

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF IOWA

IN THE MATTER OF PETITION)
FOR WAIVER BY:) **ORDER**
) Waiver of Iowa Code section
IOWA MEDICAL MUTUAL INSURANCE) 521A.5(4)(c) & (d)
COMPANY)

Now comes the Iowa Insurance Division (“Division”) pursuant to the provisions of Iowa Code section 521A.5(4) (2015) and issues the following ruling on Iowa Medical Mutual Insurance Company’s (“IMMIC”) Petition for Waiver.

Course of Proceedings

1. On September 11, 2015, IMMIC filed a Petition for Waiver of Statute (“Petition”) of the following Iowa Code section:

521A.5(4)(c) – Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee of the board of directors.

521A.5(4)(d) – The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for recommending or nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers.

2. The Division has considered the Petition.

Findings of Fact

3. IMMIC has filed an application to the commissioner for a waiver from the requirements of Iowa Code section 521A.5(4) that at least one-third of the members of the board of directors of IMMIC and no less than a majority of the members of any

committee of board of directors not be officers or employees of the University of Iowa Hospitals and Clinics, its College of Medicine, or the State of Iowa, IMMIC's parent entities.

4. IMMIC is a nonprofit insurance company formed in 2004 to provide liability protection on a claims-made basis to employees of the University of Iowa who practice their profession within the Carver College of Medicine's University of Iowa Physicians ("UIP") at the University of Iowa Hospitals and Clinics (the "University"). The college and hospitals are part of the State of Iowa. The University also provides education and training of future physicians.

5. IMMIC is licensed and in good standing with the Division, and has current financial statements on file with the Division.

6. Under the Articles of Incorporation, the Board of Directors consists of five physicians and two representatives of the Guaranty Shareholders of IMMIC pursuant to Iowa Code section 515.20 (2015).

7. Pursuant to an agreement with the State of Iowa under Iowa Code chapter 28E, the University partially self-insures the professional medical liability exposures of its UIP employees acting within the scope of their employment for all claims up to \$3 million per claim. IMMIC provides liability protection supplemental to that provided by the Iowa Tort Claims Act, Iowa Code chapter 669. IMMIC does so by way of "excess" insurance in the amount of a \$2 million policy limit after an initial self insured retention limit of \$3 million per claim. This additional layer of liability coverage is intended to minimize the potential liability of the state for tort claims against the University arising from the practice of medicine. An individual claim that exceeds \$5 million is covered by the State of Iowa.

8. IMMIC does not market or sell policies to parties not employed by the University. The premiums paid on the policies issued by IMMIC are paid with funds from the University and its guaranty capital comes wholly from the University.

9. Under IMMIC's Articles of Incorporation, all officers and employees are employees of the University.

10. IMMIC was organized by and wholly funded by the University and annual written premiums are approximately \$3 million dollars. The net earnings of IMMIC do not inure to the benefit of or are distributed to any private individual.

11. Upon dissolution, all assets of IMMIC are distributable to the University and thus inure wholly to the University.

Summary of Law

11. Iowa Code section 521A.5(4)(f) provides that an insurer may make application to the commissioner for a waiver from the requirements of this subsection based on unique circumstances. The commissioner may consider various factors including but not limited to the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

Unique Circumstances

12. Type of Business Entity

IMMIC was formed solely to provide professional liability protection to physicians and medical staff employed at UIP. Physicians and medical staff agree to become policyholders of the IMMIC and premiums are paid on their behalf by the UIP. IMMIC does not market its policies beyond the physicians and medical staff at UIP and thus all policyholders consist solely of University employees. No other entity or person would be adversely affected by the granting of a waiver to IMMIC.

13. Volume of Business Written

Annual written premiums are approximately \$3 million dollars. The premiums are paid solely by UIP to IMMIC.

14. Availability of Qualified Board Members

All members of the board of directors must be elected from the policyholders in accordance with the Articles of Incorporation. Except for the two representatives of the Guaranty Shareholders of IMMIC, the remaining five directors are all physicians and policyholders of IMMIC.

15. Ownership and Organizational Structure of IMMIC

IMMIC is owned by its ultimate parent, the State of Iowa, and is subject to oversight through the University. The purpose behind 521A.5(4)(c) and (d), that of insuring that insurer board of directors do not become too insular, is not applicable since IMMIC is accountable in that role to the democratic process.

The purpose of IMMIC is to provide professional medical liability protection to UIP at the University in the treatment of patients. By providing this protection, IMMIC is fulfilling its public purpose as a nonprofit insurer in ensuring that physicians and medical staff have adequate protection from personal liability. The public seeking medical treatment at the University is also served by this protection.

Taking into account the assertions presented by IMMIC, the oversight provided by the University, and the financial condition of IMMIC, a waiver of the requirement that at least one-third of the members of the board of directors of IMMIC and no less than a majority of the members of any committee of the board not be officers or employees of the University, meets the criteria demonstrating unique circumstances for which the Commissioner may grant the waiver requested in this case.

Order

IT IS HEREBY ORDERED that the requirements of Iowa Code section 521A.5(4)(c) and (d) are waived for Petitioner. This waiver is conditioned upon existing Iowa law and upon the facts stated in the Petition. Any variance of facts from those represented to the Division would effectively nullify this approval.

All other provisions of the Division's statutes and administrative rules remain applicable to IMMIC.

Dated this 4th day of November, 2015.

Iowa Insurance Division

/s/

NICK GERHART
Commissioner of Insurance

cc:

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