



**The State of New Hampshire
Insurance Department**

21 South Fruit Street, Suite 14
Concord, NH 03301

David J. Bettencourt
Commissioner

Keith E. Nyhan
Deputy Commissioner

**Competitive Market Determination
Regarding Medical Professional Liability Insurance
For Physicians, Surgeons, and Hospitals**

Docket: INS No. 23-030-AP

PROPOSED ORDER

Background

An important purpose within RSA 412 is to ensure competitive rates of property and casualty insurance products within the New Hampshire insurance market. Pursuant to RSA 412: 13, a competitive market is presumed to exist unless the Commissioner, after a hearing, determines that a reasonable degree of competition does not exist in the market and the Commissioner issues a ruling to that effect.

In determining whether a reasonable degree of competition exists, the commissioner shall consider relevant tests of workable competition pertaining to market structure, market performance and market conduct and the practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and

obtain insurance from competing insurers as further described in RSA 412:14.

RSA 412:13.

Such ruling expires 2 years after issue unless the Commissioner renews the ruling after a public hearing and continued finding as to a lack of a reasonable degree of competition. See RSA 412:13. RSA 400-A:17 provides that the Commissioner has authority to hold hearings for any purpose within the scope of the insurance code, (Title XXXVII), as he may deem advisable or if required by any provision within that code.

In 2019, after notice and a public hearing, the Commissioner, on November 8, 2019, issued an Order, Docket No. 19-023-AP, finding that a competitive market for medical professional liability insurance covering physicians, surgeons, and hospitals did not exist in New Hampshire. On or about September 2, 2021, the Department published notice of a second hearing for October 22, 2021. The public hearing was held, as scheduled, on October 22, 2021, at 10 am at the New Hampshire Insurance Department (Department) to determine whether the November 8, 2019, Order should be extended another two years. A determination was made at the October 22, 2021, hearing to continue the order through November 8, 2023, by Order dated November 8, 2021.

A further public hearing was scheduled on October 24, 2023, in front of Hearings Officer Steven M. Notinger who was appointed by the Commissioner to hear this case. See Ins. 203.01(b). On or about September 8, 2023, the Department published notice of the October 24, 2023, hearing on the Department's website and sent notice of the hearing to the top .5 percent licensed writers of medical professional liability insurance in the state. See Exhibits 1 and 2. In addition, the Department published additional notices of this hearing in the Concord Monitor on October 9, 11, 17 and 19 and the Manchester Union Leader on October 16, 19, 2023. See Exhibit 4. This information was presented to the hearings officer in the Med Mal Market Determination Hearing¹ binder (the "Binder") prepared by the Department for the hearing, and all exhibits in the binder shall be admitted evidence in these proceedings and are incorporated herein by reference.² This includes the written testimony of Mr. Citarella. Exhibit 5.

Findings

Christian Citarella, the Department's Chief Property & Casualty Actuary, testified at the October 24, 2023, hearing. There were no other

¹ The Court takes judicial notice of all exhibits in the Binder and admits all exhibits.

² Exhibit 6 incorporates all of the exhibits introduced by Mr. Citarella as Exhibit 1A, 1B, 1C, 2A, 2B, 3A, 3B, 3C, 3D and 4 at the hearing.

witnesses who testified at this hearing. Mr. Citarella presented testimony and exhibits to address the following considerations with regard to competitiveness within the New Hampshire medical malpractice insurance market, as outlined within RSA 412: 14(11):

- (a) The extent to which the largest insurer groups control the insurance marketplace.
- (b) Whether the total number of companies writing the form of insurance in this state is sufficient to provide multiple options to the public.
- (c) The extent to which insurer entries and exits, considered over several years, suggest the presence or lack of entry or exit barriers or both.
- (d) The degree to which the insurance products offered to consumers are homogenous in nature and, thus, comparable.
- (e) The availability of insurance coverage in all geographic areas. A review of changes in residual market shares, if applicable, may be used as an indication of availability.
- (f) The overall rate level, which is not excessive, inadequate, or unfairly discriminatory.
- (g) The trend in price level for each type of insurance.
- (h) The profitability of each form of insurance over a period of several years.
- (i) The level of knowledge of market participants and the extent to which comparative pricing information has been made readily available to consumers.
- (j) The extent to which the market for each type of insurance is growing.
- (k) The presence of conditions indicating reverse competition.
- (l) Any other factors customarily reviewed and considered relevant.

As was the case two years ago, Mr. Citarella testified that the market is

highly concentrated for admitted insurers based on the Herfindahl-Hirshman Index (HHI), which is used by the Justice Department. Exhibit 5, p. 3. The combined 2022 market share for the top 10 companies is 68.1%. Id. The four registered carriers among them wrote more than 1/3 of New Hampshire business. Id. In addition, several insurers continue to rely on each other's rate filings to justify or produce their own data and rates. Id. p. 4. As a result, Mr. Citarella testified that these circumstances support the need for the Department to continue to review and ensure that the data and methodology relied upon by insurers in this market for rates are reliable. Id. In sum, Mr. Citarella's testimony and exhibits at the hearing support the conclusion that (1) there has not been significant change in the New Hampshire market over the past two years with respect to the factors outlined within RSA 412:4 (II) and (2) there is not a reasonable degree of competition in the medical professional liability insurance marketplace. See Exhibits 5, 6.


Conclusion

After reviewing the testimony and exhibits presented at the hearing, I find that there continues to be substantial evidence in support of the conclusion that a reasonable degree medical malpractice insurance competition does not exist in the market for physicians, surgeons, and

hospitals and the market is not a competitive market. A "Competitive Market" means a market that has not been found to be noncompetitive pursuant to applicable statute in New Hampshire. See RSA 412:3(VI). As such, (1) rate filing procedures and standards as outlined within RSA 412: 15, 412: 16, and 412: 19, specific to a noncompetitive market continue to apply to medical professional liability insurance market for physicians, surgeons, and hospitals and (2) this Order will expire two years from the date this Order is signed. The record was held open for 7 days after the hearing, until the conclusion of business on October 31, 2023, in the event someone wanted to appear and present information. No further information was presented. The record was closed at 4:00 p.m. on October 31, 2023.

SO ORDERED,

11/1/23
Date


Steven. M Notinger
Administrative Hearings
Officer appointed by the
Commissioner