



PRIMMER PIPER
EGGLESTON &
CRAMER PC

GARY F. KARNEDY
ADMITTED IN VT, NH AND DC
gkarnedy@primmer.com
TEL: 802-864-0880
FAX: 802-864-0328

July 2, 2019

VIA U.S. MAIL & E-MAIL

Michael Barber, Esq.
Green Mountain Care Board
144 State Street
Montpelier, VT 05602

Re: MVP Health Care 2020 Vermont Health Connect
Rate Filing – Docket No. GMCB-005-19rr

Dear Hearing Officer Barber:

On behalf of MVP Health Plan, Inc., enclosed please find *MVP's Opposition To The HCA's Motion To Compel and Certificate of Service*.

Respectfully submitted,

Gary F. Karnedy

Cc: **(VIA E-MAIL ONLY)**
Kaili Kuiper, Esq.
Jay Angoff, Esq.
Eric Schultheis, Esq.
Christina McLaughlin
Amerin Aborjaily, Esq.
Thomas Crompton

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Care, Inc.)
2020 Vermont Health Connect Filing) DOCKET NO. GMCB-005-19rr
)
SERFF No. MVPH-131934219)
)

MVP’S OPPOSITION TO THE HCA’S MOTION TO COMPEL

MVP Health Plan, Inc., (“MVP”) by and through Primmer Piper Eggleston & Cramer PC hereby responds to the Health Care Advocate (the “HCA”)’s June 26, 2019 Motion to Compel Rate Amendment (the “Motion”).

This compressed administrative proceeding is intended to streamline a statutorily time-constrained process whereby the carriers file their rates, the Board poses pre-hearing clarifying questions about the filing (including some questions from the HCA) and then promptly holds a hearing to take evidence and order modifications to the rate based on that evidence. The hearing for this rate filing is in just three weeks, on July 22.

MVP has often simply conceded to many Lewis and Ellis (“L&E”) suggested reductions at the time of the hearing, and the Board has also typically required additional changes in its final decision based on all of the evidence admitted. All of those various voluntary and ordered reductions are then compiled and completed by the actuaries at one time, with one calculation of a reduced rate, which is confirmed with Board staff, after the due process of an evidentiary hearing. This process has worked well for many years in light of the short statutory time limits for rate review and adjustment. *See MVP Letter - Modification of Rate Increase Request*, GMCB-007-16rr; *MVP Post-Hearing Findings of Fact and Conclusions of Law*, Docket No. GMCB-008-18rr at 1 (voluntarily lowering MVP’s initial average rate increase of 6.4% to 4.6%

in light of L&E's recommendation regarding silver loaded plans, impact of most recent data, and updated hospital budget information).

In its "Motion to Compel", the Health Care Advocate is stepping beyond its statutory role to attempt to up-end this process, which is procedurally and substantively improper. The HCA effectively seeks findings of fact and conclusions of law prior to the July 22 evidentiary hearing. The statutory process is not intended to require amendments to MVP's filing before the hearing, when those amendments can be simply addressed at the hearing, and should be based on all of the evidence. The process is not intended to encourage motion practice and mini-hearings on particular rate issues prior to taking evidence at the July 22 hearing.¹

The HCA's "Motion to Compel" is not a discovery device as labelled; it amounts to a request for injunctive relief without an evidentiary or even preliminary hearing; for the Board to order MVP to change its rates prior to the July 22 hearing on the merits. Injunctive relief is an extraordinary remedy that will issue only where a remedy at law would be inadequate and there has been a showing of irreparable harm. *See e.g. Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 148 Vt. 1, 4 (1987), *Vermont Division of State Buildings v. Town of Castleton Board of Adjustment*, 138 Vt. 250, 256-57 (1980); *Committee to Save the Bishop's House v. Medical Center Hospital of Vermont, Inc.*, 136 Vt. 213, 218 (1978).

¹ *See Petition of Green Mountain Power Corp.*, 147 Vt. 509, 518, 519 A.2d 595, 601 (1986) (upholding the Vermont Public Service Board (now the Vermont Public Utility Commission) decision in a rate proceeding to deny discovery requests where the Public Service Board stated that, "unlike the civil courts for which the Rules of Civil Procedure were principally designed, we do not have the luxury of an indefinite time frame within which to decide cases. In imposing the seven month limit, the legislature must be deemed to have given us sufficient control over matters brought before us to enable us to complete proceedings within the time prescribed."). The Board has an even narrower statutory period of 90 days from the date of the filing to consider and approve a rate request.

Here, the Board can consider the HCA's argument and evidence in three weeks, at the July 22 hearing, and then modify the rate filing if the Board finds modification necessary. 8 V.S.A. § 4062; Board Rule 2.301(a). The remedy authorized by statute is adequate, and there is no harm in waiting three weeks, let alone irreparable harm.²

Furthermore, the Board is required by statute to hold a public hearing, and subsequently make findings of fact and conclusions of law in its decision. 8 V.S.A. § 4062(e); *In re MVP Health Ins. Co.*, 2016 VT 111, ¶ 26, 203 Vt. 274, 289, 155 A.3d 1207, 1218 (2016). No statute or rule authorizes the Board to order MVP to amend its rate filing prior to the hearing, and the HCA points to no such authority. An order directing MVP to change its rate is a dispositive decision on that specific portion of the rate filing. The statute and the Board's rules do not authorize piecemeal decisions on portions of a rate filing. Instead, the statute and the Board's rules grant the Board authority to decide to approve, modify or deny a rate filing in its entirety after a public hearing. 8 V.S.A. § 4062; Board Rule 2.301(a). The Board cannot exercise authority it has not been granted by statute. *In re Green Crow Corp.*, 2007 VT 137, ¶ 12, 183 Vt. 33, 38, 944 A.2d 244, 248 (2007); *In re Club 107*, 152 Vt. 320, 326, 566 A.2d 966, 969 (1989); *In re Agency of Admin., State Bldgs. Div.*, 141 Vt. 68, 76, 444 A.2d 1349, 1352 (1982). The HCA's Motion is improper, and heads down a slippery slope that would vastly overcomplicate and bog-down this streamlined rate review proceeding in violation of Vermont law.

CONCLUSION

For the foregoing reasons, MVP requests that the Board deny the HCA's Motion.

² Furthermore, the HCA appears to be improperly posing questions in its Motion as an end-run around its June 10 deadline to proffer questions to MVP. 8 V.S.A. § 4062(c)(3)(A); Board Rule 2.202(c). The board should rule that those questions are improper.

Dated at Burlington, Vermont, this 2nd day of July 2019.

PRIMMER PIPER EGGLESTON & CRAMER PC

By: _____

Gary F. Karnedy, Esq.

Ryan M. Long, Esq.

Primmer Piper Eggleston & Cramer PC

30 Main Street, Suite 500

P.O. Box 1489

Burlington, VT 05402-1489

(802) 864-0880

gkarnedy@primmer.com

rlong@primmer.com

Attorneys for MVP Health Plan, Inc.

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Care 2020)
Vermont Health Connect Rate Filing) DOCKET NO. GMCB-005-19rr
)
SERFF No. MVPH-131934219)
)

CERTIFICATE OF SERVICE

I, Gary F. Karnedy, Esq., hereby certify that I have served MVP Health Plan, Inc.'s ***Opposition To The HCA's Motion To Compel***, via e-mail and U.S. mail upon the following:

Michael Barber, Esq.
Green Mountain Care Board
144 State Street
Montpelier, VT 05602
Michael.Barber@vermont.gov

Jay Angoff, Esq.
Mehri & Skalet PLLC
1250 Connecticut Ave. NW., Suite 300
Washington, DC 20036
jangoff@findjustice.com

Kailli Kuiper, Esq.
Office of the Health Care Advocate
Vermont Legal Aid
56 College Street
Montpelier, VT 05602
kkuiper@vtlegalaid.org

Eric Schultheis, Esq.
Office of the Health Care Advocate
Vermont Legal Aid
56 College Street
Montpelier, VT 05602
ESchultheis@vtlegalaid.org

Dated at Burlington, Vermont, this 2nd day of July, 2019.

PRIMMER/PIPER/EGGLESTON & CRAMER PC

By: _____

Gary F. Karnedy, Esq.
Primmer Piper Eggleston & Cramer PC
30 Main Street, Suite 500
P.O. Box 1489
Burlington, VT 05402-1489
(802) 864-0880
gkarnedy@primmer.com

Attorneys for MVP Health Plan, Inc.