

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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	)	
IN THE MATTER OF THE WINDING DOWN OF:	)	
	)	No. 217-2015-CV-00347
THE NEW HAMPSHIRE MEDICAL MALPRACTICE	)	
JOINT UNDERWRITING ASSOCIATION	)	
_____	)	

**SUPPLEMENTAL FILING REGARDING RECEIVER'S MOTION FOR ORDER  
OF NOTICE REGARDING MOTION FOR APPROVAL OF ASSUMPTION  
AGREEMENT WITH MEDPRO**

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), submits this supplemental filing regarding the Receiver's motion for an order of notice regarding the Receiver's Motion for Approval of Assumption Agreement with MedPro further to the status conference held on June 6, 2016.

1. In accordance with the discussion at the status conference, the Receiver submits herewith a revised proposed order of notice, including a revised notice of hearing.

2. The revised proposed order of notice is the same as the proposed order previously submitted, except that it (a) contains a tentative hearing date and time – August 5, 2016 at 1:30 PM – as discussed with the Clerk after the status conference; (b) requires that any responses or opposition be filed on or before July 15, 2016 – a Friday, which is 21 days before the hearing; (c) requires the Receiver to file a consolidated

response to any such responses or oppositions on or before July 26, 2016 – a Tuesday, which is 10 days before the hearing.

3. The revised proposed order of notice attaches as Exhibit A a revised notice of hearing. The revised notice of hearing is the same as the prior notice of hearing previously submitted, except that it contains an additional paragraph – the fourth paragraph – referring to the remaining funds. This paragraph was submitted to the Court at the June 7 status conference.

4. Counsel for the Receiver has consulted concerning this supplemental filing with Nixon Peabody LLP, counsel for the class in the prior action regarding distribution of the NHMMJUA surplus (Docket #217-2010-cv-00414), current counsel to numerous NHMMJUA policyholders and proposed class counsel with respect to the anticipated distribution of the assets to be interpled pursuant to RSA 404-C: 17, III. Nixon Peabody has authorized the Receiver's counsel to advise the Court that it has reviewed the revised proposed order of notice and the revised notice of hearing and believes that both are suitable and consistent with the discussions at the status conference.

5. Counsel for the Receiver is e-mailing Word versions of the revised proposed order of notice and notice of hearing in the event the Court wishes to make any revisions.


Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF NEW  
HAMPSHIRE, SOLELY AS RECEIVER OF THE  
NEW HAMPSHIRE MEDICAL MALPRACTICE  
JOINT UNDERWRITING ASSOCIATION

By his attorneys,

JOSEPH A. FOSTER  
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June 8, 2016

**Certificate of Service**

I hereby certify that a copy of the foregoing Supplemental Filing Regarding Receiver's Motion for Order of Notice and the Revised Proposed Order of Notice, were sent this 8<sup>th</sup> day of June, 2016, by email and first class mail, postage prepaid to all persons on the attached service list.

  
J. David Leslie  
NH Bar ID No. 16859

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No. 217-2015-CV-00347

**SERVICE LIST**

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No. 217-2015-CV-00347

**[PROPOSED]**

**ORDER OF NOTICE REGARDING MOTION FOR  
APPROVAL OF ASSUMPTION AGREEMENT WITH MEDPRO**

On consideration of the motion of Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), for issuance of an order of notice regarding the Receiver's Motion for Approval of Assumption Agreement with MedPro, it is hereby ORDERED as follows:

1. The Court shall hold a hearing on the Receiver's Motion for Approval of Assumption Agreement with MedPro (the "Approval Motion") at 1:30 PM on August 5, 2016 in Courtroom 1 at the Merrimack Superior Court, 163 North Main Street, Concord, N.H. 03302.

2. All interested persons seeking to participate in the hearing shall file an opposition or other response to the Approval Motion with the Court on or before July 15, 2016. Filings shall be made with the Court Clerk, Tracy A. Uhrin, Clerk, Merrimack Superior Court, 163 North Main Street, P.O. Box 2880, Concord, N.H. 03302-2880. A copy of the opposition or other response shall be served on counsel for the Receiver on or

before the date the opposition or other response is filed with the Court. The address of Receiver's counsel is J. David Leslie/Eric A. Smith, Rackemann, Sawyer & Brewster PC, 160 Federal Street, Boston, MA 02210-1700.

3. The Receiver shall file a consolidated response to any responses or oppositions on or before July 26, 2016. A copy of the consolidated response shall be served on the counsel or persons filing a response or opposition to the Approval Motion on or before the date the response is filed with the Court.

4. The Receiver shall post the Approval Motion papers, including the Assumption Agreement and its schedules, and this Order of Notice on the website of the New Hampshire Insurance Department promptly upon receipt of this Order of Notice. The Receiver shall also post the Order of Notice on the NHMMJUA's website.

5. The Notice of Hearing attached as Exhibit A to this Order of Notice is approved. The Receiver shall complete the Notice of Hearing with the information from paragraphs 1 and 2 above and post the completed Notice of Hearing on the New Hampshire Insurance Department's website promptly upon receipt of this Order of Notice. The Receiver shall also post the Notice of Hearing on the NHMMJUA's website.

6. Within 14 days following receipt of this Order of Notice, the Receiver shall mail or arrange to have mailed the completed Notice of Hearing to (a) historic NHMMJUA policyholders at the most recent addresses available from the NHMMJUA records as supplemented or corrected by the information being provided by agreement by counsel for the plaintiff class in the prior action regarding distribution of NHMMJUA surplus (Docket No. 217-2010-CV-00414), (b) in-force NHMMJUA policyholders as of January 31, 2016 at the most recent addresses available from the NHMMJUA records,

(c) claimants with pending claims against NHMMJUA insureds at the most recent addresses available from the NHMMJUA's records or, where the claimant is represented by counsel, at counsel's address, and (d) the structured settlement annuity recipients through the insurers paying those benefits.

7. Within 14 days following receipt of this Order of Notice, the Receiver shall publish the completed Notice of Hearing in two newspapers of general circulation in New Hampshire (the Concord Monitor and Union Leader) for two successive weeks.

8. Notice as provided in accordance with this Order of Notice shall be deemed sufficient and adequate notice of the Approval Motion and the hearing in accordance with RSA 404-C:16, II.

SO ORDERED

Dated: \_\_\_\_\_, 2016

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Presiding Justice

## EXHIBIT A

In the Matter of the Winding Down of:

THE NEW HAMPSHIRE MEDICAL MALPRACTICE  
JOINT UNDERWRITING ASSOCIATION

Merrimack Superior Court No. 217-2015-CV-00347

### NOTICE OF HEARING ON RECEIVER'S MOTION FOR APPROVAL OF ASSUMPTION AGREEMENT WITH MEDPRO

The Insurance Commissioner of the State of New Hampshire, as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), has filed a Motion for Approval of Assumption Agreement with MedPro ("Approval Motion"). The Approval Motion requests approval of an Assumption Agreement between the Receiver and The Medical Protective Company ("MedPro") under which MedPro will assume coverage-related obligations of the NHMMJUA as direct obligations of MedPro. The Approval Motion seeks an order approving the Assumption Agreement and confirming that, as of the closing, the coverage-related obligations of the NHMMJUA will be assumed and novated to MedPro and the Receiver and the NHMMJUA shall have no liability for those obligations. Note that Excluded Claims, as defined in the Assumption Agreement, are not coverage obligations of the NHMMJUA subject to being transferred. Excluded Claims, including any claims arising from the interpleader of the NHMMJUA's remaining assets pursuant to RSA 404-C:17, III, will remain the obligation of the NHMMJUA and such claims will be foreclosed when the interpleader has occurred and the Receiver is discharged.

For more information the Approval Motion papers, including the Assumption Agreement and schedules, are posted on the New Hampshire Insurance Department website at [http://www.nh.gov/insurance/legal/nhid\\_nhmmjua\\_recvrshp.htm](http://www.nh.gov/insurance/legal/nhid_nhmmjua_recvrshp.htm).

The transfer of the NHMMJUA coverage-related obligations by an assumption agreement with an insurer is part of the required process for the winding down and eventual liquidation of the NHMMJUA directed by statute. RSA 404-C:15-:17. If the Assumption Agreement is approved, the NHMMJUA's rights and obligations with respect to the policies will be transferred to MedPro as specified in the Assumption Agreement. Schedule "C" to the Assumption Agreement lists the historic NHMMJUA policies to be assumed by MedPro, and Schedule "D" lists in-force policies to be assumed by MedPro. MedPro will also assume the contingent liability in the event that insurers issuing the annuities funding certain structured settlements fail to pay, and those annuities are listed on Schedule "A". The Receiver believes that the substitution of MedPro for the NHMMJUA will not diminish the coverage-related benefits to the policyholders or annuity recipients.

Pursuant to RSA 404-C: 17, III, funds that remain in the NHMMJUA after the receiver has arranged for the transfer of all of the JUA coverage-related obligations, payment of the JUA's administrative and operational expenses, transfer or resolution of tax obligations, and payment of receivership expenses, will be interpleaded with the New Hampshire Superior Court for the



purposes of adjudicating all policyholder claims to those funds. You will soon be receiving in the coming months a separate notice concerning the process the Court intends to follow in that regard, whom to contact and what, if anything, further you need to do for that purpose.

If you have questions regarding the Approval Motion or the Assumption Agreement, please contact the Receiver's counsel at the address below or by email at [dleslie@rackemann.com](mailto:dleslie@rackemann.com) or [esmith@rackemann.com](mailto:esmith@rackemann.com).

The Court has scheduled a hearing on the Approval Motion at 1:30 PM on August 5, 2016 in Courtroom 1 at the Merrimack Superior Court, 163 North Main Street, Concord, N.H. 03302.

All interested persons seeking to participate in the hearing are required to file a response or opposition to the Approval Motion with the Court on or before July 15, 2016. Filings shall be made with the Court Clerk at the following address:

Tracy A. Uhrin, Clerk  
Merrimack Superior Court  
163 North Main Street  
P.O. Box 2880  
Concord, N.H. 03302-2880

The interested person is required to serve a copy of the response or opposition on counsel for the Receiver on or before the date the opposition or other response is filed with the Court Clerk. The address of the Receiver's counsel is:

J. David Leslie/Eric A. Smith  
Rackemann, Sawyer & Brewster PC  
160 Federal Street  
Boston, MA 02110-1700