

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Plan, Inc.)	GMCB-005-24rr
2025 Individual Market Rate Filing)	
)	SERFF No. MVPH-134081032
)	
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In re: MVP Health Plan, Inc.)	GMCB-006-24rr
2025 Small Group Market Rate Filing)	
)	SERFF No.: MVPH-134081005

**ORDER DENYING MVP’s MOTION TO
ADMIT EXHIBITS 28 – 31**

On July 18, 2024, MVP Health Plan Inc. (MVP) moved to admit four exhibits into evidence in advance of a July 24, 2024, hearing on its 2025 individual and small group rate filings. The exhibits, numbered 28 – 31, are described below:

- Ex. 28: *The Economics of Medicare for All*, a memo by economist Craig Garthwaite.
- Ex. 29: *Endogenous Quality Investments in the U.S. Hospital Market*, a journal article by Craig Carthwaite, Christopher Ody, and Amanda Starc.
- Ex. 30: A Brief of 38 Health Policy Experts as Amici Curae in *John Doe #1, et al. v. Donald Trump*, Case No. 3:19-cv-01743-SB (2020).
- Ex. 31: *Making Health Care More Affordable: Lowering Drug Prices and Increasing Transparency*, Hearing Before the Subcommittee on Health, Employment, Labor and Pensions, 116th Cong. 1 (2019).

MVP plans to refer to the exhibits in its briefing and its opening and closing statements. No MVP witnesses will be testifying about the exhibits.

MVP claims that the exhibits should be admitted because 1) the Board has routinely requested additional evidence on affordability and other non-actuarial statutory criteria and the information in the exhibits is evidence on these criteria, which the Board has clearly deemed relevant; 2) the Board has discretion under 3 V.S.A. § 810 to consider any relevant and reliable evidence; 3) the Board considers reliable hearsay all the time regarding health care and economic policy; and 4) the Board may take administrative notice of Ex. 31 as legislative material.

The Office of the Health Care Advocate (HCA) opposes the admission of the exhibits, arguing that each of the documents is hearsay and should be excluded under 3 V.S.A. § 810 because it is irrelevant and immaterial and, where relevant material does appear, it is not of the “type commonly

relied upon by reasonably prudent persons in the ordinary conduct of their affairs.” The HCA also argues that Ex. 31 cannot be admitted through administrative notice, asserting that while it might be appropriate to take administrative notice that a legislative hearing took place on a particular day, the facts asserted by the witnesses at the hearing are not appropriate for administrative notice.

I. Standards

Rate review proceedings are subject to 3 V.S.A. § 810, which states that 1) irrelevant, immaterial, or unduly repetitious evidence shall be excluded; 2) the Vermont Rules of Evidence (V.R.E.) shall be followed; and 3) when necessary to ascertain facts not reasonably susceptible of proof under the V.R.E., evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

The statute’s relaxation of the rules of evidence reflects “an administrative law policy to receive all evidence which may be material or relevant” and “recognizes the need of agencies to consider any evidence which may illuminate the case.” *In re Desautels Real Estate, Inc.*, 142 Vt. 326, 335 (1982) (citing 2 Am. Jur. 2d Admin. L. § 378; 73 C.J.S. Public Administrative Bodies and Procedure § 122); *In re Central Vt. Pub. Serv. Corp.*, 141 Vt. 284, 292 (1982).

The statute also provides that notice may be taken of judicially cognizable facts. 3 V.S.A. § 810(4); *see also* GMCB Rule 2.403(a)(9). Judicially cognizable facts are facts that are not subject to reasonable dispute because they are 1) generally known within the jurisdiction of the tribunal (e.g., laws of nature), or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned (e.g., facts of geography or history). *See* V.R.E. 201(b).

II. Discussion

Exhibit 31 cannot be admitted through administrative or “official” notice pursuant to 3 V.S.A. § 810. Notice under that statute may be taken of specific facts and MVP has not identified any specific facts within the 180-page document or explained how those facts meet the standard set out in V.R.E. 201(b).

It is uncontested that Exhibits 28 – 31 are hearsay and do not qualify for an exception to the hearsay rule. *See* V.R.E. 802. While MVP asserts that documents have been admitted in prior proceedings over hearsay objections, Exhibits 28 – 31 are quite different than the previously-admitted documents that MVP cites.¹

¹ Last year, the Board admitted the pre-filed testimony of MVP’s actuary, who would be testifying at the hearing even though certain portions of the testimony had been prepared with the help of individuals on MVP’s clinical and marketing teams. The Hearing Officer did not find that the statements were hearsay because it was not clear that the statements were

Although hearsay, the documents may be admitted if they are relevant and material, if admitting them is necessary to ascertain facts not reasonably susceptible to proof under the V.R.E., and if they are of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. MVP has not established that the documents are admissible under this standard.

MVP failed to explain how the documents are relevant. Relevant evidence is evidence having any tendency to make the existence of any fact of consequence to the determination of the action more probable or less probable than it would be without the evidence. V.R.E. 401. Relevance encompasses the concepts of materiality (“fact of consequence”) and probative value (“more or less probable”).

MVP has not clearly explained the exhibits’ materiality or probative value. MVP states that the exhibits “will help the Board as it considers important public policy views about affordability and other non-actuarial statutory criteria,” and that they “speak to general public policy issues . . . not . . . warranting a second day of hearings . . .” Addressing the documents specifically, MVP states:

- Exhibits 28 and 29 “speak directly to the pricing of medical care and associated costs, and the implications and effects of relevant public policy concerns;”
- Exhibit 30 “can assist the Board with understanding affordability and the other non-actuarial statutory criteria and may help illuminate the case;” and
- Exhibit 31 includes “testimony on making health care more affordable, lowering drug prices, and increasing transparency in connection with the proposed Lowering Drug Cost Now Act.”

The relevance of the documents is not apparent on their face and these explanations are too general to be useful.

MVP also did not establish that the documents are “of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.” The focus of this clause is reliability.

the statements of the individuals on the clinical and marketing teams, as opposed to the witness’s own statements. The Hearing Officer did conclude, however, that there was insufficient evidence that the witness had personal knowledge. In admitting the pre-filed testimony in full, the Hearing Officer noted that the HCA would have an opportunity to cross-examine the witness regarding the extent of his personal knowledge and the Board could consider this in evaluating what weight to give the testimony, if any, and that the document should be admitted under the relaxed standard of 3 V.S.A. § 810. *See In re MVP Health Plan, Inc. 2024 Individual and Small Group Market Rate Filings*, GMCB-004-23rr & GMCB-005-23rr., Transcript (Tr.), 11:19 – 13:15 (July 17, 2023). Two years ago, the Vermont Household Health Insurance Survey (VHHIS) was admitted over a hearsay objection from MVP. The VHHIS is a periodic survey that measures the uninsured rate and coverage sources for insured residents and collects information on relevant demographic, income, and employment characteristics. The document was found to qualify for an exception to the rule against hearsay and to contain data commonly relied upon to understand issues of affordability and access. *See In re MVP Health Plan, Inc. 2023 Individual and Small Group Market Rate Filings*, GMCB-005-22rr & GMCB-006-22rr., Tr., 220:4 - 17. In contrast, the documents in question here consist of well of one-hundred pages of expert materials that has not been admitted in prior proceedings and is unfamiliar to the Board.

Whether documents are reasonably reliable depends on what they are being introduced for, which, as explained above, is unclear. MVP's general assertion that "[r]easonably prudent persons often rely on materials authored by informed professionals" is, again, too general to be useful.

ORDER

For the reasons stated above, MVP's motion is **DENIED**.

Dated: July 22, 2024, at Montpelier, Vermont.

s/ Michael Barber

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