

REPORT ON EXAMINATION

OF THE

HANYS MEMBER HOSPITALS SELF INSURANCE TRUST

AS OF

DECEMBER 31, 2009

DATE OF REPORT

APRIL 29, 2011

EXAMINER

FE ROSALES, CFE

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

April 29, 2011

Honorable James J. Wrynn  
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 30573 dated August 13, 2010 attached hereto, I have made an examination into the condition and affairs of HANYS Member Hospitals Self Insurance Trust as of December 31, 2009, and submit the following report thereon.

Wherever the designation "the Trust" appears herein without qualification, it should be understood to indicate HANYS Member Hospitals Self Insurance Trust.

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 home office of Healthcare Professionals Insurance Company, Inc. ("HPIC") located at 217 Great Oaks Office Park, Albany, New York 12203. HPIC, being a wholly-owned subsidiary of the Trust, provides administrative services to the Trust.

## **1. SCOPE OF EXAMINATION**

The Department has performed a single-state examination of HANYS Member Hospitals Self Insurance Trust. Transactions occurring subsequent to the examination date were reviewed where deemed appropriate by the examiner.

This examination was conducted in accordance with the National Association of Insurance Commissioners (“NAIC”) Financial Condition Examiners Handbook (“Handbook”), which requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Trust by obtaining information about the Trust including corporate governance, identifying and assessing inherent risks within the Trust and evaluating system controls and procedures used to mitigate those risks. This examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management’s compliance with Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations.

All financially significant accounts and activities of the Trust were considered in accordance with the risk-focused examination process. The examiners also relied upon audit work performed by the Trust’s independent public accountants when appropriate.

This examination report includes a summary of significant findings for the following items as called for in the Handbook:

- Significant subsequent events
- History of the Trust
- Trust records
- Management and control
- Territory and plan of operation
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements
- Summary of recommendations

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

## 2. DESCRIPTION OF TRUST

The HANYS Member Hospitals Self-Insurance Trust (“the Trust”) was created by a trust agreement between HANYS Services, Inc. (“HSI”), a for profit, wholly-owned subsidiary of the Hospital Association of New York State (“HANYS”), as trustee, and a group of HANYS member health care facilities, as Grantors of the Trust. The trust agreement was approved by the Department on November 15, 1985.

The Trust was formed in response to the mandate of the Medical Malpractice Reform Act of 1985 (“the Act”). The Act requires every general hospital which maintains facilities for providing emergency medical care to purchase a policy for excess medical malpractice insurance in the amounts of \$1 million per occurrence, \$3 million per policy period, or to provide equivalent excess coverage in a form approved by the Superintendent of Insurance.

Originally, the coverage applied to medical and dental malpractice occurrences between July 1, 1985 and June 30, 1986, affecting physicians and dentists who requested such coverage and who were primarily affiliated with each respective hospital. However, such requesting physicians or dentists must have had, in force, individual policies issued by an insurer, licensed in New York State, providing primary medical malpractice insurance coverage in amounts of no less than \$1 million for each claimant and \$3 million for all claimants, all occurrences.

The purpose of the Trust was to provide equivalent excess coverage to those facilities which had determined that it was preferable to use the Trust in lieu of obtaining commercial insurance coverage in satisfaction of the obligations imposed upon them under the Act.

Section 4 of Chapter 208 of the Laws of 1987, enacted effective July 1, 1987, extended the provisions of the Laws of 1985, allowing health care facilities to purchase such “equivalent excess coverage” for periods after June 30, 1986. As a result, the Trust agreement was amended on August 1, 1987, effective as of July 1, 1986, to provide equivalent excess coverage through the Trust, for the periods from July 1, 1986 through June 30, 1987, and July 1, 1987 through July 31, 1987.

As of August 1, 1987, upon creation of Hany Insurance Company, the Trust discontinued writing any new business. Hany Insurance Company policies were issued to cover the Trust’s insureds for the remaining eleven months of the July 1, 1987 through June 30, 1988 policy year and thereafter.

The Trust is not a licensed insurance company. However, the Trust is subject to regulation by the New York State Insurance Department.

A. Management

In September 1987, the Trust's member hospitals designated a Committee of Grantors as the decision making body for the Trust. As of December 31, 2009, the Committee consisted of the following eight members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Joseph P. Corcoran Hasbrouck Heights, NJ	Consultant to the President, New York Eye and Ear Infirmary
Dennis Loughridge Guilderland, NY	Secretary, Healthcare Professionals Insurance Company, Inc. Chief Financial Officer, Consumer Directed Choices, Inc.
Murray S. Marsh Jamestown, NY	Chairman, Healthcare Professionals Insurance Company, Inc. Consultant/Owner, M <sup>2</sup> Associates
A. Gordon McAleer Goshen, NY	President, McAleer & Associates
Mark D. Morris Niskayuna, NY	President & Chief Executive Officer, Healthcare Professionals Insurance Company, Inc.
Edward G. Murphy, MD Roanoke, VA	Vice Chair, Healthcare Professionals Insurance Company, Inc. President and Chief Executive Officer, Carilion Health System
Bertram J. Oppenheimer Eastchester, NY	Vice President of Health Services, Comprehensive Integrated Solutions, Inc.
Mark Schoell Orchard Park, NY	Treasurer, Healthcare Professionals Insurance Company, Inc. Chief Executive Officer, United Memorial Medical Center

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended and each board member has an acceptable record of attendance.

As of December 31, 2009, the principal officer of the Trust was:

<u>Name</u>	<u>Title</u>
Daniel Del Pozzo	Trustee Representative

B. Territory and Plan of Operation

The Trust was authorized, pursuant to the approved "Trust Agreement", to provide excess medical malpractice insurance only in the State of New York. All policies were written on an occurrence basis, were non-assignable, and if terminated for any reason, paid no return premium. The Trust did not insure any occurrences after July 31, 1987, except as noted below, and was in run-off status as of the examination date.

Effective July 1, 2005, for the first time since 1987, the Trust started writing new business. It is noted that for the six-month period ended December 31, 2005 the Trust wrote business in the amount of approximately \$16.3 million for approximately 9,000 physicians and for the year ended December 31, 2006 it wrote approximately \$21.7 million for approximately 8,600 physicians. Coverage has been authorized for policy periods July 1, 2005 to June 30, 2006 and July 1, 2006 to June 30, 2007.

The Trust's direct written premium for years 2006 through 2009 includes its share of the Medical Malpractice Insurance Pool of New York State ("MMIP") as follows: \$970,940 in 2006; \$1,238,769 in 2007; \$239,210 in 2008; and \$(3,023) in 2009. It should be noted that the Trust had no share in 2005 as the Trust only began writing that year and MMIP has a one year lag. (Refer to the MMIP section further herein for the MMIP description.)

C. Reinsurance

Assumed Reinsurance

The Trust does not assume any business.

Ceded Reinsurance

As indicated in the Affiliated Companies section of this report, the Trust is the parent of a wholly-owned subsidiary, Healthcare Professionals Insurance Company, Inc. ("HPIC"). When HPIC commenced operations in 2006, the Trust ceded excess medical professional liability ("Section 18") business written in 2005 and 2006 to HPIC. Additionally, this treaty also included the Trust's assumed risk by reason of its participation as a member of MMIP. Effective July 1, 2007, the reinsurance treaty covering only the Section 18 business portion was rescinded and replaced with a novation agreement whereby HPIC assumes all liabilities during this period.

Novation Agreement

The Trust entered into a novation agreement effective July 1, 2007 ("novation date") with HPIC. Under this agreement, on the novation date, HPIC was substituted as the insurer under the Section 18 policies in place. Additionally, on and after the novation date, HPIC assumed all of the Trust's interests, rights, duties, liabilities under the Section 18 policies. Furthermore, the agreement states that HPIC will assume all of the Trust's interests, rights and liabilities in connection with MMIP for the periods July 1, 2005 through June 30, 2006, and July 1, 2006 through June 30, 2007.

Examination review of the Schedule F data reported by the Trust in its filed annual statement was found to accurately reflect its reinsurance transactions. Additionally, management has represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in SSAP No. 62. Representations were supported by appropriate risk transfer analyses and an attestation from the Trust's chief executive officer pursuant to the NAIC Annual Statement Instructions. Additionally, examination review indicated that the Trust was not a party to any finite reinsurance agreements. All ceded reinsurance agreements were accounted for utilizing reinsurance accounting as set forth in paragraphs 43 to 47 of NAIC Accounting Practices and Procedures Manual Statements of Statutory Accounting Principles ("SSAP") No. 62.



D. Affiliated Companies

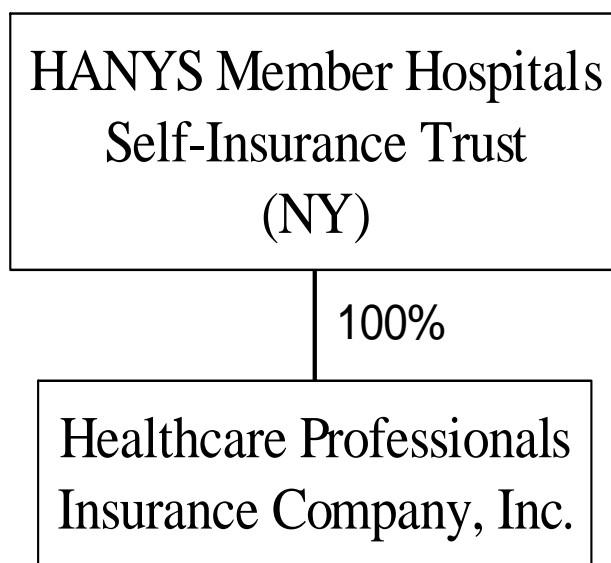
The Trust is the parent of a wholly-owned subsidiary, Healthcare Professionals Insurance Company, Inc. (“HPIC”).

Pursuant to Section 1502(a) of the New York Insurance Law, the Trust is exempt from the filing requirements of Article 15. However, Department Circular Letter No. 10 (2010) requires every insurer that is exempt from Article 15 to submit the same information to the Department pursuant to Section 308 of the New York Insurance Law and to furnish the Department with copies of the insurance holding company system annual registration statement (“NAIC Form B”). It was noted that during the examination period the Trust did not file with the Department the information contained in NAIC Form B.

It is recommended that the Trust file with the Department its annual holding company registration statement (“NAIC Form B”) pursuant to the provisions of Department Circular Letter No. 10 (2010).

Subsequent to the examination date, on March 18, 2011 the Trust filed with the Department, its first annual holding company registration statement.

The following is a chart of the affiliated group at December 31, 2009:



At December 31, 2009, in addition to the novation agreement detailed in the reinsurance section of this report, the Trust was party to the following agreements with its subsidiary, HPIC:

#### Tax Allocation Agreement

The Trust entered into a tax allocation agreement dated July 25, 2007, with HPIC for the filing of consolidated returns for the 2006 tax year and for all tax years thereafter. The agreement is in accordance with Department Circular Letter No. 33 (1979).

#### Reinsurance Agreement

The Trust and HPIC entered into a reinsurance agreement for Section 18 coverage and the MMIP business allocated to the Trust. The Section 18 coverage portion of this reinsurance agreement was rescinded when the novation agreement between the HPIC and the Trust became effective.

#### Management, General Services and Facilities Agreement

HPIC provides administrative support services to its parent, the Trust. During the examination period, specifically years 2008 and 2009, there was no written agreement in place to document the services to be provided by HPIC and the amount for which it was to be compensated. It was indicated that the fees were determined as part of the HPIC budget utilizing work hour estimates for Trust work. However, there is no written documentation for this time study. Good business practices dictate that any service arrangements between two parties should be reduced to written form. Further, Section 1608(c) of the New York Insurance Law, which deals with relationships and transactions between parent and subsidiary, states:

“The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.”

Subsequent to the examination, the Trust entered into a written management, general services and facilities agreement with HPIC effective January 1, 2010.

Nonetheless, it is recommended that in the future, the Trust prepare a written agreement before entering into any service arrangements with its subsidiary in compliance with Section 1608(c) of the New York Insurance Law.

E. Medical Malpractice Insurance Pool

While it actively wrote direct business, the Trust assumed a share of the liabilities incurred by the Medical Malpractice Insurance Pool of New York State, a joint underwriting facility established under Article 55 of the New York Insurance Law and Department Regulation 170. As a writer of medical professional liability insurance in New York, the Trust was required to share in the operations of MMIP based upon its proportionate market share of the New York medical professional liability insurance market. MMIP is a state created insurance pool designed to provide insurance to all physicians and medical professionals who cannot obtain medical professional liability insurance through the voluntary market.

In accordance with SSAP No. 63 – paragraph 8, the Trust’s share of such business was recorded as if it was directly written.

F. Significant Operating Ratios

The following ratios have been computed as of December 31, 2009, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	0%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	18%
Premiums in course of collection to surplus as regards policyholders	0%

All of the above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

G. Accounts and Records

i. Trust Administrative Fees

The Trust Agreement, effective November 12, 1985, stated the following regarding compensation to HANYS Services, Inc. (HSI), as Trustee:

“The Trustee shall receive, as compensation for its services hereunder, fees or commissions in such amounts and to be paid or retained in such manner and at such times as set forth in the fee schedule..., or as may hereafter be agreed upon by the Trustee and the Grantor in writing.” (Emphasis added.)

It was noted that the fees paid to HANYS Services, Inc. during the examination period were not agreed upon in writing nor approved by the Committee of Grantors who represent the interests and act on behalf of all Grantor Members under the Trust as there was no annual approval of the fees noted in the Committee of Grantors’ meeting minutes.

It is recommended that going forward, the Trust’s administrative fees be agreed upon in writing or be approved by the Committee of Grantors. In addition, such approvals must be noted in the minutes of the Committee of Grantors’ meetings.

ii. Non-compliance with Section 1409 of the New York Insurance Law

Section 1409 of the New York Insurance Law states in part that:

“... no domestic insurer shall have more than ten percent of its admitted assets invested in or loaned upon, the securities of any one institution.”

The Trust reported an investment in the Columbia Short Term Bond Fund of \$15,976,916. This investment exceeded 10% of the Trust’s admitted assets as reported on its filed 2009 annual statement.

It is noted that this investment was disposed of in July 2010. Hence, subsequent to the examination date the excess investment has been cured and the Trust is now in compliance with Section 1409 of the New York Insurance Law.

Nonetheless, it is recommended that the Trust, at all times, fully comply with the provisions of Article 14 of the New York Insurance Law.

iii. Letter of Credit

As of the examination date, the Trust is reporting an admitted asset for a standby letter of credit (“LOC”) in the amount of \$16.2 million, plus accrued interest in the amount of \$3,476,204. The LOC was originally issued to HANYS Hospital Trust (1987) (“HHT”) on September 15, 2005 in the amount of \$32.2 million to secure a promissory note as part of the sale by HHT of its minority shareholder interest in Hospitals Insurance Company (“HIC”, formerly known as HANYS Insurance Company) to FFH Hospitals Trust (“FFH”). The promissory note provides for four quarterly payments of \$4 million each beginning on September 30, 2005, with the remaining \$16.2 million plus accrued interest due on June 30, 2013.

On September 20, 2005, the LOC was transferred to the Trust, as beneficiary, in exchange for \$32.2 million in cash transferred to HHT. The transfer was done to expedite the distribution by HHT to its member hospitals of the proceeds of the sale of its HIC shares. Subsequently, in August 2007, HHT was dissolved.

The Trust’s letter of credit was reviewed for compliance with Department Regulation 133 which stipulates the required conditions for acceptable letters of credit. The review revealed that the letter of credit does not contain the following required conditions:

1. That it is clean and unconditional;
2. the definition of a beneficiary set forth in section 79.1(b) of the regulation (Beneficiary meaning "the insurer in favor of which the letter of credit or its confirmation is established and shall include any successor by operation of law of any named beneficiary including, without limitation, any liquidator, rehabilitator, receiver and conservator".);
3. a statement that it is not subject to any agreement, condition or qualification outside of the letter of credit;
4. a statement to the effect that the obligation of the issuing bank under the letter of credit is an individual obligation of such bank and is in no way contingent upon reimbursement with respect thereto;
5. that, in the event of any conflict, the Laws of the state of New York will control;
6. a provision for an extension of time, of not less than 30 days after resumption of business, to draw against the letter of credit in the event that one or more of the occurrences described in Article 17 of Publication 500 occurs (i.e. Acts of God, riots, civil commotions, insurrections, wars of any other causes beyond control, or any strikes or lockouts).

It is recommended that the Trust take steps to ensure that its letter of credit comply with all of the required provisions of Department Regulation 133.

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2009 as determined by this examination and as reported by the Trust:

<u>Assets</u>	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Common stocks	\$44,481,492	\$ 0	\$44,481,492
Cash, cash equivalents and short-term investments	875,308		875,308
Investment income due and accrued	44,830		44,830
Net deferred tax asset	2,879,503	2,879,503	0
Receivables from parent, subsidiaries and affiliates	1,337	0	1,337
Aggregate write-ins for other than invested assets			
Letter of credit	16,200,000		16,200,000
Accrued interest – letter of credit	3,476,204		3,476,204
Prepaid expenses	<u>17,011</u>	<u>17,011</u>	<u>0</u>
Total assets	<u>\$67,975,685</u>	<u>\$2,896,514</u>	<u>\$65,079,171</u>

Liabilities, Surplus and Other fundsLiabilities

Losses & loss adjustment expenses	\$	0
Other expenses (excluding taxes, licenses and fees)		63,190
Current federal and foreign income taxes		89,082
Tax escrow account		<u>2,828,836</u>
Total liabilities		\$2,981,108

Surplus and Other funds

Unassigned funds (surplus)	<u>\$62,098,063</u>	
Surplus as regards policyholders		<u>62,098,063</u>
Total liabilities, surplus and other funds		<u>\$65,079,171</u>

**NOTE:** The Internal Revenue Service (“IRS”) did not audit the Trust’s consolidated Federal Income Tax returns during the examination period. Additionally, as of the date of this examination report, the Trust has not received any notification from the IRS that an audit is scheduled to begin. The examiner is unaware of any potential exposure of the Trust to any tax assessment and no liability has been established herein relative to such contingency.

#### **4. LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability for the captioned items of \$0 is the same as reported by the Trust as of December 31, 2009. It should be noted that all of the Trust’s liabilities for losses and loss adjustment expenses were novated to its subsidiary, HPIC, in accordance with a novation agreement between the parties. Refer to Section 2C of this report.

#### **5. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Affiliated Companies</u>	
i. It is recommended that the Trust file with the Department its annual holding company registration statement (“NAIC Form B”) pursuant to the provisions of Department Circular Letter No. 10 (2010).	7
ii. It is recommended that in the future, the Trust prepare a written agreement before entering into any service arrangements with its subsidiary in compliance with Section 1608(c) of the New York Insurance Law.	9



<u>ITEM</u>		<u>PAGE NO.</u>
B.	<u>Accounts and Records</u>	
i.	It is recommended that going forward, the Trust's administrative fees be agreed upon in writing or be approved by the Committee of Grantors. In addition, such approvals must be noted in the minutes of the Committee of Grantors' meetings.	10
ii.	It is recommended that the Trust, at all times, fully comply with the provisions of Article 14 of the New York Insurance Law.	11
iii.	It is recommended that the Trust take steps to ensure that its letter of credit comply with all of the required provisions of Department Regulation 133.	12

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Fe Rosales, CFE  
Associate Insurance Examiner

STATE OF NEW YORK     )  
  )ss:  
COUNTY OF NEW YORK    )

FE ROSALES, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

\_\_\_\_\_/s/\_\_\_\_\_  
Fe Rosales

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Appointment No. 30573

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, James J. Wrynn 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*

**HANYS MEMBER HOSPITALS SELF INSURANCE TRUST**

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

**Trust**

*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 13th day of August, 2010*



*James J. Wrynn*  
\_\_\_\_\_  
JAMES J. WRYNN  
Superintendent of Insurance