

**MASSACHUSETTS MEDICAL MALPRACTICE
REINSURANCE PLAN**

OPERATIONS & AUDIT COMMITTEE MEETING

Minutes of Meeting

November 23, 2009

An Operations & Audit Committee meeting of the Massachusetts Medical Malpractice Reinsurance Plan (“MMMRP”; “the Plan”) was held at its Executive Offices, 95A Turnpike Road, Westborough, MA on Monday, November 23, 2009 at 9:00AM.

The following committee members were present in person, unless otherwise noted:

Gerald J. Cassidy (*via phone call*)
Michael J. Sabbagh
James Bacon
Richard Brewer

The following MMMRP staff/consultants were present in person:

William T. McGrail, President
Susan S. Smith, Director of Administration
Moe Edwards, CPA, CFO

Mr. Cassidy called the meeting to order at 9:00AM. Ms. Susan Smith kept a record of the proceedings.

1. Minutes of Meeting

The minutes to the previous meeting dated May 6, 2009 had been distributed. Mr. Cassidy referred to page 2, paragraph 3, and inquired if the impairments in the audit were still a possibility. Mr. Edwards replied that it is still potentially an issue, though significantly less than this time last year due the rebalanced portfolio and the sale of most of the lot that were over 20% down for over 12 months. A **motion** was made and duly seconded to approve the minutes as presented. The motion was voted unanimously.

2. Review of Proposed Budget

A printed copy of the 2010 Budget was distributed and is included with these minutes. The Board then reviewed the Budget, and a brief discussion ensued. When discussing the Total Premium Earned budget figure of \$2.1 million, it was noted that MedPro has been increasing their cedings to The Plan. Mr. Brewer noted that MedPro has picked up market share and ProMutual is losing some business to them. In reviewing Audit Claim expenses, it was noted that there was a large variance between the 2009 budgeted and actual figures. It was explained that Dr. Carling had not prepared audits for MMMRP this year, and that Attorney Geraldine Foley has been doing all the work now. It was felt that a replacement for Dr. Carling was not necessary at this time. Mr. Edwards also reviewed the Computer Expenses, and noted that a new data encryption law is being enforced in Massachusetts and it is not yet clear what expenses will be involved in being in compliance with this new regulation. Mr. Edwards added that he is working with legal counsel and IT consultants and hopes to have further information soon. Mr. Brewer inquired as to the Conference and Seminar expenses, and Mr. McGrail replied that this includes the Annual Meeting at The International in Bolton, the annual Educational Retreat, as well as other conferences and seminars which MMMRP employees attend for professional development. The committee also discussed Legal and Actuarial fees, and noted that they will need to determine if they need one or two actuarial analysis report, adding that Mr. Edwards had been able to predict fairly well, and therefore they may only need one report in the future. A **motion** was made by Mr. Brewer and duly seconded by Mr. Sabbagh to approve to recommend to the Governing Committee that the Budget be accepted as presented. The motion was voted unanimously. Mr. Edwards will send out the final 2009 budget when it is completed.

3. Discussion of 401(k) Plan and Report of IRS Profit Sharing Audit

An IRS letter dated 9.3.09 and a copy of Form 4564 had been distributed, and copies of both are included with these minutes. Mr. Edwards reviewed the history of the audit, stating that MMMRP had received a letter dated 9.3.09 from Grace Zhu, an EP Specialist/Revenue Agent with the IRS, indicating that MMMRP's Profit Sharing Plan had been selected for examination by the IRS for the year ending 12.31.07. Ms. Zhu came in to the MMMRP offices on 10.20.09, and Mr. Edwards worked with her to provide the proper documents. After reviewing the information, Ms. Zhu provided MMMRP with Form 4564, Information Document Request. The IRS auditors had a concern with the percentage and a correction was suggested in order to be in compliance. The audit noted that Mr. Edwards was out of percentage and a self-correction of roughly \$8,500 was made to be in compliance with the IRS, as instructed to do so by 11.12.09. Roughly half of this amount was put in by HMIC, and the balance by MMMRP. Ms. Zhu is working on closing the file, and Mr. Edwards is planning to present this at the next Governing Committee meeting.

Mr. Edwards reviewed the history of the 401(k) Profit Sharing Plan at MMMRP, stating that Dr. Coldiron had made a decision as part of an Executive Session in 2006 to freeze the participants at a dollar amount for that year, and that new employees would get 15%. Mr. Edwards did not think it could be done this way, but the plan administrators at that time (The Standard) had said they could do it that way. In working with Ms. Zhu at the current time, Mr. Edwards learned that the administrator needed to first get this in writing to the IRS. Ms. Zhu realized this was an honest mistake and did not penalize the plan with a tax penalty.

Mr. Edwards stated that going forward, the committee will need to vote on the Profit Sharing Plan percentage for the next year, and that he had budgeted and recommends a percentage of 21.45% for 2010. After 2010, the committee will need to decide and vote on the percentage for the following year by December of the previous year. Mr. Edwards

continued with a detailed explanation of the mechanics of the 401(k) Profit Sharing Plan for the edification of the committee members. He pointed out that it is similar to a defined benefit plan, but truly a hybrid of a 401(k) plan and a defined benefit plan. Mr. Edwards added that employees get the assigned percent regardless of the employee's individual contribution. These contributions are determined on an annual basis. He continued that MMMRP had passed all the tests with the administrators over the past several years, and several committee members inquired if MMMRP should take legal action. Mr. Edwards explained that the administrators at that time have moved to Portland, OR and The Plan now uses a local administrator in Worcester, MA. Since the cost to The Plan is only \$4k, they agreed it is not worth the legal expenses involved.

Mr. Sabbagh made a motion that in order to be in compliance with the 2006 directive of the Operations Committee and in order to be in compliance with the IRS rules, that the Operations Committee vote to fund the plan at the rate of 21.45% for 2010. The motion was seconded by Mr. Brewer, and the motion was voted unanimously.

4. Auditor Engagement Letter

Next, the Committee reviewed the engagement letter from Saslow, Lufkin and Buggy, the MMMRP's audit firm. Mr. Edwards and Mr. McGrail mentioned that their annual fee is fair and that their service has been excellent. It was also noted that SL&B mostly works with insurance companies. Mr. Brewer inquired as to the difference between the amount of \$40k in their engagement letter and the \$48k presented in the budget. Mr. Edwards explained that the difference is primarily due to the auditors' travel and lodging expenses, as well as fees incurred by Bob Osbourne who helps MMMRP prepare their Annual Report. A **motion** was made by Mr. Sabbagh and duly seconded by Mr. Brewer to approve the engagement letter. The motion was voted unanimously.

5. Discussion of Future Application of Rule 4

Mr. McGrail reviewed the history surrounding a letter which Mr. Brewer sent to MMMRP in July 2006 regarding the structure of The Plan, and suggesting that The Plan follow a CAR, or partnership, model. However, it was determined that this would not be allowed under current IRS regulations. Recently, a meeting was held at ProMutual with Mr. Brewer, ProMutual's Controller, Mr. McGrail, Mr. Edwards and The Plan's attorney, Mr. Valvo, to continue discussion of possible scenarios moving forward.

A scenario was proposed that in the future, towards the end of a given year, MMMRP could look forward to budget all expenses (loss, loss adjustment and administrative) for the coming year, and then assess that amount to the companies. Then at the end of that year, true up by either assessing more money if we were short, or in the event of a surplus, roll that over to the estimations for the following year. In this scenario, there would also be a cushion of money to keep part of our reserves to eliminate the possibility of being way off on estimates. In doing so, this would change ProMutual's matrix and allow for the potential of additional cedings to MMMRP.

It was further discussed that the only downside to such a plan, would be if ProMutual or MedPro becomes insolvent or goes out of business in that year. If such a rare instance were to occur, it could be devastating to the remaining MMMRP member companies who could risk a huge assessment not in line with their business with The Plan. To that end, the committee discussed commissioning the actuaries to conduct a probability study to determine the likeliness of ProMutual or MedPro going out of business.

Mr. McGrail stated that the next step in this process is a conference call with MedPro set up for Wednesday, November 25, 2009 at 10:00 AM to bring them up to speed. Then the topic will be discussed again at the December 2, 2009 Governing Committee meeting, which MedPro would be invited to attend. Should the Governing Committee want to proceed, we

would have a Public Hearing in Boston and notify all member companies to attend and express pros and cons. Then if the Governing Committee votes to change the structure of The Plan, we would submit changes to the Commissioner that we intend to change The Plan and The Rules. It was added that Jerry Condon and Matt Mancini from the Division of Insurance should be contacted prior to the December 2, 2009 meeting.

6. Other Business

Mr. McGrail noted that the annual Educational Retreat is tentatively scheduled for April 9-11, 2010.

7. Meeting Adjourned

A **motion** was made and duly seconded to adjourn the meeting at 10:10AM. The motion was voted unanimously.

A true record transcribed on November 23, 2009 by Susan S. Smith.

MMMRP Operations & Audit Committee

Action Items: