

No. 3310
Date: May 8, 1986 11:55 A.M.
Approved: Héctor Luis Acevedo
Secretary of State

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
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Amendment to the Regulations of the Insurance
Code of Puerto Rico

Section I. In accordance with the provisions of section 2.040 of Act No. 77 of June 19, 1957, as amended, I hereby give notice to the insurance industry, the insurance consumers and the general public of the approval of Rule LVI of the Regulations of the Insurance Code of Puerto Rico. This Rule is being approved on an emergency basis to mitigate the serious problems posed by private physicians, especially those practicing gynecology and obstetrics, who have ceased to provide medical and surgical care to their patients because of the unavailability of medical malpractice insurance on an occurrence basis. Said Rule shall read as follows:

Rule LVI

Assigned Medical Professional Liability Insurance Risks

Legal Authority: Section 12.200

Section 1. Purpose of this Rule

The purpose of this Rule is to distribute equitably among insurers authorized to transact insurance business under Section 4.080(1) through (12) of the Insurance Code of Puerto Rico, the physicians and surgeons professional liability insurance required by law, when such insurance can not be obtained at statutory limits and at the prevailing rate level on an occurrence basis from insurers authorized to transact such type of insurance in Puerto Rico.

Section 2. Scope of this Rule

This Rule shall not be construed as to create any additional and separate legal entity to provide insurance. Insurers shall participate under their own legal status as such and shall only be responsible under each contract of insurance for their percentage participation as required by Section 3 of this Rule, except that in case of insolvency of any participating insurer, the remaining insurers shall distribute among themselves its participation in the proportion which results from the second

distribution of the individual liability excluding the insolvent insurer, among the remaining insurers pursuant to the formula contained in section 3, so modified. With respect to a loss occurred prior to the insolvency, that portion of the claim corresponding to the percentage participation of the insolvent insurer shall be treated as any other business of such insolvent insurer.

Section 3. Distribution system of risks through a pool of
insurers

The distribution of risks pursuant to this rule shall be made through a group or pool of the insurers, which will be known as the Medical Malpractice Insurance Pool (hereinafter called "the Pool"). The Pool will have no legal status as a separate legal entity, and will be composed by all insurers authorized to transact insurance business under Section 4.080(1) through (12) of the Insurance Code of Puerto Rico. Each such insurer shall participate in the Pool and shall continue to participate in the Pool as a requisite to continue being authorized to transact insurance business in Puerto Rico.

All claims and/or suits arising from the activities of the Pool shall be instituted in the name of the Medical Malpractice Insurance Pool, or in the name of all the participating insurers which will be responsible to the extent of their respective participations.

Each insurer shall participate in the premiums, losses, expenses and profits of the Pool in a percentage participation to be determined by the ratio of the net direct premiums written by the insurer for insurance falling under the scope of Section 4.080(1) through (12) of the Insurance Code of Puerto Rico to the total net direct premiums written by all insurers under that same section for the year ending as of December 31 preceding the year in which the policy was issued.

Section 4. Administration

The Pool shall be administered by a Board of Representatives (hereinafter referred to as the Board), which will be composed by seven (7) members, who will be selected by the majority of the voting participating insurers, but shall have no power to bind any of the participating insurers in any matter not covered by this Rule or for which the participating insurer has not expressly given its consent either by vote or by vested powers on the Board. Each vote shall have weight in the same proportion as the ratio determined in Section 3 above.

The Commissioner shall call a meeting of all participating insurers for the election of the Board, at a time and place designated by him.

The members of the Board are empowered to receive applications for insurance and refer them to the servicing carrier provided in section 5.

The members of the Board shall not be held responsible to the members of the Pool for any determination or decision taken in good faith and within the scope of their duties during the normal course of business.

Section 5. Servicing Carrier

The Board shall select from within its members, a servicing carrier which will act under the direction of the Board. The servicing carrier will receive and process insurance applications, underwrite the risks, issue the policy, receive suits, provide legal defense, adjust, claim, and pay losses including loss adjustment expenses under the authority of the Board.

Section 6. Issuance of policies

Policies will be issued in the name of the Medical Malpractice Insurance Pool and shall be signed by the president and the secretary of the Board, and shall also be countersigned by an authorized representative of the servicing carrier duly authorized to countersign policies by the Commissioner of Insurance. Such policies shall also contain the name of each

participating insurer with its corresponding percentage participation.

Section 7. Application for insurance

a) The Pool shall only provide physicians and surgeons professional liability insurance to all eligible classifications.

b) A complete application for insurance shall be signed by the applicant and may be submitted to the Pool through a duly licensed property and casualty agent or broker.

c) If the servicing carrier determines that the applicant meets the underwriting standards of the Pool, as provided in this rule, then the servicing carrier, upon receipt of the full premium, as required, shall issue on the physicians and surgeons professional liability insurance policy to be effective at the date following the receipt of the premium.

Section 8. Underwriting Standards

a) Premiums applicable shall be determined in accordance with the occurrence type policy forms, endorsements, manual rules, and the rate level for physicians and surgeons professional liability insurance approved by the Commissioner of Insurance to the Insurance Services Office, Inc., on behalf of its member and subscriber companies, or as they may be subsequently amended or revised.

b) All manual rules, rate level, rating plans and classifications referred to in Section 8(a) shall be deemed as approved by the Commissioner of Insurance to all participating insurers not having such standards on file, only for the purpose of issuing the policy in the name of the Pool. No further filing with the Commissioner of Insurance will be needed.

c) The limits of liability to be offered shall only be \$100,000 for each medical incident, as defined in the policy, and \$300,000 aggregate for the policy term.

d) The insurance contract shall be the occurrence type policy form approved to the Insurance Service Office, Inc., on behalf of its members and subscriber companies.

e) Policies shall be issued for a term until December 31, 1986, for all eligible classifications, except that for the obstetrics classifications such term shall be extended until August 31, 1987, due to the particular nature of their practice. Nevertheless, no risks shall be covered nor policies shall be issued to be effective on or after January 1, 1987.

f) The policy shall be a syndicated policy written in the name of the Pool and each insurer shall be a direct insurer to the extent of its percentage participation. The liability of each participating insurer under each policy shall be several, each for itself, and not jointly, and no participating insurer shall be liable under any such policy for the obligation of any other participating insurer, except as provided in Section 2 of this Rule. The service of process or of any notice or proof of loss required by such policy upon the servicing carrier shall constitute service upon all participating insurers.

g) Each participating insurer shall be deemed to have authorized the Board as its attorney-in-fact to execute policies on behalf of each participating insurer.

Section 9. Assessment

Assessment upon each participating insurer in connection with the Pool's business shall be levied and assessed by the Board in the proportion established in Section 3 of this Rule.

Section 10. Declination; non-renewal

a) The Board or any person in its name may decline to provide coverage:

1) If the application is incomplete, or not duly signed by an applicant who qualifies under this Rule.

2) Until full payment of the premium is received by the Board or the servicing carrier.

3) To any applicant who, during the previous five (5) years, has had two or more paid claims under a physicians and surgeons professional liability insurance policy or coverage.

4) To any applicant who has canceled or has provoked cancellation of any valid physicians and surgeons professional liability insurance policy after April 1, 1986.

b) Declinations shall be in writing and shall state the reason or reasons for such declination and shall also inform the applicant of his right to appeal to the Commissioner of Insurance such determination of the Pool and shall advise him of the means whereby such an appeal may be initiated.

Section 11. Surcharged premium

Applicants otherwise eligible having two or more claims outstanding at the time of application, for which loss reserves have been set aside during the previous five (5) years, may be insured by the Pool applying a surcharge pursuant to Section 12.090 of the Insurance Code of Puerto Rico.

Section 12. Appeals

Any applicant or any other person or its representative or any affected participating insurer, may appeal to the Board within fifteen (15) days after any final ruling, action or decision of the servicing carrier. The Board shall take action within twenty (20) days after having been notified of the appeal on all matters within its powers or within twenty (20) days after consulting the participating insurers on other matters, provided that all consultations to participating insurers must be made within ten (10) days after the notification of the appeal. A decision of the Board may be reviewed by the Commissioner of Insurance, within fifteen (15) days from the date the action or decision of the Board is notified to the interested party.

Section 13. Statistics

The servicing carrier shall file with the Insurance Services Office, Inc., the compiled experience of premiums and losses on business handled by the Pool, in accordance with the statistical plan in effect.

Section 14. Records

The servicing carrier shall maintain complete and separate records of all business transactions, including copies of all policies and endorsements issued in the name of the Pool.

Section 15. Reports

a) The Board shall file a monthly report of all business transacted and all losses incurred to all participating insurers.

b) The Board shall file with the Commissioner of Insurance a complete financial and operational report as of December 31 of each year not later than March 1.

Section 16. Termination of the Pool

The Pool shall cease issuing policies to eligible classifications on December 31, 1986. Notwithstanding, the term of such policies will be in accordance with Section 8(e). Any obligation incurred by the Pool shall not be impaired by its expiration and the Pool shall be continued for the purpose of performing such obligations.

Section II. This Rule shall become effective five (5) days after the publication in a newspaper of general circulation, once a week for two consecutive weeks, of a notice to the effect that such Rule has been approved.


Juan Antonio Garcia
Commissioner of Insurance

Approved: April 23, 1986