BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION, **Petitioner,**	)))	
vs.	))	**No.: 05-021** **12.01-070107J**
MEDICAL LIABILITY MUTUAL INSURANCE COMPANY, **Respondent.**	)))	

AGREED ORDER

WHEREAS, Petitioner, the Tennessee Insurance Division, (hereinafter referred to as the "Division"), and the Respondent, Medical Liability Mutual Insurance Company, (hereinafter referred to as the "Respondent"), hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance (hereinafter referred to as the "Commissioner") as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Agreed Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. The Commissioner has determined that the resolution set forth in this Agreed Order is fair, reasonable, and in the best public interest.

3. This Agreed Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Agreed Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further

participation or resolution of these proceedings.

4. Respondent fully understands that this Agreed Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Agreed Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

5. The Respondent expressly waives all further procedural steps and all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreed Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Agreed Order by the Commissioner.

FINDINGS OF FACT

6. Medical Liability Mutual Insurance Company is an insurance company domiciled in the State of New York.

7. Respondent has received a certificate of authority to sell property and casualty lines of insurance in the State of Tennessee and is subject to regulation under the Tennessee Insurance Law (hereinafter referred to as them "Tennessee Law"), codified as Title 56 of the Tennessee Code.

8. In Note 32 to the 2004 annual statement, the Respondent states that "[t]he medical professional liability coverage reserves reported on page 3 and the reinsurance recoverables on loss reserves reported in Schedule F are discounted." The Respondent further states that the amount of the discount is Five Hundred Eighty-Four Million Nine Hundred Ninety-Three Thousand and Fifty-Nine Dollars ($584,993,059.00).

9. The practice of discounting non-tabular loss reserves is not authorized by the Statements of Statutory Accounting Principles (hereinafter referred to as the "SSAP") published by the National Association of Insurance Commissioners in its Accounting Practices and Procedures Manual or by the Tennessee Law. Statement of Statutory Accounting Principle No. 65 ¶ 10 of the Accounting Practices and Procedures Manual states that, with the exception of fixed and reasonably determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, property and casualty loss reserves shall not be discounted.

10. The Respondent deviated from Statement of Statutory Accounting Principle No. 65 by booking a non-tabular discount of its loss reserves. The loss reserves which were discounted were not fixed and reasonably determinable payments, as required by Statement of Statutory Accounting Principle No. 65. Such deviation is a violation of Tennessee Law and, therefore, should not be recognized as a valid practice.

11. Respondent is required by Tennessee Law to possess and maintain bona fide surplus funds in the amount of One Million Dollars ($1,000,000.00). Had the Respondent complied with the SSAP, the Respondent's policyholders' surplus would have been negative One Hundred Six Million Eight Hundred Sixty-Eight Thousand Five Hundred and Ninety-Two Dollars ($(106,868,592.00)).

CONCLUSIONS OF LAW

12. Tenn. Code Ann. § 56-1-416 provides that the Commissioner shall revoke or suspend all certificates of authority granted to an insurance company if the Commissioner is of the opinion, upon examination or other evidence, that a foreign insurance company is in an unsound condition or has failed to comply with the law and, upon such a finding, no new business shall be done by the

company or its agents under suspension or revocation while such default or disability continues and not until its authority to do business is restored by the Commissioner.

13. Tenn. Code Ann. § 56-2-115 states, in pertinent part, that all insurance companies doing business in this state shall possess and maintain bona fide surplus funds in the amount of One Million Dollars ($1,000,000).

14. Tenn. Code Ann. § 56-1-501(g) provides that the annual statements provided by insurance companies shall be prepared in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual in effect for the period covered by the statement.

15. The Finding of Facts, above, demonstrate that had the Respondent used SSAP in determining its financial condition, its policyholders' surplus would have fallen well below the requirement of Tenn. Code Ann. § 56-2-115. By virtue of the financial condition of the Respondent as it relates to its policyholders' surplus, the Respondent's financial condition is unsound in violation of Tenn. Code Ann. § 56-1-416(a)(1)(A).

16. Respondent admits to the Findings of Fact, above, and further admits that such findings subject it to sanctions pursuant to Tenn. Code Ann. § 56-1-416. Respondent further admits that the Conclusions of Law, above, are fair and reasonable. In order to avoid any further expenses or costs associated with litigating this matter, Respondent hereby desires to enter into this Agreed Order.

ORDER

NOW THEREFORE, on the basis of the foregoing, the wavier of the Respondent of its rights to a hearing and appeal under Tennessee Insurance Law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this order, this Order is appropriate, and in the public interest.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-1-416 of the Tennessee Insurance Law, that:

1. Respondent's Certificate of Authority is hereby suspended for a period of two (2) years. Should the Commissioner determine that the Respondent's financial condition is no longer unsound, she may at any time remove the suspension of the Respondent's Certificate of Authority. The Commissioner, in her sole discretion, may also extend the suspension period should she find such extension to be in the public interest. However, in the event the Respondent's Certificate of Authority is not reinstated within two (2) years from the date of this Order, the Respondent's Certificate of Authority shall automatically be revoked without further action by the Commissioner or the Division.

2. While the Respondent's Certificate of Authority is either suspended or revoked, Respondent shall cease writing new business in the State of Tennessee and shall only renew those policies that the law may require. Respondent shall, however, at all such times continue to file its annual statement, pay fees, licenses, and taxes as required and applicable and service existing policyholders and adjust losses thereunder.

This Agreed Order is in the public interest and in the best interests of the parties. This Agreed Order represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, the Respondent affirmatively states that it has freely agreed to the entry of this Agreed Order, that it has been advised that it may consult legal counsel in this matter and has had the opportunity to consult with legal counsel should it had desired to do so, that it waives its right to a hearing on the matters underlying this Agreed Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Agreed Order, affirmatively state their agreement to be bound by the terms of this Agreed Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Agreed Order, are binding upon them.

Nothing in this Agreed Order should be construed to limit the authority of the Insurance Division or the Commissioner to take further action against the Respondent should such action, in the opinion of the Insurance Division or the Commissioner, be necessary.

SO ORDERED.

ENTERED this the 22nd day of April, 2005.

Paula A. Flowers

Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Medical Liability Mutual Insurance Company

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