REPORT ON EXAMINATION

OF THE

PUPIL BENEFITS PLAN, INC.

AS OF

DECEMBER 31, 2007

DATE OF REPORT **DECEMBER 14, 2009**

EXAMINER **GARY J. PRESSER**

TABLE OF CONTENTS

STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

James J. Wrynn
Superintendent

December 14, 2009

Honorable James J. Wrynn
Superintendent of Insurance
Albany, New York 12257

Sir:

Pursuant to the provisions of the New York Insurance Law, and acting in accordance with the instructions contained in Appointment No. 22748, dated February 5, 2008, attached hereto, I have made an examination into the condition and affairs of Pupil Benefits Plan, Inc., a not-for-profit corporation licensed pursuant to Article 43 of the New York Insurance Law, as of December 31, 2007 and respectfully submit the following report thereon.

The examination was conducted at the Plan's home office located at 101 Dutch Meadows Lane, Glenville, New York 12302.

Whenever the designation, "the Plan" appears herein, without qualification, it should be understood to indicate Pupil Benefits Plan, Inc.

1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 2003. This examination covered the four-year period from January 1, 2004 through December 31, 2007. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities as of December 31, 2007, in accordance with Statutory Accounting Principles as adopted by this Department, a review of income and disbursements deemed necessary to accomplish such verification and, to the extent considered appropriate, utilized work performed by the Plan's independent certified public accountants. A review or audit was also made of the following items as called for in the *Examiners Handbook of the National Association of Insurance Commissioners* (NAIC):

History of the Plan
Management and controls
Corporate records
Fidelity bonds and other insurance
Officers' and employees' welfare and pension plans
Territory and plan of operation
Growth of the Plan
Loss experience
Accounts and records
Market conduct activities

A review was also made to ascertain what action was taken by the Plan with regard to comments and recommendations in the prior report on examination.

This report on examination is confined to financial statements and comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

2. EXECUTIVE SUMMARY

- The Plan failed to comply with the maximum administrative expense limitation prescribed by Section 4309(a)(2) of the New York Insurance Law. A similar finding was included in the prior report on examination**.**

- The Plan issued explanation of benefits statements (EOBs) which did not contain all of the requisite information prescribed by Section 3234 of the New York Insurance Law. A similar finding was included in the prior report on examination.

3. DESCRIPTION OF THE PLAN

Pupil Benefits Plan, Inc. is a medical expense indemnity corporation, organized under Article 43 of the New York Insurance Law. It commenced business on July 18, 1941.

During the examination period, the Plan incorrectly reported on the Jurat Page of statements filed with the Department that the Plan was incorporated and commenced business on July 1, 1941.

It is recommended that the Plan report the proper date of its incorporation and commencement of business within its future statutory filings with this Department.

A. Management and Controls

Pursuant to the Plan's charter and by-laws, management of the Plan is vested in a board consisting of twenty-four members, who are elected annually.

The board meets at least once during each calendar year in accordance with its by-laws.

The directors of the Plan, as of December 31, 2007, were as follows:

Name and Residence	Principal Business Affiliation
Provider Representatives	
Donald W. Henline, M. D. Potsdam, New York	Orthopedic Surgeon
Frank Segretto, M. D. Ronkonkoma, New York	Orthopedic Surgeon
Lawrence Wiesner, M.D. Binghamton, New York	Orthopedic Surgeon
Public Representatives	
David Civale, D.C. Scotia, New York	Chiropractor
Scott Dinse, P.T. Wilson, New York	Director of Physical Therapy & Athletic Training, University of Buffalo.
Daniel MacGregor, North Warren, New York	Retired Superintendent, North Warren Central School District
Name and Residence	Principal Business Affiliation
Steven O'Shea, Bethlehem, New York	Assistant Superintendent, Bethlehem Central School District

Michael Picciano, Weedsport, New York	Retired Superintendant, Weedsport Central School District
Virginia Plaisted, D.D.S. Delmar, New York	Dentist
Dale Schumacher, Whitney Point, New York	Retired Superintendent, Whitney Point Central School District
Martha Slack, Massena, NY	Retired Athletic Director, Massena Central School District
John Wells, Camden, NY	Athletic Director, Camden Central School District

Subscriber Representatives

David Alena, Lyons, New York	Assistant Superintendent, Lyons Central School District
Richard Freyman, Bronxville, New York	Assistant Superintendent, Bronxville Union Free School District
Thomas Heinzelman, Hudson Falls, New York	Athletic Director, Hudson Falls Central School District
Douglas Kenyon Glen Falls, New York	Executive Director, New York State Public High School Athletic Association, Section II
Michael Marcelle, Scotia - Glenville, New York	Superintendent, Scotia-Glenville Central School District
Michael McCarthy, Mechanicville, New York	Secretary, Pupil Benefits Plan, Inc.
Clifford Moses, Galway, New York	Superintendent, Galway Central School District
Dean Veenof, Gilbertsville, New York	Past (Former) President, New York State Public High School Athletic Association

Name and Residence	Principal Business Affiliation
W. Bruce Wadkins, M.D. New Rochelle, New York	Assistant Superintendent, Briarcliff Manor Union Free School District
Jonathan Whelan, Johnstown, New York	Superintendent, Greater Johnstown Central School District
Theodore Woods North Rose, New York	Retired Executive Secretary, New York State Public High School Athletic Association, Section V
Officer-Employee Representatives	
Carol Rog, Barneveld, New York	President, Pupil Benefits Plan, Inc.

According to the Plan's by-laws, the majority of members of the board shall be designated representatives of the member schools of the New York State Public High School Athletic Association. The Plan's by-laws further state that at least one-fourth of the directors shall be persons other than physicians and/or dentists and at least one-fifth shall be physicians and/or dentists licensed to practice medicine in the state of New York.

Section 4301(k)(1) of the New York Insurance Law states in part:

> "…Not more than one-fifth of the directors of any such corporation shall be persons who are licensed to practice medicine in this state (other than physicians employed on a full-time basis in the fields of public health, public welfare, medical research or medical education…"

As noted above, the Plan's by-laws conflict with the above section of the New York Insurance Law.

It is recommended that the Plan amend its by-laws to reflect compliance with Section 4301(k)(1) of the New York Insurance Law.

It is further recommended that the Plan's board be constructed to comply with Section 4301(k)(1) of the New York Insurance Law.

The minutes of all meetings of the board of directors and committees thereof held during the examination period were reviewed. All board and committee meetings held during the examination period were well attended with every member attending at least 50% of the meetings they were eligible to attend.

The principal officers of the Plan at December 31, 2007 were as follows:

Name	Title
Carol Rog	President
Daniel MacGregor	Vice-President
Michael McCarthy	Secretary
Thomas McGuire	Treasurer

B. Territory and Plan of Operation

The Plan is authorized to operate throughout New York State. All business is conducted from its home office in Glenville, New York.

The Plan provides medical, hospital and dental benefits for accidental bodily injuries sustained by elementary and high school students while engaging in school sponsored activities. Benefits under the Plan's policies are secondary; therefore, all other primary insurance policies must be exhausted before payment may be made by the Plan. The Plan's maximum exposure per injury is $50,000.

Enrollment in the Plan is achieved by means of group contracts made with elementary, middle and high schools registered and approved by the Board of Regents of the State of New York. For the 2006/2007 school year, the Plan insured 357 schools with approximately 732,000 insured students. The table below indicates the direct premiums written during the examination period.

Year	Direct Premiums Written
2004	$3,350,399
2005	$3,680,147
2006	$4,096,405
2007	$4,526,244

C. Reinsurance

The Plan did not maintain any reinsurance arrangements during the period under examination.

D. Significant Operating Ratios

The following ratios have been computed as of December 31, 2007 based upon the results of this examination:

Net premiums written (2007) to Surplus	2 to 1
Cash and invested assets to Unpaid claims	306.8%
Surplus to Unpaid claims	91.0%
Claims and expenses paid to premiums written for the year ending December 31, 2007	93.3%

The underwriting ratios presented below are on an earned-incurred basis and encompass the four year period covered by this examination:

	Amount	Ratio
Claims incurred	$13,991,206	89.38%
Claims adjustment expenses incurred	1,199,323	7.66%
Other underwriting expenses incurred	2,354,938	15.04%
Premium deficiency reserve	95,000	0.61%
Net underwriting loss	(1,987,272)	(12.69%)
Premiums earned	$15,653,195	100.00%

E. Limitation of Expenses

In accordance with the provisions of Section 4309(a)(2) of the New York Insurance Law, the Plan's expenditures during any one year for expenses other than benefit payments made to or on behalf of persons covered under contracts issued by the Plan, are limited to 19% of its premiums received during such year.

Section 4309(a)(2) of the New York Insurance Law states in part:

> "No corporation subject to the provisions of this article shall, during any one year, disburse more than the percentages hereafter prescribed of the aggregate amount of the premiums received during such year as expenditures for expenses…twenty per centum reduced by one per centum for each five million dollars or fraction thereof above one million dollars of premiums received…"

The examination review revealed that the Plan's ratio of expenses paid to direct premiums written, for each of the four years under examination, was above the maximum ratio mandated by Section 4309(a)(2) of the New York Insurance Law, as follows:

Year	Direct Premiums Written	Expenses Paid	Plan's Expense Ratio	Maximum Expense Ratio per Section 4309(a)(2) of the NYIL
2004	$3,350,399	$795,609	23.75%	19%
2005	$3,680,147	$803,180	21.82%	19%
2006	$4,096,405	$861,044	21.02%	19%
2007	$4,526,244	$1,094,428	24.18%	19%

It is recommended that the Plan comply with the requirements of Section 4309(a)(2) of the New York Insurance Law relative to the limitation of expenses. A similar recommendation was included in the prior report on examination.

F. Approval of Investments

Section 1411(a) of the New York Insurance Law, states:

> "No domestic insurer shall make any loan or investment, except as provided in subsection (h) hereof, unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan. The committee's minutes shall be recorded and a report submitted to the board of directors at its next meeting."

A review of the minutes of the Plan's board of directors and executive committee meetings held during the examination period revealed that the Plan failed to comply with the requirements of Section 1411(a) of the New York Insurance Law. Investment reports were provided to the board of directors on a periodic basis; however, specific investments were neither approved by the board nor by any committee thereof.

It is recommended that the Plan comply with the investment approval requirements of Section 1411(a) of the New York Insurance Law. A similar recommendation was included in the prior report on examination.

G. CPA Contracted Duties

The Plan contracts with an independent certified public accountant (CPA) to perform the audit of its GAAP financial statements. In addition to this, such CPA firm also provides accounting services to the Plan for a negotiated fee, which includes: receiving financial information from the Plan; maintaining the general ledger of the Plan and posting entries to the Plan's general ledger, which are later reviewed and approved by the Plan's Treasurer.

Further, such CPA firm also compiled the data from the Plan's books of account to complete the New York statutory "Annual", "Quarterly" and "Supplement" filings during the examination period.

The American Institute of Certified Public Accountants (AICPA) has the following rule in place:

> **01 Rule 101—Independence.**
>
> "A member in public practice shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council".

It appears that the Plan's contracting arrangements with its CPA firm relative to services performed have violated the AICPA's rule regarding independence of duties performed by its CPA firm.

It is recommended that the Plan incorporate the principle of segregation of duties and cease the practice of having its CPA firm perform accounting and ancillary functions on the Plan's books of account that such CPA firm also audits.

It is also recommended that the Plan's board of directors review the practice of having its CPA firm conduct duties which appear to be in conflict with AICPA .01 Rule 101.

4. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities, capital and surplus as determined by this examination and as reported by the Plan as of December 31, 2007 (as per a revised filing made on October 23, 2008). This statement is the same as the balance sheet filed by the Plan.

Assets	Examination	Plan
Bonds	$4,703,716	$4,703,716
Common stocks	791,341	791,341
Real estate	292,386	292,386
Cash and short-term investments	2,405,009	2,405,009
Investment income due and accrued	52,929	52,929
Uncollected premiums	92,097	92,097
Health care and other receivables	17,599	17,599
Total assets	$8,355,077	$8,355,077
Liabilities		
Claims unpaid	$2,670,000	$2,670,000
Unpaid claims adjustment expenses	277,190	277,190
Aggregate health policy reserves	95,000	95,000
Premiums received in advance	2,396,442	2,396,442
General expenses due or accrued	536,591	536,591
Aggregate write-ins for other liabilities	15,499	15,499
Total Liabilities	$5,990,722	$5,990,722
Capital and surplus		
Statutory reserve	$ 608,983	$ 608,983
Unassigned funds (surplus)	1,755,372	1,755,372
Total reserves and unassigned funds	$2,364,355	$2,364,355
Total liabilities, capital and surplus:	$8,355,077	$8,355,077

Note: The Internal Revenue Service has not conducted any federal income tax audits of the Plan through tax year 2007. . The examiner is unaware of any potential exposure of the Plan to any tax assessment and no liability has been established here in relative to such contingency.

B. Statement of Revenue, Expenses and Capital and Surplus

Capital and surplus decreased $1,460,578 during the four-year examination period, January 1, 2004 through December 31, 2007, detailed as follows:

Revenue		
Net premium income	$15,653,195	
Net investment income	650,024	
Net realized capital gain	95,344	
Other income	134,702	
Total revenue		$ 16,533,265
Expenses		
Claims incurred	$13,991,206	
Claims adjustment expenses	1,199,323	
General administrative expenses	2,354,938	
Premium deficiency reserve	95,000	
Total expenses		17,640,467
Net loss before federal and foreign income taxes		$ (1,107,202)
Federal and foreign income taxes incurred		(104,817)
Net loss		$(1,002,385)

Changes in Capital and Surplus

	Gains in Surplus	Losses in Surplus	
Capital and surplus per report on examination as of December 31, 2003			$ 3,824,933
Net loss		$(1,002,385)	
Change in net unrealized capital gains	$49,740		
Change in not admitted assets		(67,933)	
Aggregate write-ins for losses in surplus	0	(440,000)	
Net decrease in capital and surplus			(1,460,578)
Surplus per report on examination as of December 31, 2007			$ 2,364,355

5. CLAIMS UNPAID

The examination liability of $2,670,000 for the above captioned account is the same as the amount reported by the Plan in its filed annual statement as of December 31, 2007.

The examination analysis of the claims unpaid reserve was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Plan's internal records and its filed annual statements as verified by the examiner during the examination. The examination reserve was based upon actual payments made through a point in time, plus an estimate for claims remaining unpaid at that date. Such estimate was calculated based on actuarial

principles, which utilized the Plan's experience in projecting the ultimate cost of claims incurred on or prior to December 31, 2007.

6. MARKET CONDUCT ACTIVITIES

In the course of this examination, a review was made of the manner in which the Plan conducts its business practices and fulfills its contractual obligations to policyholders and claimants. The review was general in nature and is not to be construed to encompass the more precise scope of a market conduct examination. The review was directed at the practices of the Plan in the following major areas:

A. Claims Processing
B. Explanation of Benefits Statements

A. Claims Processing

A claims review was performed by using a limited, stop and go sampling methodology, stratified by dollar value and adjudication code, covering the claims processed in 2007, in order to evaluate the overall accuracy and compliance environment of the Company's claims processing.

The stratified sampling process, which was performed using ACL for Windows©, an auditing software program, was devised to test various attributes deemed to be necessary for the successful processing of claims. The objective of the sampling process

was to be able to test and reach conclusions about all predetermined attributes, individually or on a combined basis. For example, if ten attributes were being tested, conclusions about each attribute individually or on a collective basis could be concluded for each item in the sample. The review incorporated processing attributes used by the Plan in its analysis of claims processing. The sample size was comprised of 33 claims.

There were no errors noted with regard to the thirty-three claims reviewed.

During the aforementioned claims review, it was noted that the Plan maintains a claims status entitled, "Settled/No Payment", which denotes that such claims have not reached final adjudication. In cases where the Plan receives a claim form and a bill and then requests an EOB from the primary insurance carrier but does not receive it, the Plan's practice is to keep the claim open as pending.

It is also the Plan's practice to keep claims open as pending with a status "Awaiting Requested Information", if no information is received within 30 days of the request for information. The Plan sends a letter informing the recipient that the claim is being made inactive, but would be processed at the time that the requested information is submitted. The claim may reside for six years in the claims system without ever being truly adjudicated; even if the claim has no real reasonable possibility of ever having to be paid. The claims are purged from the system after six years.

It is recommended that the Plan adopt procedures to complete the adjudication of all claims within twelve months from the date the claim is received.

In addition, it is recommended that the Plan deny claims for which information necessary to process the claim was requested but not received, and issue an EOB to the subscriber in compliance with Section 3234 of the New York Insurance Law.

Similar recommendations were included within the prior report on examination.

B. Explanation of Benefits Statements

As part of the review of the Plan's claims practices and procedures, an analysis of the Explanation of Benefits Statements (EOBs) sent to subscribers and/or providers by Pupil Benefits Plan was performed. An EOB is an important link between the subscriber, provider, and the Plan. It should clearly communicate to the subscriber and/or provider that the Plan has processed a claim and how that claim was processed. It should correctly describe the charges submitted, the date the claim was received, the amount allowed for the services rendered, and show any balance owed by the subscriber. It should also serve as the necessary documentation to recover any money from coordination of benefits with other carriers.

New York Insurance Law Section 3234(a) states in part:

> "Every insurer, including health maintenance organizations … is required to provide the insured or subscriber with an explanation of benefits form in response to the filing of any claim under a policy…"

Section 3234(b) of the New York Insurance Law, states:

> "The explanation of benefits form must include at least the following:
> (1) the name of the provider of service the admission or financial control number, if applicable;
> (2) the date of service;
> (3) an identification of the service for which the claim is made;
> (4) the provider's charge or rate;
> (5) the amount or percentage payable under the policy or certificate after deductibles, co-payments, and any other reduction of the amount claimed;
> (6) a specific explanation of any denial, reduction, or other reason, including any other third-party payer coverage, for not providing full reimbursement for the amount claimed; and
> (7) a telephone number or address where an insured or subscriber may obtain clarification of the explanation of benefits, as well as a description of the time limit, place and manner in which an appeal of a denial of benefits must be brought under the policy or certificate and a notification that failure to comply with such requirements may lead to forfeiture of a consumer's right to challenge a denial or rejection, even when a request for clarification has been made."

A review of a sample of the Plan's paid and denied claims for members/providers residing or located in New York, adjudicated during the year 2007 was performed. The review revealed that EOBs issued by the Plan failed to contain all of the information required by Section 3234(b)(7) of the New York Insurance Law. The Plan's subscribers were thus not informed of their appeal rights. Therefore, all paid or wholly/partially denied claims processed for New York subscribers and/or providers were in violation of Section 3234(b) of the New York Insurance Law.

It was determined that approximately 14,200 deficient EOBs were sent to subscribers and providers during 2007.

As a temporary measure, the Plan, beginning on May 7, 2008, when the above deficiency was brought to the attention of Plan management by the examiner, began including a one-page insert with its issued EOBs that notified payees of their appeal rights.

It is recommended that the Plan issue EOBs that include all of the requisite information required by Sections 3234(a) and (b) of the New York Insurance Law. A similar recommendation was included in the prior report on examination.

7. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 2003, contained the following twelve (12) comments and recommendations (page numbers refer to the prior report on examination):

ITEM NO.		PAGE NO.
1.	It is recommended that the Plan change the composition of its Board of Directors to be in compliance with Section 4301(k)(1)(A)&(B) of the New York Insurance Law. The Plan has complied with this recommendation.	6
2.	In accordance with Section 4301(k)(4) of the New York Insurance Law, it is recommended that Directors Daniel DiChristina, M.D., Barbara Felice, Ritchie Parrotta and Martha Slack forfeit their office immediately. The Plan has complied with this recommendation. Ms. Slack, after being removed and taking a one year hiatus, was reappointed as a director. Her attendance has been satisfactory since her reappointment to the board.	7
3.	It is recommended that the Plan comply with Section 4309(a)(2) of the New York Insurance Law relative to the limitation of expenses. The Plan has failed to comply with this recommendation and a similar recommendation is included within this report on examination.	10
4.	The Plan was in violation of Section 1409(a) of the New York State Insurance Law, which prohibits an insurer to have more than 10% of its net admitted assets invested in any one entity. It is recommended that the Plan comply with the investment limitation of Section 1409(a) of the New York Insurance Law. The Plan has complied with this recommendation.	11

ITEM NO.		PAGE NO.

5. It is recommended that the Plan comply with the requirements of Section 1411(a) of the New York Insurance Law. 12

The Plan has failed to comply with this recommendation and a similar recommendation is included within this Report on Examination..

6. It is recommended that the Plan execute a proper custodian agreement with a bank for its investment and sweep accounts. The custodian agreement should include the prudent protective provisions as set forth in the Department's guidelines. 13

The Plan has complied with this recommendation.

7. It is recommended that the Plan execute a new investment agreement with its investment advisor, which provides for adequate control on the part of the Plan over its securities. It is further recommended that such agreement should preclude the investment advisor from acting as a custodian of the Plan's securities. 13

The Plan has complied with this recommendation.

8. It is recommended that only one person should have the key to the safe where the Plan's blank checks are stored. The Plan's safe should remain locked at all times. In addition, it is recommended that two manual signatures be required for checks over a specified amount that is approved by the Board of Directors. 14

The Plan has complied with this recommendation.

9. It is recommended that the Plan establish a follow-up procedure and send an initial letter of inquiry to the payee for all checks which remain outstanding for six months from the date of issue. 15

The Plan has complied with this recommendation.

ITEM NO.		PAGE NO.
10.	It is recommended that the Plan comply with the Insurance Department Regulation No. 64 (11NYCRR 216.0(e)(6)) and distribute a copy of Regulation No. 64 to every person directly responsible for the supervision, handling and settlement of claims subject to such regulation. It is further recommended that the Plan satisfy itself that all such personnel are thoroughly conversant with, and are complying with Regulation No. 64. The Plan has complied with this recommendation.	20
11.	It is recommended that the Plan adopt procedures to complete the adjudication of all claims within 12 months from the date the claim is received except in specific situations where additional time is warranted. In addition, it is recommended that the Plan deny claims for which information necessary to process the claim was requested, but not received and issue an EOB to the subscriber, in compliance with Section 3234 of the New York Insurance Law. The Plan has failed to comply with these recommendations and similar recommendations included within this report on examination.	21
12.	It is recommended that the Plan issue EOBs that include all of the requisite information required by Sections 3234(a) and (b) of the New York Insurance Law. Accordingly, subscribers will be properly informed of their appeal rights and how their claims are processed. The Plan has failed to comply with this recommendation and a similar recommendation is made in this report.	23

8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

Appointment No. ***22748***

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, **Eric R. Dinallo** , Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Gary Presser

as a proper person to examine into the affairs of the

Pupil Benefits Plan, Inc.

and to make a report to me in writing of the said

Plan

with such information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal of this Department, at the City of New York.

this 5th day of February 2008

Eric R. Dinallo
Superintendent of Insurance