

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Care 2015)
Vermont Health Connect Rate Filing) DOCKET NO. GMCB-17-14-rr
SERFF No. MVPH-129560321)
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)

**MVP’S MOTION IN LIMINE TO EXCLUDE THE AUGUST 11, 2014 LETTER OF
DONNA C. NOVAK AND ANY TESTIMONY REGARDING THE CONTENT OR
OPINIONS CONTAINED IN THE LETTER**

NOW COMES MVP Health Plan, Inc. (“MVP”), by and through its counsel, Primmer Piper Eggleston & Cramer PC and submits this motion to exclude the August 11, 2014 letter of Donna C. Novak (the “Letter”) and any testimony or opinions contained in the Letter. The Board should grant this motion because the Letter is an untimely attempt to supplement and change Ms. Novak’s expert opinion, and is prejudicial to MVP. In support of this Motion, MVP states as follows:

1. On June 2, 2014, MVP filed its proposed rates in this matter. The Office of Health Care Advocate (“HCA”) has had over two months to review and analyze MVP’s filing to prepare for the hearing.

2. On July 1, 2014, the Board issued a Scheduling Order in this matter. The Scheduling Order provides that, after the August 1 disclosure of the Board’s expert opinion regarding MVP’s rate filing, the HCA must provide “[a] copy of the expert opinion, prepared and signed by the witness” and “[t]he facts, opinions, data, and documents relied on as a basis for the expert opinion” no later than August 5, 2014.

3. Also on July 1, HCA posed questions (through the Board) to MVP regarding its filing, providing it with an opportunity to further prepare for the hearing. The Board approved questions were answered by MVP.

4. On July 15, 2014, HCA identified Ms. Novak as its expert witness.

5. On July 30, 2014, the Board provided the opinion of its expert – Lewis & Ellis (L&E) in advance of the August 1 deadline “to help expedite the HCA expert opinion.” On the issue of demographics, that report recommended a 3.2% overall reduction in MVP’s rates.

6. On August 5, 2014, the HCA provided the report of Ms. Novak as required by the Scheduling Order. Pursuant to the Scheduling Order, MVP was left with one week to prepare to respond to Ms. Novak’s opinion, prior to the final hearing.

7. In her August 5 opinion, Ms. Novak specifically referenced the demographics issue, noting that L&E recommended that MVP:

- “Increase the projected index rate by 2.8% to account for changes in demographics”; and
- “Reduce the single contract conversion factor from 1.165 to 1.098.”

See Exhibit 1 at 14.

8. With respect to these recommendations, Ms. Novak stated that:

“L&E did not provide quantitative support for its calculation of” these proposed changes and “I therefore cannot comments on” the adjustments.

See id.

9. Six days later, on August 11, 2014, just two days prior to the hearing, Ms. Novak has attempted to change her opinion. In her Letter she states, in relevant part, “I have now had time to research the methodology and assumptions behind these two recommendations” and that she is now in agreement with L&E on both recommendations, effectively changing her opinion to include an additional 3.2% reduction. *See Exhibit 2.*

10. Absent from the Letter is any discussion of the research that Ms. Novak purports to have done regarding L&E’s methodology and assumptions. Ms. Novak does not cite to any

additional quantitative support for her new opinion. In fact, there is nothing discussed in the Letter that was not included in the L&E opinion, to which Ms. Novak had already had an opportunity to review and opine on.

11. In sum, there is nothing in Ms. Novak's new opinion that is based on any new information or quantitative support. She should not be permitted to now say "me too" and express an "opinion" on the subject, that she did not arrive at based on her own analysis. She is not in fact providing an opinion; she is instead relying upon another expert's opinion. Allowing her to do so at this late date, and after the disclosure deadline, is prejudicial to MVP.

12. While this is an administrative proceeding, it is governed by the Scheduling Order and Vermont courts routinely grant motions to exclude expert opinions which are provided after the deadline for doing so. *See e.g., Lamell Lumber Corp. v. Newstress Intern., Inc.*, 182 Vt. 282, 296-297 (2007). The HCA should not be allowed to introduce testimony that was not disclosed until two days before the hearing. To do so would permit HCA to circumvent the Hearing Officer's Scheduling Order. *See White Current Corp. v. Vermont Electric Coop.*, 158 Vt. 216, 223 (1992) (upholding trial court's exclusion of expert testimony disclosed at the last minute). The Scheduling Order on expert disclosures was prepared to be consistent with Vermont Rule of Civil Procedure 26.

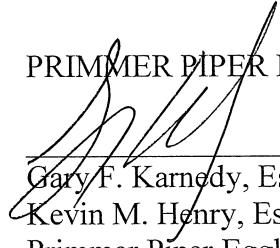
13. This late change of opinion is improper and should be excluded. Ms. Novak should be directed by the Hearing Officer (in advance of the hearing) to not testify on these issues, beyond saying "I cannot comment", since she did not opine on them in her expert report prior to the August 5 deadline.

[signature on following page]

Dated at Burlington, Vermont, this 11th day of August, 2014.

PRIMMER PIPER EGGLESTON & CRAMER PC

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CERTIFICATE OF SERVICE

I, Kevin M. Henry, hereby certify that I have served MVP Health Plan, Inc.'s Motion in Limine, via electronic mail and U.S. mail, on Michael N. Donofrio, General Counsel to the Green Mountain Care Board, Judith Henkin, Green Mountain Care Board Health Policy Director, Lila Richardson, Staff Attorney, Office of Health Care Advocate, and Kaili Kuiper, Esq., Staff Attorney, Office of the Health Care Advocate, P.O. Box 606, Montpelier, Vermont 05601.



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