

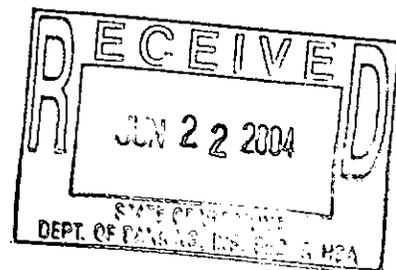


**BlueCross BlueShield  
of Vermont**

*An Independent Licensee of the Blue Cross and Blue Shield Association.*

June 22, 2004

Herb Olson, General Counsel  
Vermont Department of Banking, Insurance  
Securities & Health Care Administration  
89 Main Street, Drawer 20  
Montpelier, VT 05602



RE: Blue Cross and Blue Shield of Vermont  
Docket No. 03-031-I

Dear Herb:

Enclosed please find our written arguments in opposition to the Proposed Findings, Conclusions and Order, attached to the Show Cause Order issued on June 7, 2004.

If you have any questions, please feel free to contact me at (802) 371-3256, or Jeff at (802) 223-2102.

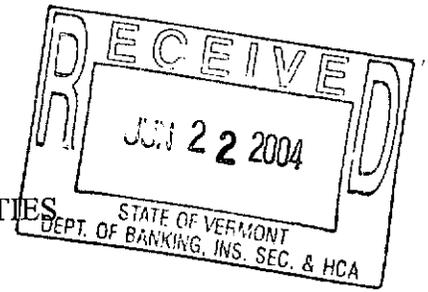
Sincerely,

Monica A. Neronha, Esq.  
Assistant General Counsel

Enclosures

CC: Rebecca C. Heintz, Enforcement Attorney, Insurance Division

STATE OF VERMONT  
DEPARTMENT OF BANKING, INSURANCE, SECURITIES  
& HEALTH CARE ADMINISTRATION



In re: Motion for Stay Pending Appeal )  
Motion for Extension of Time to Appeal; and )  
Motion to Modify the Commissioner's Order ) Docket # 03-031-I  
Amending an Order adopting the Report )  
of Examination )

NOW COMES Blue Cross and Blue Shield of Vermont ("BCBSVT") by and through its attorney, Jeffrey Johnson, in response to the Proposed Findings, Conclusions and Order, attached to the Show Cause Order issued on June 7, 2004.

1. BCBSVT reasserts, in their entirety, the issues, concerns and positions set forth in its Motions for Stay Pending Appeal; Extension of Time to Appeal; and Modification of the Amending Order and in its Response to Opposition to Modify Order Amending Order Adopting Report of Examination (dated December 29, 2003).
2. BCBSVT objects to the issuance of the Show Cause Order pursuant to 8 VSA section 15. The general statutory authority to issue orders should not be employed in a manner that interferes with the obligation to conduct Administrative Procedure Act proceedings. In other words, the Commissioner should be looking only to those laws which the Vermont Legislature intended for use by the Executive Branch in connection with its discharge of judicial powers. The Show Cause Order places the burden, unfairly we believe, on BCBSVT to demonstrate that the proposed Findings, Conclusions and Order should not be issued. BCBSVT petitioned the Commissioner to rule on its aforementioned Motions based on the Record represented in the Amending Order. Because the Commissioner concedes in paragraphs 16 and 17 of

the Proposed Findings, Conclusions and Order that an evidentiary hearing would be required before the Administrative Penalty could be imposed and because such hearing was never held in conjunction with the Amending Order, BCBSVT asks that the Commissioner modify the Amending Order by deleting the Administrative Penalty and any reference to it contained in such Order.

3. The Proposed Findings, Conclusions and Order contain repeated characterizations of the Amending Order as a preliminary order, one that could be revised, assumably on a de novo basis given the Commissioner's proposed use of the Show Cause Order as a means of establishing a basis for an evidentiary hearing. The Amending Order was a final order which contains extensive findings of fact and conclusions of law. While the right to appeal the order may exist, that right is an empty vessel if there is no ability either to challenge facts or make legal arguments. By the time BCBSVT first saw the Amending Order; it contained findings of fact and conclusions and was signed by the Commissioner. All References in the Proposed Findings, Conclusions and Order to findings and conclusions of the Amending Order should be struck.
4. BCBSVT believes that the issues raised and determinations made in the Amending Order would have been better and more fairly addressed had they been accomplished at the conclusion of an evidentiary hearing. This observation is also apparently made in footnote #3 of the Proposed Findings Conclusions and Order. While not endorsing the "Show Cause" strategy for the reasons set forth in paragraph #2 above, we believe that one reasonable approach to resolving this matter is to vacate the entire Amending Order, and then provide BISHCA with an opportunity to initiate a new proceeding,

conditioned however, on the requirement that BCBSVT would be entitled to a full evidentiary hearing prior to the filing of any final order.

Respectfully submitted this 22nd of June, 2004,  
BLUE CROSS AND BLUE SHIELD OF VERMONT  
By:

A handwritten signature in cursive script, appearing to read "Jeffrey Johnson For". The signature is written in black ink and is positioned above a horizontal line.

Jeffrey Johnson, Esq.  
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