ATTACHMENT 21

STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT

ORDER

**Competitive Market Determination
Regarding Medical Malpractice Insurance
for Physicians, Surgeons and Hospitals**

Docket No.: Ins 05-025-AP

Introduction

1. Title XXXVII, Chapter RSA 412 contains the provisions regulating forms and rates for property and casualty insurance.

2. RSA 412:13 states that a competitive market is presumed to exist unless the commissioner, after conducting a hearing, determines that a reasonable degree of competition does not exist in the market and issues a ruling to that effect that is valid for one year from date of issue.

3. The provisions of RSA 412:14 delineate the relevant information, analytical systems and other sources the commissioner may consider when making this determination.

4. RSA 400-A:17 provides the commissioner with the authority to hold hearings for any purpose within the scope of this title (XXXVII) as he may deem advisable or if required by any provision of this title (XXXVII).

5. A June 22, 2005 Order of Public Hearing scheduling a hearing on the matter for July 18, 2005 was mailed to the fifty-three (53) licensed writers of medical malpractice insurance in New Hampshire and known interested parties; and a legal notice was published in fifteen (15) state newspapers on July 6th and July 13th.

Findings

1. Testimony, presented at the hearing by the Department's Property and Casualty Actuary, focused on the following considerations enumerated in RSA 412:14 II:

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 homogeneous in nature and thus comparable.
e. The availability of coverage in all geographic areas.
f. The trend in price levels for each type of insurance.
g. The profitability of each form of insurance over a period of several years.
h. The level of knowledge of market participants and the extent to which comparative pricing information has been made readily available to consumers.
i. The extent to which the market for each type of insurance is growing.

2. Testimony and documentary submissions of the Department's Property and Casualty Actuary support the following findings:

a. For physicians and surgeons seeking medical malpractice insurance and, to a lesser extent for hospitals, there exists a highly concentrated market, as measured by share of total premium volume. For physicians and surgeons, the market share of the top 4 insurers,

including the NHMMJUA as an insurer, is 95 %. For hospitals, the market share is 59% for the top 4 insurers. Combined, the top 4 insurers' market share is 80%. RSA 401-B:3-a, the statute governing insurance holding companies, defines a "highly concentrated market" to be one in which the share of the 4 largest insurers is 75% or more.

b. The Herfindahl – Hirschman Index also supports the conclusion that the market is highly concentrated. The index exceeds 3,000 for physicians and surgeons. The index is above 1,200 for hospitals. The standard used by the U.S. Department of Justice in determining the impact of mergers and acquisitions on competition is that an index of 1,800 or more is a sign of a highly concentrated market. An index in the range of 1,200 to 1,800 is a sign of a moderately concentrated market.

c. The regulated market, excluding the NHMMJUA, has even higher concentration ratios, and 3 insurers write nearly all of the business. In reviewing rate filings made by all carriers, there is a clear and significant reliance on one company's data, loss costs and rates. Therefore, a significant level of "control" exists, even though it does not appear to be intentional on the part of the company.

d. The recent round of filed rate changes reflect a continuation of regular and large increases on the part of the licensed, regulated companies.

e. Financial results, while in accordance with accepted accounting and actuarial standards and principals, reflect a high degree of uncertainty, given the long tail for loss development associated with this line of business, coupled with the minimal amount of loss data upon which to base projections. The potential for excess profits or excess losses, either of which is a concern, is real and justifies a higher level of scrutiny for submitted rate filings.

3. No prepared testimony was offered at the hearing to support the position that a competitive market does exist. During the open comment period, additional comments related to some of the considerations cited in paragraph 6 were received from interested parties representing various insurers and insurance company associations in support of the position that a competitive market does exist. None of the comments, however, contradicted the findings in the preceding paragraphs or altered the general significance of those findings.

Conclusions

After reviewing the material and testimony presented at the hearing along with additional written materials submitted during the open period, I find that there is substantial evidence in support of the conclusion that the medical malpractice insurance market for physicians, surgeons and hospitals is not a competitive market.

Therefore, it is ORDERED, that:

1. Per RSA 412:3 and RSA 412:13, a competitive market for medical malpractice insurance covering physicians, surgeons and hospitals does not exist in New Hampshire; and

2. Rate filing procedures and standards outlined in RSA 412:15, 412:16 and 412:19, specific to a noncompetitive market, should be adhered to immediately; and

3. This order will expire one year from the date this order is signed.

Signature: _____ Date: 10-13-05