

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903**

IN RE: Medical Malpractice Joint Underwriting	:	
Association of Rhode Island	:	
Hospital Experience Rating Plan Revision	:	DBR No. 04-I-0160
	:	
(Filed September 3, 2004)	:	

DECISION

**I.
TRAVEL**

This matter came to be heard before the Department of Business Regulation ("Department") as a result of a rate filing received by the Department on September 3, 2004 ("Filing"), from the Medical Malpractice Joint Underwriting Association of Rhode Island ("MMJUA"). The filing requests revisions to the Hospital Experience Rating Plan which would result in an overall rate level change of +30.58%, to be effective October 1, 2004. The Hospital Experience Rating Plan now in effect was approved effective September 1989.

By order dated October 14, 2004, the Director of the Department designated Elizabeth Kelleher Dwyer, Deputy Chief of Legal Services and Paula M. Pallozzi, Chief Property and Casualty Insurance Rate Analyst, as Co-Hearing Officers in this matter. An initial pre-hearing conference was held on November 3, 2004. Appearances were entered at the prehearing conference by Genevieve M. Martin, Esq., and Jodi Nourse Bourque, Esq. on behalf of the Attorney General and David P. Whitman, Esq., on behalf of MMJUA. An initial prehearing order was entered requiring that all Insurance Regulation

39(9)(b) statements and all Motions to Intervene be filed no later than December 6, 2004 and that the public hearing in this matter would be held on December 16, 2004. The Hospital Association of Rhode Island (“HARI”) was provided with notice of the hearing and sent a representative to observe the initial prehearing and hearing. HARI declined to intervene in this matter. No other motions to intervene were filed.

On December 13, 2004, the Attorney General filed a statement in accordance with Insurance Regulation 39(9)(b). The 39(9)(B) statement provided indications of alleged deficiencies with the filing. However, the Attorney General indicated that it had reached “...an agreement to settle this filing.” That agreement was set out by the Attorney General as limiting premium increases as follows:

1. The premium that results after changing the [Expected Loss Ratio] to 100%; and
2. For any policies becoming effective within one year of the effective date of a revised [Hospital Experience Rating Plan], the increase in premium be limited to a 25% increase over the premium that would have been calculated had the current [Hospital Experience Rating Plan] remained in force.

Based on currently available data, adoption of the Attorney General’s proposed alternative recommendation will produce premium increases as [follows]:

	Premium Increase
Hospital A	49.4%
Hospital B	40.2%
Hospital C	31.5%
Subtotal	44.2%
Hospital D	19.8%
Total	38.1%

Pursuant to R.I. Gen. Laws § 27-9-10 notice of the filing and of the hearing thereon was published on November 24, 2004 in *The Providence Journal*. The notice provided that any person or organization could file a motion to intervene in the

proceedings no later than December 6, 2004. No Motions to Intervene were filed. The notice further provided that all interested persons could submit comments regarding the rate filing orally at the public hearing or in writing by delivering the same to the Department prior to the public hearing.

A public hearing was held on December 16, 2004 at 10:00 a.m. No members of the public appeared to offer comment on the filing. Attorney General Exhibits 1 through 10 and MMJUA Exhibits 1 through 15 were admitted in full without objection. The Attorney General's expert actuary appeared at the hearing and confirmed that he had reviewed the filing and agreed with the settlement as set forth in the Attorney Generals 39(9)(b) statement.

II. JURISDICTION

The Department has jurisdiction in this matter pursuant to R.I. Gen. Laws §§ 27-9-10. The hearing was conducted in accordance with the provisions of the Administrative Procedures Act, R.I. Gen. Laws §§ 42-35-1 *et seq.*

III. ISSUE

Whether the agreement of the Attorney General and MMJUA for an aggregate rate level increase of +23.7% is excessive, inadequate, or unfairly discriminatory for the MMJUA Hospital Experience Rating Plan?

IV. DISCUSSION

As noted above, the Attorney General agreed to an increase of the MMJUA HERP as set forth above, to be effective October 1, 2004. The actuary retained by the Attorney General confirmed at the hearing that he had reviewed the filing and all

information he requested and agreed to the increase as set forth above. Additionally, the Department's actuary separately reviewed the agreed upon increase and found it supported as set forth in the attached actuarial opinion.

At the hearing MMJUA submitted correspondence indicating that the affected hospitals were placed on notice of the pending rate increase and the fact that it would be proposed for an October 1, 2004 effective date. The Attorney General did not object to a October 1, 2004 effective date.

The MMJUA functions as the residual market for medical malpractice insurance in Rhode Island. The last increase approved for the HERP was effective more than fourteen years ago. For this reason, and the fact that the hospitals were made fully aware of the pending rate request, the Department is granting this increase effective October 1, 2004. However, the Department strongly cautions the MMJUA against filing a request with an effective date so close to the filing date. In this case, MMJUA filed on September 3, 2004 with a requested effective date of October 1, 2004. Even under the best of circumstances, it would be virtually impossible for the Department to conduct a thorough review in that short time period. Therefore, while the Department is granting the increase in this unique circumstance, the Department strongly encourages the MMJUA to make filings with requested effective dates that allow sufficient time for a complete review by the Department.

V. FINDINGS OF FACT

1. On September 3, 2004, MMJUA filed for a rate increase for its Hospital Experience Rating Plan ("HERP"). The filing was duly advertised pursuant to the appropriate statutory provisions on November 24, 2004 in *The Providence Journal*,

and a public hearing was held on December 16, 2004. No members of the public appeared to offer comment on the requested rate increase.¹

2. The filing requested an overall rate increase of +30.58% (+35.20% to the current program and +16.77% to Hospital 'D' upon renewal on July 1, 2005)

3. The MMJUA and the Attorney General entered into an agreement proposing to the Department that a rate level increase be approved limiting the increase as follows:

1. The premium that results after changing the [Expected Loss Ratio] to 100%; and
2. For any policies becoming effective within one year of the effective date of a revised [Hospital Experience Rating Plan], the increase in premium be limited to a 25% increase over the premium that would have been calculated had the current [Hospital Experience Rating Plan], remained in force.

Based on currently available data, adoption of the Attorney General's proposed alternative recommendation will produce premium increases as [follows]:

	Premium Increase
Hospital A	49.4%
Hospital B	40.2%
Hospital C	31.5%
Subtotal	44.2%
Hospital D	19.8%
Total	38.1%

4. In consultation with its consulting actuary, the Department has determined that the agreement results in a proposed aggregate rate level change of +23.7% and that this increase falls within the range of indications and is not excessive, inadequate or unfairly discriminatory. (See attached actuarial opinion.)

¹ Three members of the public appeared at the hearing. However, it was determined that while they had comments about MMJUA their comments were not directed to the HERP. MMJUA personnel agreed to speak with these individuals outside of the hearing process regarding their concerns.

5. The agreement of the Attorney General and MMJUA is hereby approved for use beginning October 1, 2004.

6. Any conclusion of law which is also a finding of fact is hereby adopted as a finding of fact.

VI. CONCLUSIONS OF LAW

1. The Department of Business Regulation has jurisdiction in this proceeding in accordance with R.I. Gen. Laws § 27-9-10.

2. The Director of the Department of Business Regulation has jurisdiction in this proceeding to conduct the hearing for purposes of considering whether MMJUA's proposal contained in its filing dated September 1, 2004 is excessive, inadequate or unfairly discriminatory.

3. All of the procedural prerequisites for the conduct of the hearing of this matter have been duly complied with.

4. MMJUA's request for rate relief was filed at the Office of the Director of the Department of Business Regulation in accordance with the applicable statutes and regulations pertaining thereto.

5. An aggregate rate level change of +23.7% increase for MMJUA Hospital Experience Rating Plan is not excessive, inadequate or unfairly discriminatory.

6. Any finding of fact which is also a conclusion of law is hereby adopted as a conclusion of law.

**VI.
RECOMMENDATIONS**

In accordance with the Findings of Fact and Conclusions of Law set forth above, we find that a aggregate rate level change of +23.7% increase for MMJUA Hospital Experience Rating Plan to be effective October 1, 2004 is not excessive, inadequate or unfairly discriminatory.

January 28, 2005

original signature on file

Elizabeth Kelleher Dwyer, Co-Hearing Officer

January 28, 2005

original signature on file

Paula M. Pallozzi, Co-Hearing Officer

ORDER AND DECISION

I, A. Michael Marques, Acting Director of the Department of Business Regulation and Insurance Commissioner of the State of Rhode Island, having read the Findings of Fact, Conclusions of Law, and Recommendations of the Co-Hearing Officers in this matter and having satisfied myself as to their validity, do hereby adopt and accept the Findings of Fact, Conclusions of Law and Recommendations of the Co-Hearing Officers.

ENTERED AS AND ADMINSTRATIVE ORDER OF THE DEPARTMENT OF
BUSINESS REGULATION THIS 28th DAY OF JANUARY, 2005.

____ original signature on file ____
A. Michael Marques
Acting Director and Insurance Commissioner
Department of Business Regulation

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.