Vermont . . .

Department of Banking, Insurance, Securities and Health Care Administration

June 23, 2004

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Re: In re Blue Cross Blue Shield of Vermont
Docket No. 03-031-I

Dear Jeff and Monica:

Enclosed you will find a copy of the Commissioner's Findings, Conclusions and Order.

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

Yours truly,

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STATE OF VERMONT
Department of Banking, Insurance, Securities and
Health Care Administration

In re: Blue Cross Blue Shield of Vermont	)))	Docket No. 03-031-I

Findings, Conclusions and Order

Introduction:

1. The Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration ("the Department") issues the following Findings, Conclusions and Order on pending motions after fully considering all of the record in this docketed matter, including the pleadings and other records filed by the Company, and the pleadings and other records filed by the Insurance Division of the Department ("the Division"). In making these determinations, the Commissioner relies on the undisputed facts alleged by the parties. Any disputed issues of fact, and any contested matters of law that rely upon disputed issues of fact will need to be resolved, if necessary, after notice and an opportunity to be heard in an administrative hearing conducted pursuant to the Vermont Administrative Procedure Act and the Department's Regulation I-82-1.

Findings:

2. On May 20, 2003 Commissioner John P. Crowley ("Commissioner") of the Vermont Department of Banking, Insurance, Securities and Health Care Administration ("Department") issued an Order Adopting the Report of Examination ("Examination Order"). The Examination Order related to a market conduct examination of Blue Cross Blue Shield of Vermont ("the Company") for calendar years 2000 and 2001 concerning the Company's failure to make timely payment of claims to subscribers and health care providers as required by 8 V.S.A. § 9418. (Examination Order, ¶ 3) The market conduct examination was conducted pursuant to Title 8, Vermont Statutes Annotated, Chapter 101, Subchapter 7.

3. The Examination Order specifically provided that:
    a. The Company shall pay interest on past due penalties imposed as a result of the Company's untimely payment of claims no later than October 1, 2003. (Examination Order, ¶ 25)
    b. The Company shall start making interest payments contemporaneously with the payment of claims no later than October 1, 2003, or reach an alternative compliance agreement with the Department. (Examination Order, ¶ 27)
    c. The Company shall provide quarterly compliance reports to the Department beginning on October 1, 2003. (Examination Order, ¶ 28)
    d. A penalty of $10,000 was imposed. (Examination Order, ¶ 30) The penalty was characterized as "minimal", due to the improvements made by the Company in its claims processing, and the unique role of the Company in Vermont's health insurance market. (Examination Order ¶ 19)
4. The Examination Order became a final decision of the Department when the Company declined its opportunity to appeal the Examination Order within 30 days of its issuance. (Company's Motion for Stay Pending Appeal, ¶ 3)
5. On November 13, 2003 the Commissioner issued an Order Amending Order Adopting Report of Examination ("Amending Order"). The Amending Order found, *inter alia*, that the Company failed to comply with the Examination Order, in that:
    a. The Company failed to pay interest on past due penalty payments by October 1, 2003, as required by Paragraph 25 of the Examination Order. (Amending Order, ¶ 1)
    b. The Company did not start making interest penalty payments contemporaneously with the payment of claims by October 1, 2003, nor in the alternative did the Company reach an agreement with the Department by October 1, 2003 as to when it would begin to comply with the Company's contemporaneous payment obligation, as required by Paragraph 27 of the Examination Order. (Amending Order, ¶ 4)

c. The Company did not provide claims monitoring reports in the format prescribed by the Department, the first of which was to be filed by October 1, 2003, as required by Paragraph 28 of the Examination Order. (Amending Order, ¶ 3)

6. The Amending Order proposed to amend the Examination Order as follows:
   a. Paragraph 28 of the Examination Order was deleted. Instead, the Department determined that it would conduct a follow-up market conduct examination within 12 to 24 months of the Amending Order. (Amending Order ¶ 5)
   b. A new Paragraph 31 was added, requiring the Company *inter alia* to provide the Department with a Compliance Plan within 60 days of the date of the Amending Order. (Amending Order ¶ 6)
   c. A new Paragraph 32 was added, reaffirming the Company's obligation under Paragraph 25 of the Examination Order to pay interest on past due penalties, and requiring the Company *inter alia* to explain why interest on penalty payments were not made, and to provide the Department with a detailed list of all payments made pursuant to Paragraph 25 of the Examination Order. (Amending Order ¶ 7)
   d. The Company was ordered to pay an additional $20,000 administrative penalty. (Amending Order ¶ 8)
7. The Amending Order provided the Company with an opportunity to contest the findings, conclusions and other terms of the Amending Order, and to contest the proposed fine, in an administrative hearing held in accordance with the Vermont Administrative Procedure Act and the Department's Regulation I-82-1. (Amending Order, final paragraph)
8. The Company did not appeal the Amending Order, but instead on December 1, 2003, the Company filed with the Commissioner a Motion to Modify the Commissioner's Order Amending an Order Adopting the Report of Examination ("Motion to Modify"), a Motion for Stay Pending Appeal, and a Motion to Extend Time for Appeal of Order.

9. On December 11, 2003 the Division filed its Opposition to Motion for Stay Pending Appeal and Motion to Extend Time for Appeal of Order, and Opposition to Motion to Modify the Amending Order ("Opposition").
10. On December 29, 2003 the Company filed its Response to the Division's filings.
11. On June 7, 2004 the Commissioner issued a Show Cause Order notifying the Company of the Commissioner's proposed decision on the Company's motions, and providing to the Company an opportunity to be heard before issuing his decision. The Company waived its opportunity to be heard orally before the Commissioner, and instead on June 22, 2004 filed a written response to the Show Cause Order.

Conclusions of Law:

12. The Company's Motions request the Department to:
    a. Stay execution of its obligation to pay the $20,000 administrative penalty.
    b. Extend the time for the Company to appeal the Amending Order by the amount of time the Department requires to consider and decide on the Company's Motion to Modify.
    c. Modify the Amending Order by deleting Paragraph 8, which imposes a $20,000 penalty on the Company.
13. The Division does not object to the Company's request to stay execution of the $20,000 administrative penalty pending appeal, and does not object to an extension of time for the Company to file its appeal after the Commissioner rules on the Motion to Modify. The Division requests that the extension of time to appeal should be limited to 10 days. Pursuant to the terms of the Amending Order the Company had 30 days from the date of the Amending Order (November 13, 2003) to appeal the decision. The Company's Motions were filed on December 1, 2003. Thirteen (13) days following the issuance of this Order is a reasonable extension of time within which to permit the Company to appeal those portions of

the Amending Order, specifically the $20,000 penalty, which are contested by the Company. [1]

14. The Company in essence suggests two reason why its Motion to Modify should be granted, and the $20,000 administrative penalty should be withdrawn: First, the facts do not demonstrate contumacious or otherwise unlawful conduct during the time period between the Examination Order and the Amending Order on the part of the Company such that a new penalty is warranted; and Second, the law does not permit the imposing of an administrative penalty without notice and an opportunity to he heard.
15. Concerning the factual matters alleged by the Company in support of its Motion to Modify, the Company states that during the period of time before the Amending Order issued, the Company was working with the Department to provide evidence that it had "adequately addressed" the issues of timely payment of claims, the Company was working together with the Department to resolve technical issues and to complete its payments, and the Company is in full compliance with the Examination Order's requirements with respect to interest payments. (Motion to Modify ¶¶ 7-8) [2]
16. The Division in its Opposition observes that the Company does not appear to dispute that it violated Paragraph 25 of the Examination Order relating to the payment of interest on past due penalties by October 1, 2003, and that the Company does not appear to dispute that it is in violation of Paragraph 28 of the Examination Order relating to compliance reports. The Division disputes the Company's assertions that it is in full compliance with Paragraph 27 of the

[1] The Company's request for a stay of execution of the penalty is addressed in Paragraph 17, below, and by Paragraph A of this Order.

[2] The Company also complains that the Department violated the Vermont Rules of Professional Conduct No. 4.2 by hand-delivery of the Amending Order to officials at the Company, instead of communicating directly with the Company's attorneys. The Commissioner observes from the pleadings filed by the Company and the Division that before the issuance of the Amending Order, communications between the two parties took place frequently between non-lawyer representatives of each party, apparently without objection by either party. In any event, the Company does not appear to be making an argument that a violation of the Rules of Professional Conduct, if a violation occurred, warrants modifying the Amending Order, or invalidates the administrative penalty. If the Company intends to make such an argument , the Commissioner concludes that it is without legal merit.

Examination Order relating to the contemporaneous payment of interest with the payment of penalties incurred as a result of untimely payment of claims.

17. The Commissioner has no authority to resolve these disputed factual matters without a formal administrative hearing, at which time the parties will have the opportunity to demonstrate whether or not the Company is or is not in compliance with the Examination Order, whether or not the facts warrant the imposing of an administrative penalty, whether any aggravating or mitigating circumstances should be considered, and any other relevant matter.
18. The Company's second argument in support of its Motion to Modify asserts that the Commissioner has no legal authority to impose an administrative penalty without notice and an opportunity to be heard. The Commissioner agrees with the Company's statement of the law, but the Commissioner concludes that the process provided in this matter is in full compliance with the due process rights of the Company. The Amending Order did not impose a penalty without the due process procedures required by the Department's Regulation I-82-1, the Vermont Administrative Procedure Act, and the Vermont and federal constitutions, because the Company has always had a thorough opportunity to contest the findings and the proposed terms of the Amending Order as they relate to the proposed $20,000 penalty if it files a timely appeal. Furthermore, the Company has been provided with notice and an opportunity to be heard before the Commissioner's decision on the Company's motions.
19. The Company has not appealed, requested modification, or otherwise contested any provision of the Amending Order other than Paragraph 8 of the Amending Order. Consequently, the Commissioner concludes that Paragraph's 5, 6, and 7 of the Amending Order must take effect in accordance with their terms upon issuance of this Order. If the Company intends to appeal Paragraph's 5, 6, and 7 of the Amending Order, it must request permission from the Commissioner to appeal these provisions of the Amending Order, and if permission is granted the Company must file a notice of appeal as to these provisions within 13 days of the issuance of this Order.

Order:

Wherefore, it is hereby Ordered that:

A. The Company's Motion for Stay Pending Appeal is granted as follows: the Company is not obligated to pay the $20,000 administrative penalty until 23 days following the issuance of this order if the Company does not make a timely administrative appeal of the Amending Order, or until 10 days following a final decision at the conclusion of the administrative appeal if the Company makes a timely appeal of the Amending Order.

B. Paragraphs 5, 6, and 7 of the Amending Order shall take effect in accordance with their terms upon issuance of this Order, except that the Company shall have an additional 15 days to propose to the Department its Compliance Plan in accordance with Paragraph 6 of the Amending Order, if such Compliance Plan has not already been proposed, and the Company shall have an additional 10 days to provide the written explanation of noncompliance and verifiable list of payments in accordance with Paragraph 7 of the Amending Order, if such documents have not already been provided.

C. The Company's Motion to Extend Time for Appeal is granted as follows: the Company shall have 13 days from the issuance of this Order to appeal the administrative penalty imposed by the Amending Order.

D. The Company's Motion to Modify is denied. If a timely appeal of the Amending Order is filed, the administrative hearing procedures established in Department Regulation I-82-1 shall apply.

Dated at Montpelier, Vermont this 23rd day of June, 2004.

John P. Crowley, Commissioner