

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**In Re: BlueCross BlueShield of Tennessee  
Docket No.: Ins. No. 21-058-EP**

**AMENDED ORDER TO SHOW CAUSE  
AND NOTICE OF HEARING**

The New Hampshire Insurance Department ("NHID") orders BlueCross BlueShield of Tennessee ("Respondent") to show cause why the New Hampshire Insurance Commissioner should not levy an administrative fine against it and/or order Respondent to cease and desist from offering health insurance in this state. In support of the Order to Show Cause and pursuant to RSA 541-A:31, RSA 400-A:17 *et seq.* and Ins Chapter 200, the NHID states as follows:

**STATEMENT OF FACTS**

1. Respondent is a Tennessee based insurance carrier who offers large group major medical health insurance coverage to at least one employer operating in New Hampshire.
2. B.C. is a New Hampshire resident who receives Respondent health insurance coverage through her employer; B.C.'s employer operates a physical work space in New Hampshire.
3. In 2020, B.C. sought out fertility treatment. B.C. has continued to receive fertility treatment through 2021. To date, B.C. has undergone treatment resulting in no less than 20 separate claims relating to fertility treatment.
4. Though required under New Hampshire law, Respondent denied coverage of those claims relating to medically necessary fertility treatments for B.C.
5. Throughout June and July of 2021, the NHID requested that Respondent reverse the denial for B.C.'s fertility treatment, noting that New Hampshire law requires that Respondent's insurance plan provide coverage for medically necessary fertility treatment.
6. Respondent failed to accede to that request.

### STATEMENT OF ISSUES

7. Whether Respondent violated NH RSA 400-A:15, by failing to provide coverage to consumer B.C. for medically necessary fertility treatment, in contravention of NH RSA 417-G:2.
8. The NHID reserves the right to amend this statement of issues upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

### INSURANCE LAWS VIOLATED BY RESPONDENT

9. The NHID maintains the Respondent violated the following New Hampshire insurance law statutes: NH RSA 400-A:15 and NH RSA 417-G:2.
10. The NHID reserves the right to amend this list of insurance laws violated by the Respondent upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

### PENALTY REQUESTED

11. In the event that the Hearing Officer determines after an evidentiary hearing that the NHID sustained its burden of proof with respect to the allegations of fact and violations of law outlined above, the NHID requests that the Hearing Officer impose the following sanctions on the Respondent:
  - a. Order the Respondent to pay a penalty no less than \$52,500; and;
  - b. Order the Respondent to cease and desist from offering health insurance in this state.
12. The NHID reserves the right to amend penalty requested upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

### NOTICE OF HEARING

13. An adjudicatory proceeding shall be commenced for the purpose of resolving the issues articulated above pursuant to RSA 541-A:31, RSA 400-A:17, *et seq.*, and Ins 200. To the extent that the Department's rules do not address an issue

of policy or procedures, the Department shall apply the N.H. Department of Justice Rules, Part 800.

14. The Respondent shall appear at Department on **TO BE DETERMINED** (with proper notice to all parties), at the Department's office located at 21 South Fruit Street, Suite 14, in Concord New Hampshire to participate in this adjudicatory proceeding and, if deemed appropriate, be subject to sanctions pursuant to RSA 400-A:15, III. Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia* and sanctions may be imposed without further notice or an opportunity to be heard.
15. James Fox, Esq. is appointed to act as Hearing Officer in this matter with all the authority within the scope of RSA 400-A:19 and Ins 203.01.
16. Sandra Barlow shall serve as clerk to the Hearing Officer. The parties should direct all communications to Ms. Barlow, whose contact information is:

Sandra Barlow, Clerk  
New Hampshire Insurance Department  
21 South Fruit Street, Suite 14  
Concord, NH 03301  
Tel: (603) 271-2033  
Fax: (603)271-1406  
Email: [sandra.l.barlow@ins.nh.gov](mailto:sandra.l.barlow@ins.nh.gov)

17. The Respondent has the right to be represented by a lawyer in this proceeding. However, the Respondent shall bear the cost of retaining said lawyer. Should the Respondent elect to retain a lawyer, his lawyer shall file a Notice of Appearance with Ms. Barlow, and said lawyer should do so at the earliest possible date. A copy of the NHID's Notice of Appearance form is enclosed with this Order.
18. Any party may request a transcript of the proceeding. The party requesting a transcript of the proceedings shall file a written request for a certified court reporter with the Hearing Officer at least 10 days prior to the scheduled hearing date. The costs incurred for the services of a certified court reporter shall be borne by the requesting party.
19. Joshua Hilliard, Esq. shall serve as staff advocate representing the interests of the NHID.

20. All routine procedural inquiries may be made by contacting Sandra Barlow, Hearing Clerk, New Hampshire Insurance Department, 21 South Fruit Street, Suite 14, Concord NH 03301, (603) 271-2033, but that all other communications with the Hearing Officer and the Commissioner shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Department's regulations.
21. A copy of this hearing notice shall be served upon Respondent by certified mail addressed to the mailing address on file with New Hampshire Insurance Department. *See*, RSA 400-A:14.

It is **SO ORDERED**.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: 12/6/23

  
David J. Bettencourt  
Insurance Commissioner

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Order to Show Cause and Notice of Hearing was sent this date via e-mail to Respondent's local counsel Bryan Gould, Esq, at [gouldb@cwbp.com](mailto:gouldb@cwbp.com).

Date: 12/6/23

  
Joshua S. Hilliard, Esq.  
Compliance & Enforcement Counsel