



*State of Vermont . . .*

Agency of Administration  
109 State Street  
Montpelier, VT 05609-0201

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December 9, 2003

Jeffrey Johnson, Esq.  
Primmer and Piper  
PO Box 1309  
Montpelier, VT 05601-1309

Re: Blue Cross Blue Shield of Vermont  
Motion to Modify Order Amending Order Adopting Report of Examination  
Docket No. 03-031-I

Dear Jeff:

I am acknowledging the Department's receipt of your Motion to Modify, Motion for Stay Pending Appeal, and Motion to Extend Time for Appeal dated December 1, 2003.

Rebecca Heinz, Counsel to the Insurance Division will be preparing a response to your motion, which I anticipate will be filed by Wednesday, December 10, 2003. Any further response you wish to make should be made five business days after Ms. Heinz' filing, unless an additional reasonable period of time is requested. The matter will thereafter be presented to the Commissioner for his consideration.

Please let me know if you have any questions concerning the above.

Yours truly,

A handwritten signature in cursive script, appearing to read "Herbert W. Olson".

Herbert W. Olson, Esq.  
General Counsel

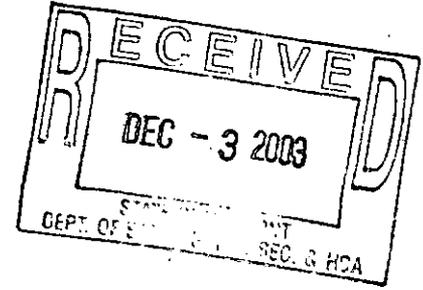
cc: Rebecca Heinz, Insurance Division Counsel

bec John Crowley  
Peter Yankowski  
Charlie Piasecki



**BlueCross BlueShield  
of Vermont**

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



HAND DELIVERED

December 3, 2003

Herb Olson, General Counsel  
Department of Banking, Insurance,  
Securities and Health Care Administration  
89 Main Street – Drawer 20  
Montpelier, VT 05620-3101

Dear Herb:

In support of our December 1<sup>st</sup> Motion to Modify and Motion for Stay of the Administrative Order in Docket Number 03-031-I, enclosed please find an Affidavit executed by Douglas Warren, Vice President of Audit and Business Consulting.

If you have any questions, please feel free call either Jeff Johnson or me.

Sincerely,

A handwritten signature in cursive script that reads "Monica A. Neronha".

Monica A. Neronha  
Assistant General Counsel



**BlueCross BlueShield  
of Vermont**

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

AFFIDAVIT OF DOUGLAS WARREN

I, Douglas Warren, the undersigned, do state under oath as follows:

1. I am the Vice President of Audit and Business Consulting for Blue Cross and Blue Shield of Vermont (“BCBSVT”).
2. In 2002, BCBSVT developed and implemented policies and procedures to comply with the requirements of 18 V.S.A. 9418. These policies and procedures are designed to ensure timely payment of claims. They also include provisions to identify non-compliant claims payments and for the manual processing and payment of the penalty due on non-compliant claims.
3. BCBSVT has been processing penalty payments on a quarterly basis since June 2002. Effective January 1, 2004, BCBSVT will initiate revised policies and procedures and will commence processing these payments on a monthly basis.
4. In January 2003, BCBSVT conducted, under my order and supervision, an internal audit to assess the appropriateness of and compliance with the policies and procedures noted in paragraph 2. The audit revealed no material weaknesses or deficiencies in the policies and procedures or BCBSVT’s compliance therewith.
5. In an effort to systematize the calculation and payment of penalties, BCBSVT has been diligently working with its software vendor, Computer Sciences Corporation (“CSC”), to update existing software to automatically calculate and process penalty payments.

6. For the period of January through September 2003, BCBSVT processed a total of 1,426,011 claims (through the MHS, Legacy and MediComp claims systems). This number includes claims that were received and processed in 2003, and does not include adjustments processed during that period. For the same period, only 471 claims were processed beyond the 45-day period required by 18 V.S.A. 9418(b). The total penalty due on those claims was \$233.16. Of that penalty, \$4.71 was due to Subscribers and \$228.45 was due to providers.
7. Since issuance of the Commissioner's May 21, 2003 Order, BCBSVT has made good faith efforts to keep the Department up to date on its efforts to comply with the requirements of the Order and 18 V.S.A. 9418.
8. BCBSVT continues to strive to process all claims within the 45-day period.

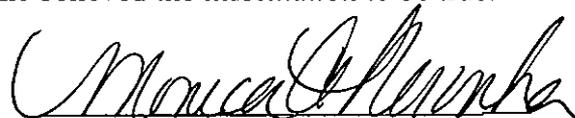
Sworn and Subscribed at Berlin, Vermont this 2nd day of December, 2003.

  
\_\_\_\_\_  
DOUGLAS WARREN

STATE OF VERMONT  
WASHINGTON COUNTY, ss.

At Berlin, in said County, this 2nd day of December, 2003, DOUGLAS WARREN personally appeared before me and swore to the truth of the foregoing and, where made upon information and belief, he stated that he believed the information to be true.

My commission expires: 2/10/07

  
\_\_\_\_\_  
Notary Public

LAW OFFICES OF  
**PRIMMER & PIPER**

PROFESSIONAL CORPORATION  
100 EAST STATE STREET  
P.O. BOX 1309

MONTPELIER, VERMONT 05601

TELEPHONE 802-223-2102

FACSIMILE 802-223-2628

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ELIJAH D. EMERSON (VT, MA, ME)  
PETER W. KOPSCO (VT, MA, CT)

**Of Counsel**  
JOHN L. PRIMMER, PLC  
GARY H. BARNES  
GARY A. SWENSON

**Government Relations**  
JAMES F. FEEHAN - Director  
JONATHAN D. WOLFF - Specialist

**Legal Assistants**  
CARA B. GRISWOLD  
CATHY D. CONTE  
KURT A. LUTES  
JUSTIN B. BARNARD

December 1, 2003

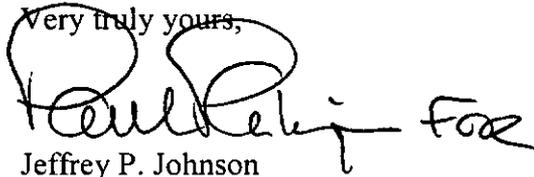
Herb Olson  
Vermont Department of Banking, Insurance,  
Securities and Health Care Administration  
89 Main Street, Drawer 20  
Montpelier, VT 05620-3101

Dear Herb:

I enclose a Motion to Modify in Docket Number 03-031-I. Also enclosed, is a Motion for Stay of the Administrative Order. We plan to file an affidavit later this week describing the timely claims payment efforts of BCBSVT as of the first quarter following issuance of the initial order. This affidavit will also describe the manual system that BCBSVT has put in place to make sure that any late paid claims result in payment of appropriate interest charges. Even though there has been difficulty programming the computer system, the manual system is an effective alternative until a computerized system has been established. We believe that this affidavit will provide sufficient evidence to the Department regarding the seriousness with which BCBSVT addressed issues set forth in the Market Conduct Examination Report, as well as the initial order.

Please give me a call if you have any questions. We appreciate your consideration of the important issues raised in the enclosed Motion to Modify.

Very truly yours,



Jeffrey P. Johnson

Enclosures

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

	)	
	)	
Blue Cross and Blue Shield of Vermont	)	
Motion for Stay Pending Appeal and	)	DOCKET NO. 03-031-I
Motion to Extend Time for Appeal of Order	)	
	)	
	)	
	)	

**Motion for Stay Pending Appeal and  
Motion to Extend Time for Appeal Of Order**

NOW COMES Blue Cross and Blue Shield of Vermont (“BCBSVT”) by and through their attorneys, Primmer & Piper, P.C., and hereby moves the Vermont Department of Banking, Insurance, Securities & Health Care Administration (“BISHCA” or the “Department”), pursuant to the authority granted by Vermont law, including that contained in Title 8, to stay further proceedings of this docket pending appeal and to extend the time by which an appeal may be brought by the amount of time the Department requires to fully consider and decide on BCBSVT’s Motion to Modify the Order Amending Order Adopting Report of Examination (the “Amending Order”), which is filed concurrently with this Motion.

1. On February 12, 2003, the examiners of the Department issued a market conduct report entitled BLUE CROSS BLUE SHIELD OF VERMONT MARKET CONDUCT EXAMINATION (the “Report”).

2. On March 13, 2003, BCBSVT submitted its formal written response to the Report.

3. On May 20, 2003 the Commissioner issued an Order Adopting the Report of Examination. BCBSVT did not file an administrative appeal, and the Order became final.

4. On November 13, 2003, the Commissioner issued the Order Amending Order Adopting Report of Examination (the "Amending Order").

5. The Amending Order imposed a \$20,000 administrative penalty on BCBSVT.

6. The Order was not received by BCBSVT until November 17, 2003, when BISHCA's Deputy Commissioner, J. Peter Yankowski, delivered the Amending Order to Mr. William R. Milnes, Jr., President of BCBSVT.

7. No copy was delivered by the Department to Mr. Jeffrey P. Johnson, partner of Primmer & Piper, P.C. and BCBSVT General Counsel.

8. Neither BCBSVT nor Mr. Johnson had any notice that the Amending Order was forthcoming.

9. While BCBSVT had an opportunity, pursuant to 8 V.S.A. § 3572(c), to participate in the process leading to the issuance of the Order Adopting the Report of Examination, BCBSVT was not afforded notice or any opportunity to participate in the internal decision-making leading to the Amending Order by which the Company was assessed a \$20,000 penalty.

10. Pursuant to 8 V.S.A. § 3572(c), BCBSVT may appeal the Amending Order by filing an appeal within thirty (30) days of the date of the Order.

11. BCBSVT filed, simultaneously with this Motion to Stay and to Extend Time for Appeal of Order, a Motion to Modify the Amending Order.

WHEREFORE, BCBSVT respectfully requests the Department:

1. stay execution of the Amending Order to the extent that the Order requires BCBSVT to pay an administrative penalty of \$20,000; and
2. extend the time during which BCBSVT may appeal the Amending Order by the amount of time the Department requires to consider and decide on BCBSVT's Motion to Modify the Amending Order.

DATED at Montpelier, Vermont, this 1st day of December, 2003.

Respectfully submitted,

BLUE CROSS AND BLUE SHIELD OF  
VERMONT

By:

A handwritten signature in black ink, appearing to read "Paul Kelly", is written over a horizontal line. To the right of the signature, the letters "FOR" are written in a similar cursive style.

Jeffrey P. Johnson, Esq.  
General Counsel, Blue Cross and  
Blue Shield of Vermont  
Primmer & Piper, P.C.  
P.O. Box 1309  
Montpelier, VT 05601-1309  
(802) 223-2102  
jjohnson@primmer.com

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

	)	
	)	
Blue Cross and Blue Shield of Vermont	)	
Motion to Modify Order Amending Order	)	DOCKET NO. 03-031-I
Adopting Report of Examination	)	
	)	
	)	
	)	

**Motion to Modify Order Amending Order Adopting  
Report of Examination**

NOW COMES Blue Cross and Blue Shield of Vermont (“BCBSVT” or the “Company”) by and through its attorneys, Primmer & Piper, P.C., and hereby moves the Vermont Department of Banking, Insurance, Securities & Health Care Administration (“BISHCA” or the “Department”), pursuant to the authority granted by Vermont law, including that contained in Title 8 and Title 3, to Modify the Order Amending Order Adopting Report of Examination, issued November 13, 2003.

1. On February 12, 2003, the examiners of the Department issued a market conduct report entitled BLUE CROSS BLUE SHIELD OF VERMONT MARKET CONDUCT EXAMINATION (the “Report”).

2. On March 13, 2003, BCBSVT submitted its formal written response to the Report pursuant to 8 V.S.A. § 3574.

3. After fully considering the Report and BCBSVT’s formal written response, the Commissioner issued an Order Adopting the Report of Examination on May 20, 2003.

4. In Paragraph 10 of the Order, the Department found that BCBSVT did not timely process a certain percentage of its claims within the statutorily required 45-day period following receipt of a claim. 18 V.S.A. § 9418(e)(1).

5. Section 9418 states that interest accrues at a rate of 12 percent per annum for uncontested claims not settled during the statutory 45-day period. 18 V.S.A. § 9418(e)(1).

6. At Paragraph 14 of the Order, the Department ordered BCBSVT to pay 12 percent interest on the interest required by 18 V.S.A. § 9418(e)(1), which accrued between June 2002 and June 2003. BCBSVT did not file an administrative appeal and the Order became final.

7. During the period following the Order and until approximately November 13, 2003, BCBSVT worked together with the Department to provide evidence that BCBSVT adequately addressed issues involving timeliness of claims payments going forward, and that BCBSVT paid past-due interest and the interest on the past-due interest as ordered by the Department.

8. BCBSVT worked together with BISHCA to resolve technical issues and to complete its payments. The Company strove to keep the Department fully informed of developments and was responsive to the Department's requests for information. The Company is now in full compliance with respect to the interest payments required by the Department's Order.

9. On November 13, 2003, the Commissioner issued an Order Amending the Order Adopting the Report of the Examiners (the "Amending Order"). The Order was not received by BCBSVT until November 17, 2003, when BISHCA's Deputy

Commissioner, J. Peter Yankowski, delivered the Amending Order to Mr. William R. Milnes, Jr., President of BCBSVT.

10. No copy was delivered by the Department to Mr. Jeffrey P. Johnson, partner of Primmer & Piper, P.C. and BCBSVT General Counsel.

11. Mr. Johnson last heard from the Department on October 1, 2003, when Mr. Charles Piasecki sent an email to BCBSVT regarding information provided by the Company and copied Mr. Johnson. Mr. Johnson was not, from that date forward, included in communications between the Department and the Company.

12. The Amending Order made certain findings of fact and ordered: (a) a follow up market conduct examination; (b) that BCBSVT provide a proposed Compliance Plan; (c) that BCBSVT make the payments required by the Order of May 20 (payments the Company completed); and (d) that the Company pay a \$20,000 administrative penalty.

13. While BCBSVT had an opportunity, pursuant to 8 V.S.A. § 3572(c), to participate in the process leading to the issuance of the Order Adopting the Report of Examination, BCBSVT was not afforded notice or any opportunity to participate in the internal decision-making leading to the Amending Order by which the Company was assessed a \$20,000 penalty.

14. 8 V.S.A. § 3574 entitles a company being examined the opportunity to review an examination report and to offer a written submission for the Commissioner's consideration when issuing the Order Adopting the Report. By the enactment of § 3574, the Vermont Legislature established a clear procedure designed to protect the rights of all parties involved. The procedure set forth in this section was not followed.

15. Chapter 25 of Title 3, with particular reference to 3 V.S.A. § 809 entitles a company that is the subject of an order resulting from a contested case to notice and a hearing.

16. Constitutional due process considerations also require notice and a hearing before depriving an individual of a significant property interest. The administrative penalty referenced in Paragraph 12 above should constitute a significant property interest.

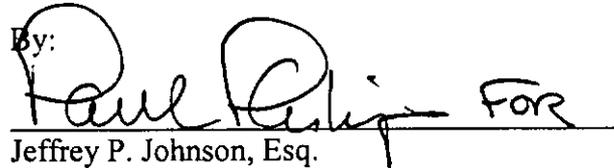
WHEREFORE, based on the foregoing BCBSVT respectfully requests that the Department modify its Order Amending Order Adopting Report of Examination by the deletion of paragraph 8.

DATED at Montpelier, Vermont, this 1st day of December, 2003.

Respectfully submitted,

BLUE CROSS AND BLUE SHIELD OF VERMONT

By:

A handwritten signature in black ink that reads "Paul Johnson" with a large, stylized initial "P" and "J". To the right of the signature, the word "FOR" is written in capital letters.

Jeffrey P. Johnson, Esq.  
General Counsel, Blue Cross and  
Blue Shield of Vermont  
Primmer & Piper, P.C.  
P.O. Box 1309  
Montpelier, VT 05601-1309  
(802) 223-2102  
jjohnson@primmer.com



**Vermont . . .**

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Health Care Administration: 1-800-631-7788  
See other division numbers below.

**Department of Banking, Insurance,  
Securities and Health Care Administration**

November 14, 2003

William Milnes  
President and CEO  
Blue Cross Blue Shield of Vermont  
P.O. Box 186  
Montpelier, VT 05601-0186

Re: BCBSVT Market Conduct Examination

Dear Bill:

Attached is a copy of the Amended Order adopting the above noted examination report with modifications.

Sincerely,

  
J. Peter Yankowski  
Deputy Commissioner – Insurance Division

CC: Paulette Thabault  
Charles Piasecki  
Rebecca Heintz

Attachment

*BCC: JULIAN CROWLEY  
HERB OLSON*

89 Main Street, Drawer 20, Montpelier, VT 05620-3101  
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**STATE OF VERMONT  
DEPARTMENT OF BANKING, INSURANCE, SECURITIES  
& HEALTH CARE ADMINISTRATION**

In re: Blue Cross Blue Shield )  
Of Vermont ) DOCKET NO. 03-031-I  
)  
)

**ORDER AMENDING  
ORDER ADOPTING REPORT OF EXAMINATION**

NOW COMES John P. Crowley, Commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration (the "Department"), and hereby makes the following findings and amends the Order Adopting Report of Examination dated May 20<sup>th</sup>, 2003 in the above matter (hereinafter "Order") as follows:

**FINDINGS OF FACT**

1. Blue Cross Blue Shield of Vermont (hereinafter "the Company") failed to make the payments required by Paragraph 25 of the Order by October 1, 2003 as required.
2. The Company has not provided the reports required by Paragraph 28 of the Order.
3. The Company has indicated that providing the reports required by the Department as described in Paragraph 28 of the Order may be unduly burdensome. The Department has reviewed the Company's procedures, technology systems and additional information made available by the Company. It appears the Company lacks the resources to produce the required reports in a useful fashion.

4. The Company has not yet complied with Paragraph 27 of the Order, although it has communicated with the Department as required and has indicated a continued effort to meet this requirement.

**ORDER**

Based on the foregoing, the Order is amended as follows:

5. Paragraph 28 is deleted. The Department shall conduct a follow up market conduct examination within 12 – 24 months of this Order. Such follow up examination will focus on the Company's compliance with 18 V.S.A. § 9418, as well as any other issue deemed appropriate by the Department at that time. As required by law, the Company shall ensure it maintains adequate records sufficient to verify compliance with the 18 V.S.A. § 9418. Nothing in this Amended Order shall be construed to limit the Department's ability to conduct a market conduct examination of the Company prior to 12 months from the date of this Amended Order.

6. Paragraph 31 shall be added to read: The Company shall provide the Department with a proposed Compliance Plan within 60 days of the date of this Order. Such compliance plan shall indicate what steps the Company is taking and plans on taking to ensure compliance with all of the requirements of 18 V.S.A. § 9418 and the requirements of Paragraph 27 of the Order. Such Compliance Plan shall set goals and provide dates by which the Company intends to accomplish those goals. Upon approval of the Compliance Plan, the Company shall provide the Department with status reports regarding the Compliance Plan, specifically identifying whether the Company has accomplished its goals. Such status reports shall be provided to the Department's Market Conduct Chief every thirty days following Compliance Plan approval until the start of the

follow up market conduct exam or the achievement of the Compliance Plan objectives, whichever comes first.

7. Paragraph 32 shall be added to read: The Company shall make the payments as required by Paragraph 25 of the Order and shall further provide a written response to the undersigned as to why such payment was not made in compliance with the Order. The Company shall further provide the Market Conduct Chief with a detailed list of all the payments made pursuant to Paragraph 25. Such detailed list shall be provided on an excel spreadsheet and shall provide sufficient information such that the Market Conduct Chief can verify payments were made correctly. The written explanation to the undersigned and the verifiable list of payments shall be provided no later than ten days from the date of this Amended Order.

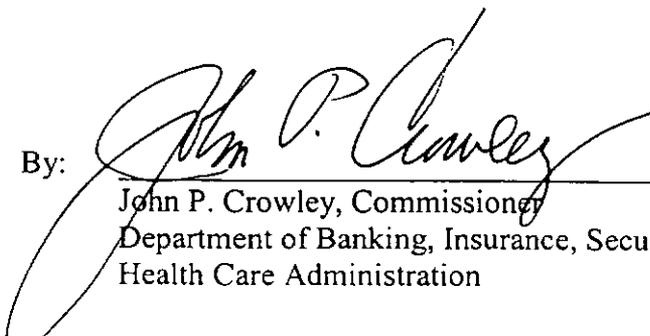
8. The Company shall pay a \$20,000 administrative penalty within ten days of the expiration date of the appeal deadline of this Amended Order.

**PURSUANT TO 8 V.S.A. § 3574(c), THIS ORDER AND REMEDIAL ACTION SET FORTH HEREIN MAY BE APPEALED TO THE COMMISSIONER BY FILING AN ADMINISTRATIVE APPEAL WITHIN THIRTY (30) DAYS OF THE DATE SET FORTH BELOW.**

Dated at Montpelier, Vermont this 13<sup>th</sup> day of November, 2003.

Department of Banking, Insurance,  
Securities and Health Care Administration

By:



John P. Crowley, Commissioner  
Department of Banking, Insurance, Securities and  
Health Care Administration