

**STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD**

In re: Blue Cross Blue Shield Vermont ) GMCB-002-23rr  
2024 Vermont ACA Market – )  
Individual Rate Filing ) SERFF No. BCVT-133654578

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In re: Blue Cross Blue Shield Vermont ) GMCB-003-23rr  
2024 Vermont ACA Market – )  
Small Group Rate Filing ) SERFF No. BCVT-133654592

**BLUE CROSS VT’S FIRST MOTION IN LIMINE**

On May 22, 2023, the Green Mountain Care Board issued a letter to Lewis & Ellis, its consulting actuary, requesting “that Lewis and Ellis provide it with information regarding the affordability of the proposed rates,” including at a minimum answering three specific questions on or before July 5, 2023. The request suggests that L&E will provide evidence and opinions beyond the scope of its expertise as the Board’s consulting actuary. As the Board recognizes, L&E itself has testified in prior hearings that affordability is not an actuarial standard, and L&E “does not make recommendations regarding affordability, *which is not an actuarial standard.*” *In re Blue Cross and Blue Shield Vermont 2022 Individual and Small Group Market Rate Filings*, GMCB-005/006-21rr, at 7 ¶ 27 (Aug. 5, 2021) (“2022 Decision”) (emphasis added). As explained below, the Board should take steps well in advance of July 5 to ensure that L&E’s response does not introduce inadmissible expert evidence into this proceeding.

On June 2, 2023, MVP Health Plan Inc. filed its First Motion in Limine, arguing that: (1) L&E is not qualified to opine about affordability; (2) Vermont law prohibits L&E from providing expert evidence about the meaning of an undefined statutory term; and (3) adding unqualified expert testimony to the record days before the hearing would prejudice the carriers and expand the scope of the proceeding. Blue Cross VT joins in MVP's request and, in the interest of efficiency, will not repeat MVP's arguments here. Instead, we make three discrete additional points below, to underscore the need for the Board to clarify the May 22 requests.

First, Blue Cross VT requests that the Board act consistently across the Blue Cross VT and MVP dockets with respect to the May 22 request. We have conferred with counsel for the HCA and MVP who authorized us to say that they agree with this request for a consistent approach in both dockets.

Second, the Board lacks statutory authority to elicit non-actuarial expert testimony from L&E. The Legislature authorized the Board to call two specific experts in rate review hearings: the Vermont Commissioner of Financial Regulation and the Board's "contracting actuary." 8 V.S.A. § 4062(e)(1). The Board's Rate Review Rule acknowledges those statutory limits. *See* GMCB Rule 2.000, § 2.307(d). The May 22 request, however, asks L&E to inject non-actuarial expert evidence into the record—evidence outside L&E's expertise and beyond its role as the Board's "contracting actuary." *See* Actuarial Standard of Practice No. 1, § 2.2 (defining "actuarial services" as "Professional services provided to a principal by an individual acting in the capacity of an actuary. Such services include the rendering

of advice, recommendations, findings, or opinions based on actuarial considerations.”)<sup>1</sup> *See also* MVP Mot. at 2-4. That would in turn exceed the Board’s statutory and rule-based authority to call expert witnesses.

Third, in addition to the prejudice identified in MVP’s motion, the ambiguous wording and open-ended, unclear scope of the May 22 request also prejudices the parties by leaving them unable to efficiently prepare potential rebuttal evidence. First, the general request for “information regarding the affordability of the proposed rates” lacks sufficient definition and can readily be interpreted as asking for opinion testimony.

The specific questions are also ambiguous. For example, the first question asks for “historical” information without specifying a timeframe and the phrase “effective rate increases experienced by policyholders” is open to multiple interpretations. The second question provides no indication about the kind(s) of “information” or “impacts” the Board is seeking or how the information would be collected. And the third question is unclear about whether the “premiums” being assessed are net of tax credits and other governmental assistance.

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<sup>1</sup> *Available at* <http://www.actuarialstandardsboard.org/asops/introductoryactuarialstandardpractice/>. *See also* Actuarial Code of Professional Conduct, Precept 2 (“An Actuary shall perform Actuarial Services only when the Actuary is qualified to do so on the basis of basic and continuing education and experience, and only when the Actuary satisfies applicable qualification standards.”), *available at* <https://www.actuary.org/content/code-professional-conduct>.

Given the issues raised above and in MVP's motion, Blue Cross VT respectfully requests that the Board rescind the May 22 requests to L&E. In the alternative, if there is specific data that the Board is seeking from L&E, Blue Cross VT asks that the Board narrow and clarify the request to specify the requested data and make clear that L&E is not being asked to, and may not, provide non-actuarial (and therefore unqualified and inadmissible) expert testimony. Blue Cross VT is willing to meet and confer with the Board, L&E, the HCA, and MVP in order to resolve this matter as efficiently as possible.

Dated: June 7, 2023

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**CERTIFICATE OF SERVICE**

I certify that on June 7, 2023, I served the above Blue Cross VT's First Motion in Limine on Michael Barber, Laura Beliveau, and Jennifer DaPolito of the Green Mountain Care Board; on Charles Becker and Eric Schultheis of the Office of the Health Care Advocate; and on Gary Karnedy, counsel for MVP, by electronic mail, return receipt requested.

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