetts ("Members") to make available to every health care provider the primary medical malpractice insurance coverage as defined. Members may cede direct written primary medical malpractice insurance policies to the Plan. Membership in the Plan is required for all insurers licensed, admitted, authorized or approved to write insurance covering liability risks, other than auto liability insurance, within Massachusetts on a direct basis. The Plan is authorized by its enabling statute to recoup any annual net losses incurred by the Plan by assessment of the Members.

MMMRP has adopted Rules of Operation ("Rules") in accordance with the Plan of Operation, in order to carry out the provisions of the Plan of Operation. The purpose of the Rules is to provide the detailed instructions needed to operate the Plan. The Rules supplement the Plan of Operation and contain instructions to Members concerning the processing of policies ceded to the Plan. The Rules contain specific guidance designed to regulate the conduct of Members and provide information concerning the responsibilities of Members and their participation in the results of the Plan. The Rules assign necessary responsibility to both the Members and the Plan staff and define those duties.

MANAGEMENT AND CONTROL

Governing Committee Minutes

The minutes of meetings of the Governing Committee and its sub-committees for the period under examination were read and indicated that all meetings were held in accordance with the Plan of Operation. There were two violations of the open meeting laws as found in Massachusetts General

Massachusetts Medical Malpractice Reinsurance Plan

Laws, ("MGL") Chapter 30A, Sections, 18 through 25: 1) A meeting of the Investment Committee was held outside of Massachusetts in 2013, a practice which has since ceased due to a finding during the prior examination; 2) In two instances the Investment Committee approved motions via E-mail. Additionally, activities of the sub-committees were reported upon at meetings of the Governing Committee.

Plan of Operation and Rules of Operation

The Plan of Operation and the Rules of Operation were reviewed. In 2016 the Plan of Operation was amended to increase active Member and inactive Member fees and to increase fees paid to committee members.

Governing Committee

MMMRP is administered by a Governing Committee appointed by the Massachusetts Governor for terms of three years, and shall consist of five members representing medical malpractice insurers. At least three members of the Governing Committee shall be representatives of any domestic medical malpractice insurer(s), and at least one member shall be a representative of any non-domestic medical malpractice insurer. As of December 31, 2017, the Plan's Governing Committee consisted of the following individuals:

<u>Name of Member</u>	<u>Title</u>
William T. McGrail	Chairman, Chief Executive Officer and President of MMMRP
Peter T. Robertson	Attorney
Jose R. Zorola	Chief Underwriting Officer of The Medical Professional Mutual Insurance Company
Margaret C. Bronneck	Compliance Manager and Privacy Officer of The Medical Professional Mutual Insurance Company
Renee M. Jones	Professor at Boston College Law School

Officers

The Plan has only two permanent employees that manage and administer the day-to-day operations of the Plan. Mr. William T. McGrail serves as the Plan's President and Chief Executive Officer and holds the title of Chairman of the Governing Committee. The Plan has established and filled the position of Chief Financial Officer under a facilities service agreement with Hospitality Mutual Insurance Company ("HMIC") whereby the Plan and HMIC share the services of HMIC's Chief Financial Officer, Eric Piurkowski. The Plan pays 20% of the salary and related benefits of the individual, who is an employee of HMIC. The Plan employs one additional part-time person who holds the title of Director of Administration.

TERRITORY AND PLAN OF OPERATION

The Plan only assumes business for medical malpractice risks insured in Massachusetts. Of those companies writing medical malpractice insurance coverage in Massachusetts only two companies ceded business to the Plan during 2017. The Medical Protective Company, domiciled in the state of Indiana ceded approximately \$1.11 million in premium to the Plan, or approximately 64% of the total amount assumed by the Plan. Medical Professional Mutual Insurance Company, a Massachusetts domestic, was the only other insurer to cede business to the Plan, ceding \$624 thousand dollars in premium or approximately 36% of the amount assumed by the Plan.

REINSURANCE

Assumed Reinsurance

The Plan does not write direct business. The Plan was established for the purpose of making available reinsurance to the voluntary medical malpractice insurance market in covering certain health care providers in Massachusetts. Massachusetts prohibits licensed insurers from refusing coverage with respect to medical malpractice insurance and as such, the Plan assumes all ceded business from Plan Members.

All Members of the Plan are categorized as either "active or inactive". An "inactive member" is defined as any medical malpractice insurer which did not, in fact, write any medical malpractice insurance policies in Massachusetts during the most recent calendar year and which is not the issuing company of any outstanding Massachusetts medical malpractice insurance policies. An "active member" is defined as a medical malpractice insurer that does not qualify for inactive status.

Policy coverage limits assumed by the Plan shall not exceed \$2,000,000 per occurrence and \$6,000,000 in the aggregate for an individual, or \$2,000,000 per occurrence and \$20,000,000 in the aggregate for a hospital, nursing home or clinic.

Massachusetts Medical Malpractice Reinsurance Plan

FINANCIAL STATEMENTS

The following financial exhibits are based on the statutory financial statements prepared by management and filed by the Plan with the Division and present the financial condition of the Plan for the period ending December 31, 2017. The financial statements are the responsibility of Plan management.

Statement of Assets, Liabilities, Surplus and Other Funds as of December 31, 2017

Statement of Income for the Year Ended December 31, 2017

Reconciliation of Capital and Surplus for Each Year in the Five-Year Period Ended December 31, 2017

Massachusetts Medical Malpractice Reinsurance Plan

Statement of Assets, Liabilities, Surplus and Other Funds
As of December 31, 2017

	Per Annual Statement
ASSETS	
Bonds	\$ 6,277,757
Common stocks	6,354,734
Cash, cash equivalents and short-term investments	2,602,029
Subtotals, cash and invested assets	<u>15,234,520</u>
Investment income due and accrued	38,827
Uncollected premiums and agents' balances	10,189
Total Assets	<u>\$ 15,283,536</u>
LIABILITIES	
Losses	\$ 6,873,520
Loss adjustment expenses	1,889,480
Other expenses	74,315
Current federal and foreign income taxes	272,266
Net deferred tax liability	69,940
Unearned premiums	765,914
Payable for securities	149,756
Aggregate write-ins for liabilities	222,115
Total Liabilities	<u>10,317,306</u>
SURPLUS	
Unassigned funds (surplus)	<u>4,966,230</u>
Surplus as regards policyholders	<u>4,966,230</u>
Total Liabilities, Surplus and Other Funds	<u>\$ 15,283,536</u>

Massachusetts Medical Malpractice Reinsurance Plan

Statement of Income For the Year Ended December 31, 2017

	Per Annual Statement
Premiums earned	\$ 1,878,809
Deductions:	
Losses incurred	185,366
Loss adjustment expenses	135,680
Other underwriting expenses	919,116
Aggregate write-ins for underwriting expenses	(142,017)
Total underwriting deductions	1,098,145
Net underwriting gain (loss)	780,664
Net investment income earned	261,412
Net realized capital gains (losses) less capital gains tax	142,452
Net investment gain (loss)	403,864
Aggregate write-ins for miscellaneous income	323,900
Total other income	323,900
Net income before dividends to policyholders, after capital gains tax and before all other federal and foreign income taxes	1,508,428
Net income after dividends to policyholders, after capital gains tax and before all other federal and foreign income taxes	1,508,428
Federal and foreign income taxes incurred	369,243
Net income	\$ 1,139,185

Massachusetts Medical Malpractice Reinsurance Plan

Reconciliation of Capital and Surplus For Each Year in the Five-Year Period Ended December 31, 2017

	2017	2016	2015	2014	2013
Surplus as regards policyholders, December 31, prior year	\$ 3,415,864	\$ 1,918,179	\$ (2,396,316)	\$ (3,350,240)	\$ (4,673,627)
Net income/(loss)	1,139,185	1,347,199	4,410,865	1,274,224	895,381
Change in net unrealized capital gains or (losses) less capital gains tax	604,343	191,749	(271,579)	(327,601)	442,653
Change in net deferred income tax	(196,661)	(107,335)	245,581	-	-
Change in non-admitted assets	3,500	66,072	(70,372)	7,300	(8,511)
Aggregate write-ins for gains and losses in surplus	-	-	-	-	(6,135)
Change in surplus as regards policyholders for the year	1,550,367	1,497,685	4,314,495	953,923	1,323,388
Surplus as regards policyholders, December 31, current year	<u>\$ 4,966,231</u>	<u>\$ 3,415,864</u>	<u>\$ 1,918,179</u>	<u>\$ (2,396,316)</u>	<u>\$ (3,350,240)</u>

Massachusetts Medical Malpractice Reinsurance Plan

**ANALYSIS OF CHANGES IN FINANCIAL STATEMENTS RESULTING FROM THE
EXAMINATION**

The results of this examination did not produce any financial statement adjustments.

COMMENTS ON FINANCIAL STATEMENT ITEMS

Note 1 - Loss and Allocated Loss Adjustment Expenses ("ALAE") Reserves

The Plan retained the services of Willis Towers Watson to prepare an independent actuarial analysis of the Plan's loss and ALAE liabilities as of December 31, 2017. The analysis is performed on a gross basis as to ceded business assumed by the Plan, as the Plan does not write any direct business or retrocede any assumed business.

Willis Towers Watson's projection of future claim reporting and payment is based on industry benchmark reporting and payment patterns, which are used because the Plan's most recent coverage years' historical data is not sufficiently credible or stable. Willis Towers Watson believes using the benchmark experience in an appropriate supplement to the analysis of Plan data, as it represents Willis Towers Watson's current judgment as to the typical emergence of loss that can be expected for this class of business.

The following chart illustrates the results of Willis Tower Watson's analysis providing the actuarial central estimate as well as a range of reasonable estimates. The Plan holds reserves for loss and ALAE at the high point of the range of estimates.

<u>Massachusetts Medical Malpractice Reinsurance Plan</u>			
<u>Towers Watson's Estimates (000's)</u>			
<u>Low</u>	<u>Central Estimate</u>	<u>High</u>	<u>Plan Carried</u>
\$5,313	\$6,930	\$8,763	\$8,763

SUBSEQUENT EVENTS

Effective 1/1/2018, the Plan replaced its existing investment advisor with the firm Prime, Buchholz & Associates, Inc.

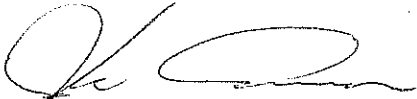
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SIGNATURE PAGE

Acknowledgement is made of the cooperation and courtesies extended by the officers and employees of the Plan during the examination.

The assistance rendered by the following examiner participating in this examination is acknowledged.

Michael Lewandowski, Financial Examiner II



John M. Curran, CFE
Supervising Examiner and EIC
Commonwealth of Massachusetts
Division of Insurance