

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Plan, Inc. ) GMCB-004-23rr  
2024 Individual Market Rate Filing )  
 ) SERFF No. MVPH-133660955

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In re: MVP Health Plan, Inc. ) GMCB-005-23rr  
2024 Small Group Market Rate Filing )  
 ) SERFF No. MVPH-133660956

**MOTION TO STRIKE PORTIONS OF THE PREFILED TESTIMONY OF  
CHRISTOPHER PONTIFF**

The Office of the Health Care Advocate (HCA) moves to strike portions of the prefiled testimony of Christopher Pontiff that MVP Health Plan, Inc. (MVP) filed on July 5, 2023, in the above referenced dockets. Specifically, the HCA moves to strike A21, A22, A23, A24, and A27 as these statements are hearsay.

Hearsay statements are generally not admissible. V.R.E. 801-805; e.g., State v. Felix, 2014 VT 68, ¶ 21. In addition to the various hearsay exceptions, an agent's hearsay statements are only admissible if they pertain to matters within the scope of the agent's employment. Lasek v. Vermont Vapor Inc., 2014 VT 33, ¶¶ 22-23.

In the present case, Christopher Pontiff's prefiled testimony (Pontiff Testimony) contains statements prepared with the help of unnamed persons other than Christopher Pontiff. As well, the Pontiff Testimony is offered to prove the truth of the matters asserted. The statements are therefore hearsay. Further, the statements are not related to actuarial matters, but rather to clinical or marketing issues, and as such are beyond the scope of Christopher Pontiff's employment. Admittance of A21, A22, A23, A24, and A27 would raise both issues related to the reliability of the Pontiff Testimony and the underlying fairness of allowing MVP to present evidence that is not subject to cross-examination. If it wished, MVP could properly notice and

have testify fact witnesses from the Clinical and Marketing teams, and the HCA would have the opportunity to cross-examine those persons. If MVP chooses not to offer such witnesses, it is improper to interject their testimony through the Pontiff Testimony.

A21 is offered to explain how “MVP promotes affordability by encouraging strong relationships with primary care physicians.” A22 is offered to explain how “MVP’s hiring and use of clinical staff improve affordability, quality and access to care.” A23 is offered to describe “MVP’s various case management programs.” A24 is offered to explain how “MVP’s case management activities help create efficiencies and improve affordability, quality and access to care.” All four of these responses are offered to prove the truth of the matters asserted. As noted in the first sentences of A21, A22, A23, A24, the answers were prepared with the “help of MVP’s Clinical team,” of which Christopher Pontiff is not a member. Lastly, the hearsay statements contained in A21, A22, A23, A24 are not actuarial in nature but rather relate to clinical practices outside the scope of Christopher Pontiff’s employment and in which he has no relevant professional experience. Prefiled Test. of Christopher Pontiff at 2, lines 8-12; Ex. 1 (Christopher Pontiff’s CV). Indeed, the fact that Christopher Pontiff relies on MVP’s clinical team to explain these matters is evidence that they are outside of the scope of his employment as an actuary.

A27 is offered to explain how MVP uses “technology to manage costs and improve affordability, quality and access to care.” The response is offered to prove the truth of Christopher Pontiff’s answer. As noted in the first sentence of A27, the answer was “authored with support from [MVP’s] Marketing team,” of which Christopher Pontiff is not a member. Lastly, the hearsay statements contained in A27 are not about actuarial matters but rather relate to marketing and technology matters outside the scope of Christopher Pontiff’s employment and

in which he has no relevant professional experience. Prefiled Test. of Christopher Pontiff at 2, lines 8-12; Ex. 1 (Christopher Pontiff's CV). As stated above and is again true in relation to A27, the fact that Christopher Pontiff must rely on MVP's marketing team to explain this matter is evidence that it is outside of the scope of his employment as an actuary.

For the above stated reasons, the HCA asks the Green Mountain Care Board to strike A21, A22, A23, A24, and A27 of the Pontiff Testimony as the responses are hearsay.

Dated in Rutland, Vermont, this 7th day of July 2023.

/s/ Charles Becker

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**CERTIFICATE OF SERVICE**

I, Charles Becker, hereby certify that I have served the above **MOTION TO STRIKE PORTIONS OF THE PREFILED TESTIMONY OF CHRISTOPHER PONITFF** on Michael Barber, Laura Beliveau, Jennifer DaPolito, and Geoffrey Battista of the Green Mountain Care Board; and Gary Karnedy, Ryan Long, and Maggie Kushner, Primmer Piper Eggleston & Cramer PC, representatives of MVP Health Care in the above-captioned matters, by electronic mail, delivery receipt requested, this 7th day of July, 2023.

*/s/ Charles Becker*  
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