

REPORT ON ORGANIZATION

OF THE

HEALTHCARE PROFESSIONALS INSURANCE COMPANY, INC.

AS OF

DECEMBER 14, 2005

DATE OF REPORT

DECEMBER 15, 2005

EXAMINER

FE ROSALES, CFE

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

December 15, 2005

Honorable Howard Mills  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 22435 dated December 2, 2005 attached hereto, I have made an examination on organization of Healthcare Professionals Insurance Company, Inc. as of December 14, 2005, and submit the following report thereon.

Wherever the designations "the Company" or "HPIC" appear herein without qualification, they should be understood to indicate Healthcare Professionals Insurance Company, Inc.

Wherever the term "Department" appears herein without qualification, it should be understood to mean the New York Insurance Department.

The examination was conducted at the Company's home office located at 217 Great Oaks Boulevard, Albany, New York 12203.

## 1. SCOPE OF EXAMINATION

The examination comprised a complete verification of the issuance of the Company's capital stock, the receipt of capital and surplus funds, and the determination of the Company's assets and liabilities. The records examined were the declaration of intention and charter, the by-laws, the certificate of incorporation, the corporate minutes, the stock register and the custodial agreements entered into by the Company as of the examination date. In addition, an affidavit, appended hereto, was obtained from two officers of the Company indicating that the transactions noted in this report were lawful and bona fide.

## 2. INCORPORATION

Healthcare Professionals Insurance Company, Inc. was incorporated under the laws of the State of New York on June 7, 2005. The Department approved the Company's declaration of intention and charter on the same date. The Company's office is intended to be located at 217 Great Oaks Boulevard, Albany, New York 12203.

The Company's board of directors was comprised of the following thirteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Joseph P. Corcoran Hasbrouck Heights, NJ	Chief Executive Officer, New York Eye and Ear Infirmary
Terence P. Cummings, Esq. Montclair, NJ	Associate Attorney, Ohrenstein & Brown
Patricia A. Kundel Voorheesville, NY	Executive Vice President, HIMCO, Inc.
Dennis Loughridge Guilderland, NY	Chief Financial Officer, Consumer Directed Choices, Inc.
Murray S. Marsh Jamestown, NY	Consultant / Owner, M <sup>2</sup> Associates

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
A. Gordon McAleer Lewistown, PA	President, Lewistown Hospital
Mark D. Morris Niskayuna, NY	President, HIMCO, Inc.
Edward G. Murphy, M.D. Roanoke, VA	President & CEO, Carilion Health System
Bertram Oppenheimer, M.D. Eastchester, NY	Vice President of Health Services, Comprehensive Integrated Solutions, Inc.
Cleo Ostrander Saratoga Springs, NY	Vice President, Finance, HIMCO, Inc.
Mark C. Schoell Orchard Park, NY	Chief Executive Officer, United Memorial Medical Center
Mark W. Thomas, Esq. Rensselaer, NY	Attorney, Wilson, Elser, Moskowitz, Edelman & Dicker
Howard Williams, M.D. Manlius, NY	Physician, Syracuse Urology Associates, PC

As of December 14, 2005, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Murray S. Marsh	Chairman
Edward G. Murphy, MD	Vice Chairman
Mark D. Morris	President and Chief Executive Officer
Dennis Loughridge	Secretary
Mark C. Schoell	Treasurer

### **3. CAPITALIZATION AND SUBSCRIPTION**

Healthcare Professionals Insurance Company (“HPIC”) is a stock company wholly-owned by HANYS Member Hospitals Self-Insurance Trust (“Trust”). The Trust was formed in response to the mandate of the Medical Malpractice Reform Act of 1985.

The Trust represents the interests of over eighty hospitals in New York State. The Trust has caused the organization of HPIC and will be its sole shareholder.

HPIC has an authorized capital of \$10,000,000, consisting of 100 shares of common stock at \$100,000 par value per share. On December 14, 2005, the Company issued 100 shares of its common stock to the Trust for a consideration of \$20,000,000, of which \$10,000,000 was allocated to common stock and \$10,000,000 was paid in and contributed surplus.

In order to fulfill the deposit requirements of Section 4104 of the New York Insurance Law, the Company has placed securities with a par and market value of \$500,000 in a custodial account in the name of “the Superintendent of Insurance of the State of New York” in trust for the security of the policyholders of Healthcare Professionals Insurance Company, Inc.

#### 4. BALANCE SHEET

The following shows the assets, liabilities and surplus as regards policyholders as determined by this examination as of December 14, 2005 and as reported by the Company:

##### Assets

Bonds		\$ 500,000
Short-term investments		<u>19,500,010</u>
Total admitted assets		<u>\$20,000,010</u>

##### Liabilities

Total liabilities		\$0
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##### Capital and Surplus

Common capital stock	\$10,000,000	
Gross paid in and contributed surplus	10,000,000	
Unassigned funds (surplus)	<u>10</u>	
Total surplus as regards policyholders		<u>20,000,010</u>
Total liabilities and surplus as regards policyholders		<u>\$20,000,010</u>

## 5. AUTHORIZATION POWERS AND MINIMUM CAPITAL REQUIRED

The Company is authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

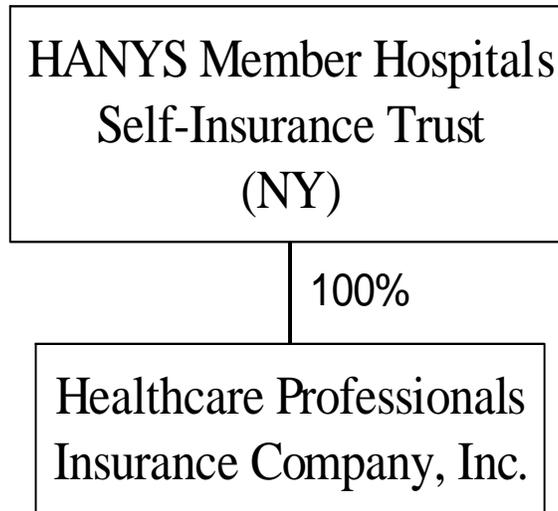
<u>Paragraph</u>	<u>Line of Business</u>
4	Fire
5	Miscellaneous property damage
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
10	Elevator
11	Animal
12	Collision
13	Personal injury liability
14	Property damage liability
15	Workers' compensation and employers' liability
16	Fidelity and surety
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine
21	Marine protection and indemnity

Based on the lines of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$3,800,000.

## 6. AFFILIATED GROUP

Healthcare Professional Insurance Company, Inc. is wholly-owned by HANYS Member Hospitals Self-Insurance Trust.

The following is a chart of the affiliated group at December 14, 2005:



**7. MANAGEMENT, GENERAL SERVICES and FACILITIES AGREEMENT**

The Company will not employ any full-time employees. Effective November 1, 2005, HPIC entered into a management, general services and facilities agreement with Hospital Insurance Management Company, Inc. (“HIMCO”), a New York corporation.

The agreement states that HIMCO shall provide management and financial services to, for and on behalf of HPIC.

In accordance with the agreement, HIMCO’s compensation shall be based and determined upon an annual fee which HIMCO shall develop and submit at least sixty days prior to the end of each year, for the following year, to HPIC for its approval. The amounts set forth in said fee shall be utilized by HIMCO to discharge all ordinary expenses of HPIC, but shall not include start-up costs, allocated loss

expenses, legal expenses or any compensation due to independent service providers engaged by HPIC to provide actuarial, investment, financial, legal or other services which shall be paid by HPIC pursuant to separate agreements to be entered into between HPIC and such independent providers.

## **8. MINIMUM CAPITAL INVESTMENTS**

Section 4103(a) puts forth the financial requirements of a stock insurance company. Section 4103(a) requires a stock insurance company, licensed for the same lines of business as HPIC to have minimum capital of \$3,800,000 and to maintain surplus to policyholders of \$3,800,000.

In view of the above, it appears that HPIC would be required to have minimum capital investments of \$3,800,000 before investing its funds in any other investments.

Further, Section 1402(b) states in part:

“Not less than sixty percent of the amount of the required minimum capital or surplus to policyholder investments shall consist of the types specified in paragraphs one and two hereof:

- (1) Obligations of the United States or of any agency thereof provided such agency obligations are guaranteed as to principal and interest by the United States.
- (2) Direct obligations of this state or of any county, district or municipality thereof”.

Based upon the review of the investment listing and bank confirmation, it appears that HPIC did not satisfy the minimum capital investment requirements inasmuch as CMG Short-term Bond Fund and Columbia Core Bond Fund securities are not considered eligible in accordance with Section 1402(b) of the New York Insurance Law.

Thus, it is recommended that the Company comply with Section 1402(b) of the New York Insurance Law and replace the ineligible investments.

It should be noted that subsequent to the examination date, the Company replaced ineligible investments to comply with the above recommendation.

## **9. CUSTODIAL AGREEMENT**

The review of the Bank of America custodial agreement for Healthcare Professionals Insurance Company, Inc. revealed that the agreement lacks five of the twelve NAIC Custodial Agreement provisions. The provisions missing are as follows:

1. That the national bank, state bank, or trust company, as custodian is obligated to indemnify the insurance company for any insurance company's loss of securities in the custodian's custody, except that, unless domiciliary state law, regulation, or administrative action otherwise require a stricter standard, the bank or trust company shall not be so obligated to the extent that such loss was caused by other than the negligence or dishonesty of the custodian;
2. That in the event of a loss of the securities for which the custodian is obligated to indemnify the insurance company, the securities shall be promptly replaced or the value of the securities and the value of any loss of rights or privileges resulting from said loss of securities shall be promptly replaced; and may provide;
3. That the national bank, state bank or trust company as custodian shall not be liable for any failure to take any action required to be taken hereunder in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosions, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control;
4. That in the event that the custodian gains entry in a clearing corporation through an agent, there should be [an] a written agreement between the custodian and the agent that the agent shall be subjected to the same liability for loss of securities as the custodian. If the agent is governed by laws that differ from the regulation of the custodian, the Commissioner of Insurance of the state of domicile may accept a standard of liability applicable to the agent that is different from the standard liability;

5. That if the custodial agreement has been terminated or if 100% of the account assets in any one custody account have been withdrawn, the custodian shall provide written notification, within three business days of termination or withdrawal, to the insurer's domiciliary commissioner;

It is recommended that the Company amend its custodial agreement to include all the protective covenants and provisions in order to comply with the requirements set forth in the NAIC Financial Condition Examiners Handbook and Department guidelines.

## **10. CONCLUSION**

Based on the foregoing examination, it is concluded that the Company sold 100 shares of common stock with a par value of \$100,000.00 per share. These shares represented the total authorized and issued stock for which the Company received a consideration of \$20,000,000, of which \$10,000,000 represents capital paid in and \$10,000,000 represents gross paid in and contributed surplus.

**11. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Minimum Capital Investments</u>	
	It is recommended that the Company comply with Section 1402(b) of the New York Insurance Law and replace ineligible investments.	9
	Subsequent to the examination date the Company replaced the ineligible investments to be in compliance.	
B.	<u>Custodial Agreement</u>	
	It is recommended that the Company amend its custodial agreement to include all the protective covenants and provisions in order to comply with the requirements set forth in the NAIC Financial Condition Examiners Handbook and Department guidelines.	10





Appointment No 22435

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, HOWARD MILLS, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Fe Rosales**

*as proper person to examine into the affairs of the*

**HEALTHCARE PROFESSIONALS INSURANCE COMPANY**

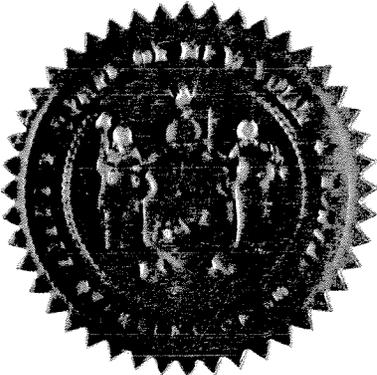
*and to make a report to me in writing of the condition of the said*

**Company**

*with such other information as she 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 2nd day of December, 2005*



A handwritten signature in dark ink, appearing to read "Howard Mills", written over a horizontal line.

HOWARD MILLS  
Superintendent of Insurance