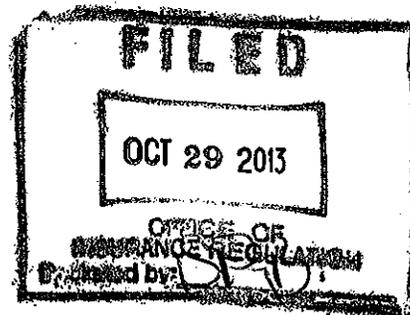




OFFICE OF INSURANCE REGULATION

KEVIN M. McCARTY
COMMISSIONER



IN THE MATTER OF:

**THE FLORIDA MEDICAL MALPRACTICE
JOINT UNDERWRITING ASSOCIATION**
2013 Market Conduct Examination

CASE NO.: 139173-13

CONSENT ORDER

THIS CAUSE came on for consideration as the result of an agreement between the FLORIDA MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION (hereinafter referred to as "FMMJUA" or "ASSOCIATION") and the OFFICE OF INSURANCE REGULATION, (herein referred to as the "OFFICE"). After a complete review of the entire record, and upon consideration thereof, and being fully advised in the premises, the OFFICE hereby finds as follows:

1. The OFFICE has jurisdiction over the subject matter and parties herein.
2. The FMMJUA is a Medical Malpractice Risk Apportionment Plan authorized to transact insurance business in Florida and is subject to the jurisdiction and regulation of the OFFICE pursuant to the Florida Insurance Code.
3. The OFFICE conducted a target market conduct examination of the FMMJUA, in January 2013 pursuant to Sections 624.3161 and 627.351(4), Florida Statutes.
4. The OFFICE issued a Target Market Conduct Examination Report (hereinafter referred to as the "REPORT") on July 17, 2013, detailing the findings of its examination. The REPORT is hereby incorporated in its entirety, by reference. [Attached as Exhibit "A"].

5. As a result, the OFFICE has determined that the FMMJUA violated the following provision of the Florida Insurance Code:

a. Section 627.4085, Florida Statutes. – Failure to provide Producer Information and Producer Signatures required on applications of insurance.

6. The OFFICE and the FMMJUA expressly waive a hearing in this matter, and the making of Findings of Fact and Conclusions of Law by the OFFICE and other proceedings to which the parties may be entitled by law or by the rules of the OFFICE. The FMMJUA hereby knowingly and voluntarily waives all rights to challenge or to contest the provisions of this CONSENT ORDER, in any forum now available, including the right to any administrative proceeding, circuit or federal court action, or any appeal. The FMMJUA hereby acknowledges the OFFICE may re-examine the ASSOCIATION to ensure compliance with the examination recommendations and the terms of this CONSENT ORDER.

7. The FMMJUA agrees that upon the execution of this CONSENT ORDER it shall be subject to the following terms and conditions:

a. The FMMJUA shall pay a penalty of \$5,000.00. The OFFICE waives all penalties provided the FMMJUA complies with the recommendations made in the REPORT.

b. The FMMJUA in addition to the recommendations made in the REPORT shall, within thirty (30) days of the execution of this CONSENT ORDER, provide to the OFFICE a certification signed by an officer of the FMMJUA that operational policies and procedures have been amended requiring applications of insurance received contain necessary information and signatures.

c. The FMMJUA shall henceforth comply with all of the provisions of the Florida Insurance Code and the Florida Administrative Code.

d. The FMMJUA is hereby placed on notice of the requirements of the above referenced sections of law and agrees that any future violations of these sections by the ASSOCIATION may be deemed willful, subjecting the FMMJUA to appropriate penalties.

8. The FMMJUA agrees that the failure to adhere to one or more of the above terms and conditions of this ORDER shall constitute a violation of a lawful order of the OFFICE, and shall be subject to such administrative action as the OFFICE may deem appropriate.

9. Except as noted above, each party to this action shall bear its own costs and attorney's fees.

10. THEREFORE, the agreement between The FLORIDA MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION and the OFFICE OF INSURANCE REGULATION, the terms and conditions of which are set forth above, is APPROVED.

FURTHER, all terms and conditions above are hereby ORDERED.

DONE AND ORDERED this 29TH day of OCTOBER 2013.



A handwritten signature in black ink, appearing to read "Kevin M. McCarty". The signature is written over a horizontal line that serves as a baseline for the signature.

KEVIN M. McCARTY
Commissioner
Office of Insurance Regulation

By execution hereof, THE FLORIDA MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION consents to entry of this Consent Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents that he or she has the authority to bind THE FLORIDA MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION to the terms and conditions of this Consent Order and has personal knowledge of the Application and the information provided therein.

THE FLORIDA MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION

Corporate Seal

By *Preston E. Cowie*

Preston E. Cowie

Print or Type Name

Title: General Manager

Date: October 24, 2013

STATE OF Florida

COUNTY OF Leon

The foregoing instrument was acknowledged before me this 24 day of October 2013,
by Preston E Cowie as General Manager
for FmmJ49.

Frankie Cowie
(Signature of the Notary)

Frankie Cowie
(Print, Type or Stamp Commissioned Name of Notary)

Personally Known or Produced Identification _____

Type of Identification Produced _____

[NOTARIAL SEAL]

My Commission Expires:

 FRANKIE COWIE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE122848
Expires 9/18/2015

COPIES FURNISHED TO:

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THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION
MARKET INVESTIGATIONS

TARGET MARKET CONDUCT FINAL EXAMINATION REPORT

OF

THE FLORIDA MEDICAL MALPRACTICE

JOINT UNDERWRITING ASSOCIATION

As Of

January 18, 2013

NAIC COMPANY CODE: 33626

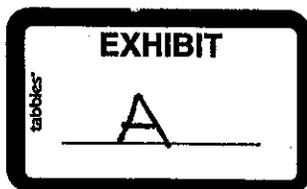


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EXECUTIVE SUMMARY

An operational review of current systems and controls was performed and included the evaluation of processes for corporate records, accounting, complaint handling, underwriting and rating, general claims, legislative changes, and pending litigation. The following information represents general findings; specific details are found in each section of the report.

<u>VIOLATIONS</u>			
Statute/Rule	Description	Files Reviewed	Number of Violations
627.4085	Failure to display agent name/license number, agent signature or insurer name on application.	10	2

PURPOSE AND SCOPE OF EXAMINATION

The Florida Office of Insurance Regulation (Office), Market Investigations, conducted a target market conduct examination of The Florida Medical Malpractice Joint Underwriting Association (FMMJUA or Association) pursuant to Section 624.3161, Florida Statutes. The examination was performed by Examination Resources, LLC. The scope period of this examination was January 1, 2009, through September 30, 2012. The onsite examination began January 7, 2013, and ended January 10, 2013.

The purpose of this examination was to determine FMMJUA's compliance with Florida Statutes, the Florida Administrative Code, its filed plan of operation, and its internal operational procedures. The operational review of current systems and controls included the evaluation of FMMJUA's processes for maintaining corporate records, for general operations, accounting, complaints review, underwriting and rating, general claims review, and responsiveness to legislative changes.

FMMJUA utilizes a service provider, Medical Protective Company (MedPro), to perform all operating activities other than investment management, financial statement preparation, actuarial rate studies and rate filings. Operating activities include underwriting and policy quotation, premium processing, claims processing, risk management services, monthly management reporting, and quarterly Board reporting.

FMMJUA's home office is located at 1836 Hermitage Boulevard Suite 201, Tallahassee, Florida. The examination of records was performed at MedPro's home office located at 5814 Reed Road, Fort Wayne, Indiana. Documentation utilized in this report was provided by the Association, MedPro, the independent auditors, and other external sources.

MedPro performs operations involving FMMJUA's underwriting, premium, and claims handling activities. MedPro's internal controls processes were reviewed for this examination. The review included obtaining and reviewing MedPro's Sarbanes-Oxley/Model Audit Rule (SOX/MAR) documentation. The Public Company Accounting Reform and Investor Protection Act of 2002, otherwise known as the Sarbanes-Oxley Act, or SOX, includes a number of reforms that seek to eliminate conflicts of interest while strengthening companies' internal controls over financial reporting. As FMMJUA premium and underwriting was immaterial to the MedPro SOX/MAR review and not included, independent testing was performed during this examination in these areas. The information review conducted of MedPro's SOX/MAR included a review of claims which provided evidence of adequate controls and testing.

This Report is based upon information obtained during the examination, additional research conducted by the Office, and additional information provided by the Association. Each finding by the Office was provided to the FMMJUA. Procedures and conduct of the examination were in accordance with the *Market Regulation Handbook* and the *Financial Condition Examiners Handbook* produced by the National Association of Insurance Commissioners.

OPERATIONS REVIEW

Corporate Records

The FMMJUA is a state-sanctioned residual market insurance plan providing medical malpractice coverage. The FMMJUA is an insurance risk apportionment plan created by the Florida Legislature in 1975 pursuant to Section 627.351, Florida Statutes, for the purpose of assuring the availability of professional liability malpractice insurance to Florida healthcare providers who can not obtain coverage in the open market. It is structured on a non-profit basis, but otherwise functions in much the same manner as a commercial insurance company. The Office approves the Association's plan of operation. To assure rates are adequate to pay claims and expense experience, the Association files with the Office for approval, as required by Section 627.351(4), Florida Statutes, plan rates adequate to pay claims and expense experience.

FMMJUA professional liability policies offer coverage for individual physicians, surgeons, dentists, nurses, physician partnerships or corporations, hospitals, medical facilities and other health care providers. Florida Statutes provide that "for those hospitals licensed under Chapter 395 whose policies have been canceled since April 1, 1975, that have not been able otherwise to secure coverage in the standard market, the plan shall provide continuous coverage at the limits available in the plan from the above date." The Association began accepting applications on July 1, 1975.

The Association operates under the supervision of a nine-member Board of Governors. The Board is comprised of five representatives of the insurers participating in the Association, an attorney named by the Florida Bar, a physician named by the Florida Medical Association, a dentist named by the Florida Dental Association and a hospital representative named by the Florida Hospital Association.

Section 627.351(4)(d)1., Florida Statutes, requires that the FMMJUA develop adequate rates to pay claims and expenses, develop a means of obtaining loss and expense experience, and file such experience with the Office for review.

The examination testing procedures included review of:

- The Plan of Operation;
- Board and Committee Meeting Minutes;
- Reports of external audits performed during the scope of the examination;
- FMMJUA's Organizational Chart; and,
- Remediation efforts towards findings reported at the prior examination.

The prior examination, performed as of December 31, 1997, reported five violations of the Florida Insurance Code. A review of the FMMJUA's current processes indicates that the Association has taken action to remediate these findings in four of the five situations. A review of the FMMJUA's current processes reflects that the Association has not remediated the violation related to the display of the agent name/license number or insurer name on applications as required by Section 627.4085, Florida Statutes.

Finding

Based upon a review of ten applications, two applications did not contain producer information. Section 627.4085, Florida Statutes, prescribes that applications shall disclose the name and license identification number of the producing agent as shown on the agent's license issued by the department.

Recommendation

The FMMJUA requires applications to be prepared for both new and renewal business. Although the application form specifies that the producer must sign the application, two renewal applications were missing the producer information.

Applications should be prepared and processed in accordance with the specified application form requirements and as required in Section 627.4085, Florida Statutes. The FMMJUA should modify the renewal process to insure that the necessary information is obtained.

Response

The FMMJUA agreed with the examination finding. The FMMJUA response specified that the renewal application will contain the required information consistent with Section 627.4085, Florida Statutes.

GENERAL OPERATIONS

Assessments

The FMMJUA Board possesses the authority to levy assessments, subject to the approval of the Office, in the event that a deficit occurs. The Plan of Operations states that a deficit is realized whenever the sum of the premiums, premium contingency assessments, and the investment income is less than the sum of the total incurred losses (including losses incurred but not reported), costs and expenses of the Association.

If the FMMJUA experiences a deficit from losses in a policy year then each policyholder for that policy year shall pay to the Association a premium contingency assessment not to exceed one-third of the annual premium payment paid by each policyholder to the Association.

Any deficit remaining after collecting the maximum allowable premium contingency assessment is recovered from the member insurers participating in the plan. The proportionate share of multi-peril policy premiums to be used in determining participation ratios shall be determined by the Board and approved by the Office.

Findings

The FMMJUA did not levy any deficit assessments during the examination period.

Refunds

The FMMJUA Board may authorize refunds in the event the funds accumulated by the

Association from premiums, premium contingency assessments and investment income exceed the total incurred losses (including losses incurred but not reported), costs and expenses of the Association. Such excess shall be refunded to the policyholders in proportion to the earned premium in accordance with procedures adopted by the Board.

Findings

The FMMJUA did not authorize any refunds during the examination period.

Grants

Funds may be available for a grant program if any surplus is remaining after payment of claims, expenses, and premium refunds to policyholders. A transfer may be made for all or part of the excess to one or more agencies or institutions in the State of Florida whose function includes activities intended to improve the safety of health care services. A Grant Program was established in 2007 with available funds of up to \$2,000,000, awardable to any one agency, or distributed in lesser amounts to any number of applicants.

Findings

From the inception of the grants program in August 2007, through the fiscal year end June 30, 2011, the Association has awarded \$1,610,588.00 in grants, including expenses.

Reinsurance

The FMMJUA does not assume or cede reinsurance risk. As previously described, the FMMJUA provides for its cash needs through assessments and has no letters of credit, lines of credit or bond issues outstanding.

Service Provider

The FMMJUA contracts with Medical Protective Company (MedPro) to handle operating activity other than investment management, financial statement preparation, actuarial rate studies, and rate filings. Operating activities provided include underwriting and policy quotation, premium processing, claims processing, risk management services, monthly management reporting, and quarterly Board reporting.

MedPro, located in Fort Wayne, Indiana, is an American healthcare malpractice liability insurer providing coverage designed for physicians, dentists and many other medical healthcare providers and facilities. Its products are distributed through a network of employee market managers and appointed agents. In 2005, Berkshire Hathaway purchased Medical Protective Company from General Electric. MedPro meets the eligibility requirements as specified in the Association's Plan of Operation.

In addition to MedPro, the Association retains Milliman, Inc., to perform rate studies and analysis of incurred losses. Douglas Capital Management, Inc. manages the FMMJUA investments based upon a Board approved investment policy. Sanders, Holloway & Ryan perform the annual audit of FMMJUA's financial statements. Rate filing is done internally prior to filing with the Office for approval.

Management

The FMMJUA is managed by a General Manager and one Administrative Assistant. The Association is directed by a Board of Governors (Board) that meets annually to review, amend and adopt policies, and adopt plans for the upcoming year.

Staffing needs are minimized due of the extensive use of third party service providers. The Association's General Manager invests the funds of the FMMJUA; establishes and monitors the annual budget; evaluates and recommends outside service providers; makes rate filings; and communicates as needed with the Office.

ACCOUNTING

A review of FMMJUA's accounting processes and procedures was completed for the period under examination. The testing included the following procedures:

- Verification that the Association trial balances agreed with the audited financial statements at June 30, 2011;
- Verification that the Association completed all filings as required by the Office and the State of Florida Department of Financial Services.

The FMMJUA completed an annual audit of its financial statements for the reporting periods ending June 30, 2011, 2010 and 2009. The audits were performed by the accounting firm of Sanders, Holloway & Ryan (CPA). The CPA did not perform auditing procedures on the Incurred But Not Reported (IBNR) Reserves, and, as a result, issued qualified opinions. The opinion stated that except for the effects of such adjustment, if any, as might be necessary to the IBNR loss reserves, the financial statements present fairly, in all material respects, the assets, liabilities, and reserves for unearned premiums. The reserves were, however, independently reviewed.

The FMMJUA retained Milliman, Inc., (Milliman) for the purpose of analyzing ultimate loss and loss adjustment expenses incurred by the FMMJUA through June 30, 2011. The ultimate incurred losses are used by FMMJUA to determine its unpaid claim liability. The Milliman ultimate loss and loss adjustment expenses incurred have decreased by approximately \$7.4 million dollars for all FMMJUA business combined. This reduction is due to better-than-expected loss experience.

COMPLAINTS REVIEW

The FMMJUA's complaints can initiate from various sources including Florida Regulatory, Legislative, and Executive offices, as well as directly from consumers.

Findings

The FMMJUA did not have any complaints reported during the examination period.

UNDERWRITING AND RATING REVIEW

The FMMJUA retains Milliman, Inc., on an annual basis to perform rate studies. Rate studies include assessing base rate changes, territory changes, class relativity changes, actual loss experience, and rates relative to the market. Based upon the results of the rate studies, Milliman provides the Association with rate change recommendations.

The Milliman report and recommendations are provided to the Board of Governors for review. Upon review and approval of rates by the Board, the FMMJUA files the rates with the Office for approval prior to implementing any rate changes.

The only eligibility requirement for coverage through the Plan is that the applicant possess a valid Florida Medical Provider license as defined by Florida Statutes. Other than manually verifying that the applicant has a proper license, the underwriting process is automated. Premiums, as determined by Milliman and approved by the Board and the Office, are pre-loaded into the rating system. The applicant information is entered into the system, which generates quotations.

MedPro adheres to underwriting guidelines specified in the FMMJUA Manual of Rules and Rates. As the FMMJUA underwriting and premiums are not considered material to MedPro's overall activity, it is not covered under MedPro's SOX/MAR internal control review process. Because of this, independent testing was performed during the examination to verify that the FMMJUA underwriting/premium process is in compliance with required statutes and Association established practices.

Examination testing procedures included reviewing FMMJUA:

- Underwriting rules, practices and rates utilized during the scope period;
- Plan of Operation during the scope period;
- Randomly selected files to determine eligibility, compliance with rule and rate filings, Florida Statutes, Plan of Operation; and,
- Randomly selected files to verify compliance with prior examination and audit underwriting recommendations.

Findings

Based upon testing performed, no compliance issues were noted with the operating plan and Florida statutes.

GENERAL CLAIMS REVIEW

Claims Summary as of the June 30th End of Fiscal Year:

Description	2009	2010	2011	2012
Claims Open at Beginning of Year	112	87	85	71
Claims Initiated During the Year	49	53	33	26
Claims Closed During the Year	74	55	47	33

Claims Open at End of Year	87	85	71	64
Number of Claims Paid	42	36	31	16
Amount Paid	\$5,679,000	\$3,776,650	\$3,374,499	\$2,051,249

MedPro provides all claims administration services to the FMMJUA in accordance with FMMJUA Claims Guidelines.

MedPro is domiciled in Indiana and is subject to financial examinations as determined by the Indiana Department of Insurance. A financial examination of Medical Protective Company was performed for the 2004 to 2008 period. There were no adjustments or recommendations noted.

MedPro engaged Crowe Howarth, LLP, to perform its annual financial audit for 2011. Crowe Howarth issued an unqualified opinion. Crowe Howarth also issued an internal control letter accompanying the audit financial statements. The internal control letter noted that no internal control material weaknesses were identified during the audit examination.

MedPro maintains a SOX/MAR internal control process. The FMMJUA claims activity controls and testing are included in the SOX/MAR claims process review. Procedures in the examination included reviewing:

- FMMJUA's claim manual;
- MedPro's claims process narratives;
- A list of all claims reported during the scope period; and,
- Internal control lists, walkthroughs, 2012 and 2011 test plans and results.

MedPro did not identify any significant deficiencies that impacted the effectiveness of the controls.

Findings

Based upon the claims review performed, no compliance issues were noted with the Plan of Operation and Florida Statutes.

ADOPTION OF LEGISLATIVE CHANGES

As part of the examination, a review was conducted of the processes and controls the FMMJUA has in place to monitor and communicate legislative changes affecting the Association's operations.

Findings

There have been no legislative provisions adopted into Florida law during the examination period that directly affect the Association. FMMJUA demonstrated adequate processes and controls to monitor and communicate legislative changes to the Board and Management.

PENDING LITIGATION

The FMMJUA is a named defendant in various legal actions arising in the normal course of business from claims made under insurance policies and contracts. These actions are considered by the FMMJUA in estimating the loss and LAE reserves. FMMJUA management believes that the resolution of these actions will not have a material adverse effect on the Association's financial position or results of operations.

EXAMINATION REPORT SUBMISSION

The Office hereby issues this report as the Final Report, which is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by the Association.