

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re:

Health Management Advisors, LLC (HMA)

and

HM Life Insurance Company

Docket No.: Ins. No. 09-026-EP

**NHID'S REVISED REQUEST FOR FINDINGS OF FACT AND
RULINGS OF LAW, AND PRAYER FOR RELIEF**

The New Hampshire Insurance Department ("NHID") submits the following Revised Request for Findings of Fact and Rulings of Law, and Prayer for Relief.

I. REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW

A. Controlling Procedural Statute and Rules

1. LAW: The above-referenced administrative proceeding is governed by the Administrative Procedure Act, RSA 541-A and Ins 200, Practices and Procedures.
2. LAW: Ins 204.05, "Burden and Standard of Proof," provides:
 - (a) For purposes of this section, "proof by a preponderance" of the evidence means what is sought to be proved is more probable than not.
 - (b) In a hearing held to determine whether a certification, license, permit or other approval that has already been issued should be suspended, revoked, or not renewed, the department shall unless otherwise required by statute, present a prima facie case supporting its action in order to meet its burden of proof, after which the opposing party shall bear the burden of persuasion to present evidence to convince the hearing officer that the department's position should not be upheld; and
 - (c) The standards for meeting the burden of proof shall be by a preponderance of the evidence.
 - (d) In a hearing held to determine whether an administrative fine should be imposed the department shall bear the overall burden of proof by a preponderance of the evidence.

(e) In any hearing held to review a department decision not subject to paragraph (b) or (c) of this section, the burden of proof shall be on the person seeking to overturn the decision.

(f) The party asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.

B. The HMA Direct Companies Acted as a Single Corporate Entity.

3. FACT: “Health Management Advisors, LLC dba HMA Direct is the parent company of a group of companies that trade together under the name HMA Direct.” (HMA Direct Marketing Brochure at NHID Exh. 44, v. 6, p. 18; *see also* HMA Direct Web Pages at NHID Exh. 45, v. 6, p. 21; *see also* Robert Bevis Engagement Letter at NHID Exh. 43, v. 6, p. 10.)

4. FACT: “HMA Direct consists of three fully-integrated divisions,” including New England Custom Health Plan Administrators, LLC (“NECHPA”); HMA Administrators, LLC; and HMA MGU, LLC (“HMA MGU”). (HMA Direct Marketing Brochure at NHID Exh. 44, v. 6, p. 18; and HMA Direct Web Pages at NHID Exh. 45, v. 6, p. 21; *see also* Robert Bevis Engagement Letter at NHID Exh. 43, v. 6, p. 10.)

5. FACT: Health Management Advisors, LLC and its three fully-integrated divisions marketed itself to New Hampshire consumers as “HMA Direct,” not NECHPA, HMA Administrators or HMA MGU. (*See e.g.*, Bevis testimony, p. 346, l. 5-17; and Cavetti testimony, p. 8, l. 12-22.)

6. FACT: HMA Direct sales personnel were trained to market the company to prospective customers as “HMA Direct.” (Bevis testimony, p. 361, l. 13-24, p. 363, l. 3-10.)

7. FACT: At all relevant times, the companies trading together under the name “HMA Direct” were located at 7 Wells Avenue, Suite 24, Newton, Massachusetts. (*See, e.g.*, HMA Direct marketing brochure, NHID Exh. 44, v. 6, p. 19.)

8. FACT: Jed L. Brettschneider (“Mr. Brettschneider”) is the owner, President and CEO of Health Management Advisors, LLC. (*See, e.g.*, HMA Web Pages, NHID Exh. 45, v. 6, p. 28.) Mr. Brettschneider is also the owner of NECHPA (*see, e.g.*, NECHPA New Hampshire Licensing Application, NHID Exh. 48, v. 6, p. 42), and the Managing Member (and therefore also an owner) of HMA MGU, LLC. (*See, e.g.*, HMA Web Pages, NHID Exh. 45, v. 6, p. 28; and Kimark’s Application to HM Life Ins. Co. for Aggregate and Specific Excess Stop Loss Insurance, NHID Exh. 14, v. 2, p. 9.)

9. FACT: Mr. Brettschneider exercised control over the hiring and training of HMA Direct’s sales personnel. (Bevis testimony, p. 339, l. 1-24; p. 340, l. 1-15, l. 21-24; p. 341, l. 1-7; p. 366, l. 11-12; p. 367, l. 3-7.)

10. FACT: Mr. Brettschneider was directly involved in the sale of HMA Direct’s services and products, including sales to certain New Hampshire employers, including Control Air. Mr. Brettschneider attended weekly sales meetings, meetings with prospective customers and was available by telephone and email to sales personnel. (Bevis Testimony, p. 381, l. 10-24; p. 382, l. 1-21.)

11. FACT: At all relevant times, William “Bill” O’Brien was employed by HMA Direct as a Regional Sales Manager. (*See, e.g.*, HMA web pages, NHID Exh. 45, v. 6, p. 30; O’Brien business card, NHID Exh. 42, v. 6, p. 9; HMA University, NHID Exh. 28, v. 4, p. 304; and various O’Brien emails, NHID Exh. 1, v. 1, pp. 14, 15, 22, 26 and 30.)

12. FACT: Mr. O'Brien identified himself to Dawn Mahoney of Amherst Label, Inc. as "Mr. O'Brien from HMA Direct." (Mahoney testimony, p. 119, l. 12-14.)

13. LAW: Under New Hampshire law, courts "will pierce the corporate veil and assess individual liability where the owners have used the corporate identity to promote an injustice or fraud. . . . In such a case, we will disregard the fiction that the corporation is independent of its stockholders and treat the stockholders as the corporation's 'alter egos.'" (*The Norwood Group, Inc. & a. v. Rose Marie Phillips & a.*, 149 N.H. 722, 724 (2003) (citations omitted)).

14. LAW: In addition to recognizing that an individual may be the alter ego of a corporation, New Hampshire has also recognized that a parent corporation may be the alter ego of a subsidiary and vice versa. (*See Leeman v. Boylan*, 134 N.H. 230, 233 (1991)).

15. LAW: "Veil-piercing is proper when a subsidiary is an alter ego or instrumentality of the parent corporation. A court applying the alter ego theory in a corporate context will disregard the separate legal existence of the alter ego entity and view it as a mere conduit through which the primary corporate entity exercised power over all decisions. The ultimate test for imposing alter ego status is whether, from all of the facts and circumstances, it is apparent that the relationship between the parent corporation and the subsidiary is so intimate, the parent's control over the subsidiary is so dominating, and the business and assets of the two so mingled that recognition of the subsidiary as a distinct entity would result in an injustice to third parties." (18 C.J.S. § 29 (2007)).

16. FACT: The intertwined relationship among the HMA Direct companies is graphically depicted in a chart in the HMA University training materials. This chart appears above a caption that reads: “HMA DIRECT CORPORATE HEADQUARTERS IN NEWTON, MA.” (NHID 28, v. 4, p. 12.)

17. FACT/LAW: The NHID has adduced sufficient testimonial and documentary evidence to allow the Hearing Officer to disregard the fiction that Health Management Advisors, LLC dba HMA Direct is independent of its three subsidiaries (or “divisions”) and pierce the corporate veil.

C. Pursuant to Its Authority under the Managing General Underwriting Agreement, HMA Direct Engaged in the Business of Insurance.

18. FACT: Stop loss insurance coverage is purchased by employers in order to limit their exposure under self-insured medical benefits plans. Stop loss coverage is available in two types: (1) *Specific stop loss* coverage is triggered when a claim reaches the threshold selected by the employer. After the threshold is reached, the stop-loss policy would pay claims up to the lifetime limit per employee for the self insurance medical plan; and (2) *Aggregate stop loss* coverage is triggered when the employer's self insurance total group health claims reach a stipulated threshold selected by the employer. (See, e.g., HMA University training materials, NHID Exh. 28, v. 4, pp. 115-124.)

19. FACT: Effective December 1, 2006, HM Life Insurance Company (“HM Life”) entered “The Managing General Underwriter and Claims Services Administration Agreement” (“MGU Agreement”) with HMA MGU to underwrite the specific and aggregate stop loss insurance coverage for HMA Direct’s customers, including its

customers in New Hampshire. The MGU Agreement expired on November 30, 2009. (MGU Agreement, NHID Exh. 30, v. 5, pp. 33-87.)

20. FACT: Mr. Brettschneider is described in the MGU Agreement as “President and CEO,” and he executed the MGU Agreement on behalf of HMA MGU. (MGU Agreement, NHID Exh. 30, v. 5, pp. 38 and 67.)

21. FACT: The MGU Agreement authorized HMA Direct to act as a stop loss insurance underwriter on behalf of HM Life. (MGU Agreement, § 2.01(1), NHID Exh. 30, v. 5, p. 37 and § 3.01, v. 5, pp. 39-40.)

22. FACT: The MGU Agreement also required HMA Direct to “adjust, investigate, and examine Claims.” (MGU Agreement, § 4.01(1), Exh. 30, v. 5, p. 45.)

23. FACT: Pursuant to its authority under the MGU Agreement, HMA Direct accepted and executed applications to HM Life for aggregate and specific excess loss insurance. (See Applications at NHID Exh. 71, v. 8, pp. 8, 38, 69, 101, 130, 161, 194, 225 and 255.)

24. FACT: HMA Direct was required to issue a minimum of 5 million dollars of stop loss coverage on an annual basis. (MGU Agreement, NHID Exh. 30, v. 5, p 68.)

25. LAW: RSA 406-B:2 defines the type of conduct that constitutes the business of insurance in New Hampshire.

26. FACT/LAW: By exercising its authority under the MGU Agreement, HMA Direct engaged in the business of insurance in New Hampshire as defined in RSA 406-B:2.

D. HMA Direct Reinsured HM Life for Claims Against Stop Loss Policies.

27. FACT: HM Captive Insurance Company (“HM Captive”) is a captive insurance company organized pursuant to the laws of the State of Vermont. and is owned by HM Life. (Vermont Certificate of Authority, NHID Exh. 31, v. 5, p. 91.)

28. FACT: Health Management Advisors, LLC. owned a “protected cell” in HM Captive. (Quota Share Agreement, NHID Exh. 32, v. 5, p. 93.)

29. FACT: Pursuant to a “Specific and Aggregate Medical Stop Loss Quota Share Reinsurance Contract issued to HM Life by HM Captive” (“Quota Share Agreement”), HMA Direct reinsured HM Life for 80% of the first \$150,000 in claims made against the stop loss insurance policies issued to HMA Direct customers’ policies. (Article V of the Quota Share Agreement, NHID Exh. 32, v. 5, pp. 96-97; *see also* Bevis Engagement Letter, NHID Exh. 43, v. 6, p. 10.)

30. FACT: In consideration for reinsuring HM Life, HMA Direct was paid a minimum of 72.5% of the original gross premiums collected by HMA Direct from its own customers for stop loss insurance.

E. HMA Direct “Carved Out” Employees with Preexisting Conditions from Its Partially Self-Funded Health Plan.

31. FACT: During the sales process, HMA Direct required employees and their families seeking health coverage to complete questionnaires requesting, among other things, information about the health status of the employees and their families. (*See, e.g.*, HMA Direct Employee Enrollment/Refusal Form, NHID Exh. 69, v. 7, p. 38; Calvetti testimony, p. 44, l. 19-24, p. 45, l. 1-21.)

32. FACT: The HMA Direct Employee Enrollment/Refusal Form was distributed to employees with a document called “Memo to Employees.” Although the Memo was written from the point of view of the employer, the Memo was actually drafted by HMA Direct. (Calvetti testimony, p. 40, l. 4-6; Bevis testimony, p. 395, l. 17-24, p. 396, l. 1, p. 397, l. 11-14.)

33. FACT: The HMA Direct Employee Enrollment/Refusal Form was part of what HMA Direct called the “risk assessment survey.” (Bevis testimony, p. 375, l. 21-24, p. 376, l. 1-8.)

34. FACT: At HMA Direct, a “dual plan” was defined as running a partially self-funded plan alongside a fully-insured health plan. (Bevis testimony, p. 371, l. 21-24, p. 372, l. 1-3.)

35. FACT: HMA Direct used the risk assessment survey to determine who qualified for the partially self-funded plan, and who would have to be insured by a fully insured (and regulated) plan. (Bevis testimony, p. 376, l. 19-24, p. 377, l. 1-4.)

36. FACT: Mr. Brettschneider personally reviewed the risk assessment surveys for every employer group before proposals were released to the sales staff for distribution to prospective customers. (Bevis testimony, p. 372, l. 4-21.)

37. FACT: Internally, HMA Direct, including Jed Brettschneider, referred to the unhealthy employees who did not qualify for the partially self-funded plan as “carve outs.” (Bevis testimony, p. 377, l. 10-21.)

38. FACT: “A carve out was somebody that did not, because of health reasons, qualify for the partially self-funded health plan. They were too high risk for the [partially self-funded] group.” (Bevis testimony, p. 377, l. 23-24, p. 378, l. 1.)

39. FACT: When HMA Direct identified employees that needed to be “carved out,” HMA Direct applied for insurance for the “carved out” employees in the fully-insured, fully-regulated market. (Bevis testimony, p. p. 376, l. 19-24, p. 377, l. 1-4.)

40. FACT: In Massachusetts, where there is “guarantee issue” in the individual health insurance market, HMA Direct insured the “carved out” employees through individual health insurance policies issued by fully-regulated health insurance companies. (Bevis testimony, p. 378, l. 2-22.)

41. FACT: It was HMA Direct, not the “carved out” employee, who applied for coverage through the fully-regulated individual health insurance market. (Bevis testimony, p. 384, l. 1-8.)

42. LAW: New Hampshire law does not provide for guarantee issue in the individual health insurance market, but instead allows medical underwriting in the individual market. (*See* RSA 420-G:5, II)

43. FACT: Because New Hampshire does not have guarantee issue in the individual health insurance market, HMA Direct was unable to insure “carved out” employees through individual health insurance policies issued by fully-regulated health insurance companies. (Bevis testimony, p. 378, l. 22-24, p. 379, l. 1-11.)

44. LAW: Unlike the individual market, New Hampshire does provide for guarantee issue in the small group health insurance market. (RSA 420-G:5,II.) However, in order for a small group to qualify for coverage, New Hampshire law also requires that a minimum of 75% of the eligible employees (as defined by law) participate in the small group policy. (420-G:9, I.)

45. FACT: HMA Direct's strategy for circumventing New Hampshire's lack of guarantee issue in the individual health insurance market was to create a small group within a company by using a second Federal Employer Identification Number ("FEIN"). (Bevis testimony, p. 379, l. 17-24, p. 380, l. 1-13.)

46. FACT: HMA Direct's strategy required that the "carved out" employees be assigned to the small group that was assigned the second FEIN. (Bevis testimony, p. 380, l. 1-13.)

47. FACT: Because the employees assigned to the small group using the second FEIN were in fact still working for an employer who was operating under the original FEIN, the second small group was a sham.

48. FACT: It was HMA Direct, not the employer, who used the second FEIN to apply for coverage through the fully-regulated individual small group insurance market. (Bevis testimony, p. 383, l. 20-24, p. 384, l. 1-8.)

49. FACT: The person at HMA Direct who directed Robert Bevis to use a second FEIN number to create a sham small employer group was Jed Brettschneider. (Bevis testimony, p. 381, l. 1-7.)

50. FACT: By insuring the high-risk "carve outs" through either fully-regulated individual health insurance policies or fully-regulated small group health insurance policies, HMA Direct decreased the likelihood that there would be claims against the stop loss insurance.

51. FACT: Because the Quota Share Agreement provided that HMA Direct reinsured HM Life for 80% of the first \$150,000 in claims against the stop loss coverage, HMA

Direct avoided paying claims by shifting the high-risk “carve outs” to fully-regulated policies.

52. FACT: That HMA Direct’s strategy for avoiding claims against stop loss policies was successful is documented in NHID Exhibit 38, “Monthly Claims Underwriting Experience Reports for all New Hampshire Business.” These reports cover the period of January 2008 through January 2009, and they demonstrate that while HMA Direct was collecting tens of thousands of dollars in premiums from New Hampshire employers, only two claims were made against stop loss coverage—and one of those claims was against Kimark’s policy, which is discussed below. (NHID Exh. 38, v. 5, pp. 137- 149.)

F. HMA Direct Violated RSA 417:4, I and VIII, and RSA 420-G:5, VI in Connection with Its Sale of a Partially Self-Funded Health Plan to Amherst Label, Inc.

53. FACT: Amherst Label, Inc. is a New Hampshire corporation located in Milford, New Hampshire. At all relevant times, Amherst Label employed about thirty-six employees. (Calvetti testimony, p. 5, l. 14-23.)

54. FACT: William “Bill” O’Brien was actively involved in the sale of HMA Direct’s products and services to Amherst Label, Inc., and, indeed, Mr. O’Brien was perceived by Nicholas Calvetti, the President of Amherst Label, as “the main contact.” (See, e.g., O’Brien emails, NHID Exh. 1, v. 1, pp. 14, 15, 22, 26 and 30; Calvetti testimony, p. 49, l. 10-18, p. 19, l. 19-24 and p. 20, l. 1-10; and Creamer testimony, p. 161, l. 13-17.)

55. LAW: Employers or principals are responsible for the actions of their employees or agents if the employee or agent is acting on behalf of the employer or principal, and

for the employer's or principal's benefit and purpose while he is acting within the scope of his employment. (*See Boynton v. Figueroa*, 154 N.H. 592, 603-604.)

56. FACT/LAW: Throughout the Amherst Label transaction, Mr. O'Brien acted for HMA Direct's benefit and purpose, and he acted within the scope of his employment as HMA Direct's Regional Sales Manager. In fact, Mr. O'Brien provided updates to Jed Brettschneider about the transaction. (*See, e.g.*, O'Brien email of 8/21/2008 to Brettschneider, NHID Exh. 1, v. 1, p. 27.)

57. FACT: At HMA Direct's request, Amherst Label distributed to its employees a document called "Memo to Employees of Amherst Label," and a document called HMA Direct Employee Enrollment/Refusal Form. (Karle testimony, p. 210, l. 6-24, p. 211, l. 1; *see also* Memo at NHID Exh. 1, v. 1, p. 12, and HMA Direct Enrollment Form at NHID Exh. 69, v. 7, p. 38.)

58. FACT: The "Memo to Employees of Amherst Label" was drafted by HMA Direct. (Calvetti testimony, p. 40, l. 4-21.)

59. FACT: The "Memo to Employees of Amherst Label" included the following statement: "Since a life insurance policy may be part of the plan as an added bonus to the program, HMA Direct may ask some basic healthcare related questions." (Memo at NHID Exh. 1, v. 1, p. 12.) Nicholas Calvetti, the President of Amherst Label, understood this statement to mean that the "basic healthcare information" would be used to determine his company's eligibility for the bonus life insurance. (Calvetti testimony, p. 43, l. 3-21.)

60. FACT: In reality, HMA Direct was collecting employee health information in order to perform the risk assessment survey necessary to identify the high-risk “carve outs.” (Bevis testimony, p. 402, l. 16-24, p. 403, l. 1-9.)

61. FACT: Every Amherst Label employee, with the exception of Dawn Mahoney, completed the HMA Direct Enrollment Form that was circulated with the “Memo to Employees of Amherst Label.” (Calvetti testimony, p. 45, l. 9-21; Mahoney testimony, p. 113, l. 9-16.)

62. FACT: Dawn Mahoney eventually provided her health status information to HMA Direct via telephone, and HMA Direct had Ms. Mahoney execute a completed Enrollment Form on August 28, 2008. (Mahoney testimony, pp. 113-117.)

63. FACT: HMA Direct used the health status information provided in the Enrollment Forms to identify two employees, Dawn Mahoney and Charles Creamer, and a retired employee receiving COBRA benefits, Carol Bouchard, as high risk “carve outs.” (Calvetti testimony, p. 49, l. 23-24, p. 50, l. 1-5.)

64. FACT: HMA Direct advised Amherst Label that because of Ms. Mahoney’s, Ms. Bouchard’s and Mr. Creamer’s preexisting health conditions, they were not qualified for the partially self-funded plan and would have to be insured outside that plan. (Calvetti testimony, p. 50, l. 6-18; Mahoney testimony, p. 120, l. 9-19; Creamer testimony, p. 160, l. 10-24.)

65. FACT: HMA Direct advised Ms. Mahoney and Mr. Creamer it had already obtained health insurance coverage for them through individual policies issued by Anthem and that their Anthem coverage under the new policies would be better than the small group Anthem policy they were currently on through Amherst Label. (Mahoney

testimony, p. 123, l. 18-24, p. 124, l. 1-5; Creamer testimony, p. 160, l. 19-24, p. 163, l. 12-15; Calvetti testimony, p. 56, l. 7-19.)

66. FACT: HMA Direct actually “guaranteed” Mr. Calvetti that Ms. Mahoney, Ms. Bouchard and Mr. Creamer would be insured through an individual health insurance policy issued by Anthem (Mahoney testimony, p. 148, l. 17-24; Calvetti testimony, p. 56, l. 7-19; email of 8/26/2008 from Doris Karle to Bill O’Brien, NHID Exh. 1, v. 1, p. 30.)

67. FACT: HMA Direct did not give Ms. Mahoney or Mr. Creamer the option of choosing between the partially self-funded plan and individual Anthem policies. (Mahoney testimony, p. 124, l. 6-17; Creamer testimony, p. 161, l. 10-15.)

68. FACT: HMA Direct’s purpose in “carving out” the three Amherst Label employees was to transfer the “carved-out” employees’ anticipated medical costs from self-funded plan (with its backstop of stop loss coverage, which HMA Direct reinsured) to the fully-insured regulated market.

69. FACT: Amherst Label’s small group policy with Anthem expired on August 31, 2008. (Creamer testimony, p. 177, l. 21-23.)

70. FACT: Despite guaranteeing Amherst Label that it had already obtained individual health insurance policies for Ms. Bouchard, Ms. Mahoney and Mr. Creamer, HMA Direct did not actually apply for such policies until September 2, 2008. (*See* Anthem Applications, NHID Exh. 7, v. 1, pp. 56-63.)

71. FACT: When Anthem received applications for individual health insurance policies for Ms. Bouchard, Ms. Mahoney and Mr. Creamer, Anthem denied their applications. (*See* email of 9/15/2008 from Anne Engler of HMA Direct to Dawn

Mahoney, NHID Exh. 1, v. 1, p. 31; Mahoney testimony, p. 139, l. 22-24; Creamer testimony, p. 178, l. 6-10.)

72. LAW: RSA 417:4, Unfair Methods, Acts and Practices Defined, provides, in pertinent part, that:

“The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

I. MISREPRESENTATIONS. Misrepresenting, directly or indirectly, in the offer or sale of any insurance or in connection with any inducement or attempted inducement of any insured or person with ownership rights under an issued insurance policy to lapse, forfeit, surrender, assign, effect a loan against, retain, exchange, or convert the policy, by:

* * *

f) Employing any device, scheme, or artifice to defraud;

g) Obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; the burden of establishing truthfulness or completeness shall be upon the party stating or omitting to state a material fact; or

(h) Engaging in any other transaction, practice, or course of business which operates as a fraud or deceit upon the purchaser, insured, or person with policy ownership rights.

73. FACT/LAW: HMA Direct violated RSA 417:4, I (f), (g) and (h) by collecting health status information about Amherst Label’s employees under the pretext of applying for a “bonus” group life insurance policy when, in actuality, the information was being collected for the purpose of identifying and “carving out” any unhealthy Amherst Label employees from the self-funded plan.

74. FACT/LAW: HMA Direct also violated RSA 417:4, I (f), (g) and (h) by misrepresenting to Amherst Label that it had obtained individual health insurance policies through Anthem for three employees when HMA Direct had yet to even apply for such coverage.

75. LAW: RSA 417:4, VIII (c) prohibits making any unreasonable distinction or discrimination between persons to the policy, premiums, or rates charged for policies upon the lives or health of such persons.

76. FACT/LAW: HMA Direct violated RSA 417:4, VIII(e) and committed an insurance trade practice by “carving out” three Amherst Label employees from the self-funded plan based on these employees’ health, and not allowing the “carved-out” employees to choose to be insured under the partially self-funded plan offered to the other thirty-three Amherst Label employees.

77. LAW: As noted above, RSA 420-G:5, II permits medical underwriting in the fully-insured individual market. Accordingly, unlike New Hampshire’s small group market, there is no “guarantee issue” in the fully-insured individual market in New Hampshire.

78. FACT: Because there is no guarantee issue in the individual health insurance market in New Hampshire, HMA Direct could not, as it had done in Massachusetts, obtain coverage for the three “carved-out” Amherst Label employees through individual insurance policies issued by Anthem, a fully-regulated insurance company.

79. FACT: Unable to obtain coverage in the fully-insured individual market, Anne Engler, a Customer Service Representative with HMA Direct, advised one of the “carved-out” employees that HMA Direct was referring her to the New Hampshire “high risk pool” (also know as the New Hampshire Health Plan). (*See* email of 9/15/2008 from

Anne Engler of HMA Direct to Dawn Mahoney, NHID Exh. 1, v. 1, p. 31; Mahoney testimony, p. 147, l. 22-24, p. 148, l. 1- 24.)

80. LAW: RSA 420-G:5, VI provides:

It shall constitute an unfair trade practice under RSA 417 for an insurer, insurance producer, or third party administrator to refer an individual employee to the pool, or arrange for an individual employee to apply to the pool, for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment.

81. LAW/FACT: Acting as an insurer, insurance producer *and* third-party administrator, HMA Direct violated RSA 420-G:5, VI and committed an unfair trade practice by referring Dawn Mahoney to the New Hampshire High Risk Pool.

82. FACT: On September 19, 2008, after less than three weeks on HMA Direct's self-funded plan, Amherst Label cancelled its contract with HMA Direct. (Email of 9/19/2008 from Nicholas Calvetti to Bill O'Brien, NHID Exh.1, v. 1, pp. 35-36.)

83. FACT: Before cancelling its contract with HMA Direct, Amherst Label cut two checks payable to "HMA Direct." These checks totaled \$15,544.32 and were intended to cover expected health care claims, administrative costs, and the premium for the stop loss policy issued by HM Life. (Amherst Label Inc. checks made payable to "HMA Direct," NHID Exh. 4, v. 1, pp. 48-49.)

84. FACT: HMA Direct refunded \$8,082.70 to Amherst Label on November 14, 2008, more than two months after Amherst Label had cancelled its contract with HMA

Direct. (Letter of November 14, 2008 from Michael Emmi of HMA Direct to Doris Karle of Amherst Label, NHID Exh. 9, v. 1, p. 65.)

85. FACT: When Amherst Label questioned why HMA Direct had not refunded the entire \$15,544.32, HMA Direct advised that the withheld funds (\$7,461.62) could not be refunded because the funds had been used to pay “prescriptions,” “reinsurance premiums,” “vendors” and “commissions.” (Email of 11/26/2008 from Anne Engler of HMA Direct to Doris Karle, NHID Exh. 1, v. 1, p. 34.)

86. FACT: However, in March 2009 (and after Amherst Label filed a complaint with the NHID), HMA Direct advised Amherst Label that HMA Direct would refund an additional \$7,106.42 if Amherst Label agreed to execute a settlement and release agreement. (Settlement and Release Agreement dated March 18, 2009, NHID Exh. 12., v. 1, p. 69.)

87. FACT: Neither Michael Emmi’s correspondence of November 14, 2008 nor Anne Engler’s email of November 26, 2008 advised Amherst Label that HMA Direct would refund additional funds if Amherst Label executed a release. Moreover, Nicholas Calvetti testified no one from HMA Direct ever provided him with a release to sign prior to March 3, 2009. (Calvetti testimony, pp. 87-89.)

88. FACT/LAW: By advising Amherst Label in November 2008 that \$7,461.62 could not be refunded because the funds had been used to pay “prescriptions,” “reinsurance premiums,” “vendors” and “commissions” and then later advising that HMA Direct had withheld funds because Amherst Label had failed to execute a release agreement, HMA Direct violated RSA 417:4, I (g), quoted above.

G. HMA Direct Violated RSA 420-G:5, VI in Connection with Its Sale of a Partially Self-Funded Health Plan to Kimark Specialty Box Co.

89. FACT: Kimark Specialty Box Company, Inc. (“Kimark”) is a New Hampshire manufacturer located in Manchester, New Hampshire. (HMA Direct Preliminary Employer Application, NHID Exh. 13, v. 2, p. 1.)

90. FACT: The chief executive officer of Kimark at all relevant times was Mark Chaperon. (HMA Direct Preliminary Employer Application, NHID Exh. 13, v. 2, p. 1.)

91. FACT: Effective June 1, 2008, Kimark provided health insurance to its employees through HMA Direct’s partially self-funded plan. As part of the HMA Direct plan, Kimark was insured under a policy for specific and aggregate stop loss insurance issued by HM Life. (*See* HM Stop Loss Policy, NHID Exh. 15, v. 2, p. 10.)

92. FACT: Kimark’s stop loss policy provided, among other things, that Kimark would pay a specific per person deductible of \$20,000 for incurred medical expenses. The policy also provided that once an individual employee’s medical expenses exceeded the \$20,000 deductible, the medical expenses would be covered under the stop loss policy up to a maximum specific benefit of \$2,000,000. (HM Life Ins. Co. Schedule of Excess Loss Insurance, NHID Exh. 15, v. 2, pp. 13-14.)

93. FACT: When Kimark began insuring its employees through HMA Direct’s partially self-funded plan on June 1, 2008, Mark Chaperon was one of the employees insured through HMA Direct. (*See* Kimark group census, NHID Exh. 71, v. 8, p 1; *see also* HMA Direct “Certificate of Prior Group Coverage,” NHID Exh. 16, v. 2, p. 34.); and Business Management, Inc. screenshot of 4/10/2009, NHID Exh. 19, v. 2, p. 69.)

94. FACT: Pursuant to the HM Life Schedule of Excess Loss Insurance, any medical expenses of Mark Chaperon's that exceeded the specific deductible of \$20,000 were covered up to the maximum specific benefit of \$2,000,000. (HM Life Ins. Co. Schedule of Excess Loss Insurance, NHID Exh. 15, v. 2, pp. 13-14.)

95. FACT: Some time after Mark Chaperon's health coverage began under HMA Direct's partially self-funded plan, Mark Chaperon was diagnosed with malignant bone cancer. (*See* Business Management, Inc. screenshot of 12/15/2009, NHID Exh. 19, v. 2, p. 72; *see also* Business Management, Inc. Claim Ledger, NHID Exh. 17, v. 2, p. 49.)

96. FACT: There is no evidence establishing that Kimark terminated Mark Chaperon following his cancer diagnosis. Accordingly, at all relevant times Mr. Chaperon remained employed by Kimark and eligible for the HMA Direct partially self-funded health plan.

97. FACT: Nevertheless, after Mark Chaperon was diagnosed with cancer, HMA Direct facilitated Mr. Chaperon's application for coverage with the New Hampshire Health Plan ("NHHP"), also known as the New Hampshire High Risk Pool.

98. FACT: The NHHP is New Hampshire's payor of last resort, providing health insurance coverage for individuals who are unable to obtain health insurance in the fully-insured individual market. (McCue testimony, p. 260, l. 11-24, p. 261, l. 1-4.)

99. FACT: The NHHP contracts with Benefits Management, Inc. for the processing of applications to the NHHP and the administration of claims submitted to the NHHP. (McCormick testimony, p. 281, l. 23-24, p. 282, l. 1-5.)

100. FACT: HMA Direct facilitated virtually every aspect of Mark Chaperon's transfer to the NHHP. Among other conduct, an HMA Direct account manager, Chana Bieker ("Ms. Bieker"), signed Mark Chaperon's Application for Coverage under the New

Hampshire Health Plan as “Agent/Broker.” (See Chaperon Application for NHHP, NHID Exh. 16, v. 2, p. 28; Bevis testimony, p. 393, l. 14-22.)

101. FACT: In addition to signing the Application for Coverage, Ms. Bieker also collected the supporting documentation required to be submitted with the Application, and she, along with Erica Engler, a “Customer Service Representative” employed by “HMA Direct Benefits Consulting Group,” submitted the Application and supporting documentation to the NHHP. (See NECHPA check dated October 2, 2008 made payable to NHHP, NHID Exh. 16, v. 2, p. 41; see also Chana Bieker “urgent” fax of October 8, 2008, including attachments, to Benefits Management, Inc., NHID Exh. 16, v. 2, pp. 42-48.)

102. FACT: Moreover, after the NHHP approved Mark Chaperon’s Application for Coverage, Ms. Bieker continued to act, effectively, as a claims administrator on Mark Chaperon’s behalf. As such, she communicated directly with Business Management, Inc. about the payment of Mr. Chaperon’s claims. (Business Management, Inc. screenshots of 3/25/2009, and 7/22/2009 NHID Exh. 19, v. 2, pp. 73 and 75-76.)

103. FACT: According to Mark Chaperon’s Application for Coverage under the NHHP, Mr. Chaperon was not eligible for health insurance coverage through his employer, Kimark. (Application for Coverage, NHID Exh. 16, v. 2, p. 28.)

104. FACT: Mr. Chaperon’s Application for Coverage under the NHHP also indicated that his coverage under the HMA Direct plan terminated on September 30, 2008. (Application for Coverage, NHID Exh. 16, v. 2, p. 28.)

105. FACT: However, Kimark’s stop loss policy, which carried a maximum specific benefit of \$2,000,000 after payment of a \$20,000 specific deductible, did not terminate

until May 31, 2009. (HM Life Ins. Co. Schedule of Excess Loss Insurance, NHID Exh. 15, v. 2, p. 14.)

106. FACT: Accordingly, at the time Mark Chaperon submitted his Application to the NHHP, he had \$2,000,000, minus any claims against the stop loss policy's specific medical benefit, remaining in coverage under Kimark's stop loss policy.

107. FACT: Mark Chaperon died on December 2, 2008. At the time of his death, Mark Chaperon had incurred approximately \$105,000 in medical bills in connection with his cancer treatment. Of that \$105,000, Kimark paid \$20,000 as its deductible under the HMA Direct plan; \$13,655.35 was paid pursuant to Kimark's stop loss policy with HM Life; and the remaining amount—\$71,997.46—was paid by the NHHP. (See email of 12/18/2008 from Lateka Washington of Highmark Life to Kerri Christie HMA Direct, NHID Exh. 18, v. 2, p. 67 (indicating \$13, 655.35 was paid under the stop loss); *see also* Business Management, Inc. Claim Ledger, NHID Exh. 17, v. 2, pp. 49- 66, (showing NHHP paid \$71,997.46 in medical bills on Mr. Chaperon's behalf)).

108. FACT: Under the Quota Share Agreement, HMA Direct was responsible for reinsuring HM Life for 80% (or \$10,924) of the \$13,655.35 paid pursuant to the stop loss policy. Furthermore, if HMA Direct had not succeeded in effectively transferring Mark Chaperon from its self-funded plan to the NHHP, HMA Direct would have also been responsible for reinsuring HM Life for 80% (or \$57,597) of the claims paid by the NHHP on Mark Cameron's behalf. (See Article V of the Quota Share Agreement, NHID Exh. 32, v. 5, p. 96.)

109. LAW: RSA 420-G:5, VI provides:

It shall constitute an unfair trade practice under RSA 417 for an insurer, insurance producer, or third party administrator to refer an individual employee to the pool, or arrange for an individual employee to apply to the pool, for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment.

110. LAW/FACT: HMA Direct, through its employees Chana Bieker and Erica Engler, referred Mark Chaperon to the NHHP even though HMA Direct knew Mr. Chaperon was covered under Kimark's partially self-funded plan. Accordingly, HMA Direct violated RSA 420-G:5, VI and committed an unfair trade practice.

H. HMA Direct Violated RSA 417:4, II in Connection with Its Sale of a Partially Self-Funded Health Plan to Bronze Craft Corporation.

111. FACT: Bronze Craft Corporation is a New Hampshire employer located at 37 Will Street in Nashua, New Hampshire. Bronze Craft Corporation's Federal Employer Identification Number ("FEIN") is 02-0208200. (See HMA Direct Preliminary Employer Application, NHID Exh. 22, v. 3, p. 26.)

112. FACT: As per the "HMA Direct Quoting Process and Submission Guidelines," HMA Direct would have collected an array of information about Bronze Craft Corporation's employees, including health status information. (See HMA University training materials, NHID Exh. 28, v. 4, pp. 229-232.)

113. FACT: HMA Direct would have used the employee health status information to determine which Bronze Craft Corporation employees qualified for the partially self-funded plan, and which ones did not. (Bevis testimony, p. 376, l. 19-24, p. 377, l. 1-4.)

114. FACT: Using the “risk assessment survey” process described during Robert Bevis’ testimony, HMA Direct would have identified any Bronze Craft Corporation employees likely to have substantial health claims, the so-called “carve outs.”

115. LAW: A finder of fact “must judge the case on the basis of the evidence and the inferences [the finder of fact] can reasonably draw from it. A reasonable inference is a deduction which common sense and reason lead [the finder of fact] to draw from the evidence.” (NH Civil Jury Instruction 3.2 (2001)).

116. FACT: Based on HMA Direct’s experience with Amherst Label, Inc. in early September 2008, one can reasonably infer that by October 16, 2008—the date of Bronze Craft Corporation’s HMA Direct Preliminary Employer Application—HMA Direct understood that it could not insure the “carve outs” through individual insurance policies in New Hampshire because New Hampshire law does not provide for “guarantee issue” in the individual health insurance market. (*See* previous discussion on this point.) Indeed, Robert Bevis testified about how HMA Direct had “started to run into issues” into New Hampshire because fully-regulated insurers in New Hampshire were denying coverage for the “carve outs” in the individual health insurance market (Bevis testimony, p. 378, l. 13-24, p. 380, l. 1-13.)

117. FACT: Robert Bevis also testified about HMA Direct’s strategy for circumventing New Hampshire’s lack of guarantee issue in the individual health insurance market—namely, creating a sham small group within a company by using a second Federal Employer Identification Number (“FEIN”). (Bevis testimony, p. 379, l. 17-24, p. 380, l. 1-13.) This is the strategy that HMA Direct employed with Bronze Craft Corporation.

118. FACT: The sham small employer group was called “Bronzecraft, Inc.” (contrast with the real company name of “Bronze Craft Corporation”), and the sham small group was assigned its own FEIN number, 02-0208264 (contrast with the real company’s FEIN of 02-0208200). (*See* United Healthcare Small Group Cover Sheet, NHID Exh. 27, v. 3, p. 60.)

119. FACT: Using the name “Bronzecraft, Inc.” and the second FEIN, HMA Direct applied for small group health insurance coverage through United Healthcare Insurance Company. The United Healthcare Small Group Coversheet lists Chana Bieker, as the “Group Contact” for “Bronzecraft, Inc.,” and it lists Michael Cassandro, HMA Administrators’ Operations Director (*see* HMA Direct web pages, NHID Exh. 45, v. 6, p. 29) as the “Writing Agent.”

120. FACT: Chana Bieker is also listed as the “Contact Person” for “Bronzecraft, Inc.” on the United Healthcare Joint Health and Life Employer Application. Furthermore, all of the group’s contact information shown on the application directs United Healthcare to HMA Direct: the email address is cbieker@hmadirect.com; the phone number listed is an HMA Direct phone number, (617) 581-6655; and the billing address for “Bronzecraft Inc.” listed on the application is an HMA Direct address, P.O. Box 425 Upper Newton Falls, MA. (*See* United Healthcare Joint Health and Life Application, NHID, Exh. 27, v. 3, p. 61.)

121. FACT: HMA Administrators, LLC also issued a check dated 12/16/2008 and drawn against its account to United Healthcare Insurance Company in the amount \$23,312.51. (*see* NHID Exh. 27, v. 3, p. 109.) If one divides the United Healthcare annual premium of \$279,750.12 (*see* NHID Exh. 27, v. 3, p. 60) by 12, one quickly sees

that the \$23,312.51 check represents one month's premium for the United Healthcare policy issued to the sham small group called "Bronzecraft, Inc."

122. FACT: HMA Direct's use of a second FEIN to facilitate the creation of the sham small group called "Bronzecraft, Inc." is consistent with the HMA Direct strategy described by Robert Bevis during his testimony. (Bevis testimony, p. 379, l. 17-24, p. 380, l. 1-13.)

123. FACT: In reviewing the Bronze Craft Corporation and "Bronzecraft, Inc." documents introduced into evidence in this proceeding, one may reasonably infer that HMA Direct employed the strategy described by Robert Bevis in the Bronze Craft Corporation transaction.

124. FACT: The United Healthcare Enrollment Forms establish that, with one exception, all of the Bronze Craft Corporation employees who were placed in the sham small group called "Bronzecraft, Inc." had significant preexisting conditions. (*See, e.g.*, United Healthcare Enrollment Forms, NHID Exh. 27, v. 3, pp. 70, 72, 74, 76, 79, 81, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102 and 104.)

125. FACT: One may reasonably infer that HMA Direct facilitated the creation of the sham small group called "Bronzecraft, Inc" in order to obtain "guarantee issue" small employer group health insurance for Bronze Craft Corporation employees with serious preexisting medical conditions. The employees that HMA Direct placed in "Bronzecraft, Inc." were the "carve outs" who HMA Direct did not want to insure under its partially self-funded plan, because, under the Quota Share Agreement, HMA Direct would have been responsible for reinsuring HM Life for 80% of the claims made by the "carve outs" against the stop loss insurance.

126. LAW: RSA 417:4, Unfair Methods, Acts and Practices Defined, provides, in pertinent part, that:

“The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

* * *

II. MISREPRESENTATION IN INSURANCE APPLICATIONS OR TRANSACTIONS. Making false or fraudulent statements or representations on or relative to an application for insurance, for the purpose of obtaining a fee, commission, money or benefit from an insurer, agent, or individual.”

127. FACT/LAW: HMA Direct violated RSA 417:4, II by falsely representing to United Healthcare the sham small group called “Bronzecraft, Inc.” as Bronze Craft Corporation, the actual company conducting business at 37 Will Avenue, Nashua, NH. HMA Direct perpetrated this misrepresentation in order to avoid having to reinsure HM Life for 80% of any claims made against Bronze Craft Corporation’s stop loss policy.

I. HMA Direct Violated RSA 415-H AND Ins 4401.04 in Connection with Its Sale Partially Self-funded Health Plans to Nine New Hampshire Employers.

128. FACT: Pursuant to the MGU Agreement and Quota Share Agreement, HMA Direct marketed and sold specific and aggregate stop loss policies to at least 8 small employer groups in New Hampshire, including Amherst Label, Inc. and Kimark Specialty Box Company, Inc., and at least one large employer group, Bronze Craft Corporation. (NHID Exh. 71, v. 8)

129. LAW: RSA 415-H, Stop Loss Insurance, establishes criteria for the issuance of stop loss insurance in New Hampshire. The law specifically prohibits an insurer from issuing or renewing a stop loss policy or certificate that has an annual specific attachment point of less than \$20,000 per person and an annual aggregate attachment for small

employer group insurance of less than: 1) the greater of \$4,000 times the number of group members; 2) 120 percent of expected claims; or 3) \$20,000.

130. FACT/LAW: The Insurance Department rules implementing RSA 415-H are Ins chapter 4400.

131. LAW: Ins 4401.04(b) requires that an insurer issuing stop loss insurance submit an annual actuarial certification that the insurer has not issued or renewed any stop loss policy to any employer group having 50 or fewer covered employee members with an aggregate attachment point that is less than the greater of the following: 1) \$4,000 times the number of covered lives; 2) 120 percent of expected claims; or 3) \$20,000.

132. FACT/LAW: To comply with RSA 415-H, a small employer that elects to self-fund an employee benefit plan must pay a minimum amount of \$4,000 into a claim reserve fund for each member or covered person who receives benefits under the self-funded arrangement.

133. FACT: As established above, the MGU Agreement authorized HMA Direct to act as a stop loss insurance underwriter on behalf of HM Life. (MGU Agreement, § 2.01(1), NHID Exh. 30, v. 5, p. 37 and § 3.01, v. 5, pp. 39-40.) Pursuant to this authority, it was HMA Direct—not HM Life—that completed and executed the applications for aggregate and specific stop loss insurance for each of the eight New Hampshire employers at issue in this proceeding. (*See* Stop Loss Insurance Applications at NHID Exh. 71, v. 8, pp. 8, 38, 69, 101, 125, 161, 194, 225 and 255.)

134. FACT/LAW: None of the stop loss policies issued by HM Life Insurance to the eight small employer groups in New Hampshire met the statutorily mandated minimum aggregate deductible amount of \$4,000 per covered member required under RSA 415-

H:3, I(b)(1). This fact is established conclusively in NHID Exh. 71, v. 8: (1) Kimark: minimum aggregate should have been \$92,000 (v. 8, p.1), actual minimum aggregate shown on stop loss insurance application completed by HMA Direct was 40,000 (v. 8, p. 9); (2) New England Mountain Ventures: minimum aggregate should have been \$124,000 (v. 8, p. 31), actual minimum aggregate on stop loss insurance application completed by HMA Direct was \$72,725.40 (v. 8, p. 39); (3) Skaff Cryogenics: minimum aggregate should have been \$100,000 (v. 8, p. 62), actual minimum aggregate on stop loss insurance application completed by HMA Direct was \$77,335.40 (v. 8, p. 70); (4) Henry's Auto Body: minimum aggregate should have been \$132,000 (v. 8, p. 94), actual minimum aggregate on stop loss insurance application completed by HMA Direct was \$72,000.00 (v. 8, p. 102); (5) Humphrey's Industrial Products: minimum aggregate should have been \$140,000 (v. 8, p. 125), actual minimum aggregate on stop loss insurance application completed by HMA Direct was \$103,958.37 (v. 8, p. 131); (6) Middlesex Mechanical: minimum aggregate should have been \$240,000 (v. 8, p. 154), actual minimum aggregate on stop loss insurance application completed by HMA Direct was \$87,613.16 (v. 8, p. 162); (7) The Anthony Galluzzo Corporation: minimum aggregate should have been \$176,000 (v. 8, p. 218), actual minimum aggregate on stop loss insurance application completed by HMA Direct was \$68,157.00 (v. 8, p. 226); and (8) the Pine Hill Waldorf School: minimum aggregate should have been \$120,000 (v. 8, p. 249), actual minimum aggregate on stop loss insurance application completed by HMA Direct was \$76,000.00 (v. 8, p. 256)¹

¹ Bronze Craft Corporation is not subject to RSA 415-H because it is a large group. There is no data for Amherst Label, Inc. because HMA Direct never submitted an application to HM Life for stop loss insurance, although HMA Direct, as established above, did collect a stop loss premium from Amherst Label.

135. FACT/LAW: Because none of the eight New Hampshire stop loss policies met the statutorily minimum aggregate deductible required under RSA 415-H:3, I(b)(1), HMA Direct, which collected the employer census data, and completed and executed the applications specifying the minimum aggregate deductibles for each policy, violated RSA 415-H:3, I(b)(1).

136. FACT: Moreover, pursuant to Ins 4401.04 (b), HM Life submitted two actuarial certifications to the NHID certifying that the eight small group stop loss policies issues in New Hampshire complied with the minimum aggregate deductible requirements specified in RSA 415-H:3, I(b)(1). A comparison of the stop loss applications completed by HMA Direct and the stop loss policies subsequently issued by HM Life establishes that HM Life relied on HMA Direct's calculation of minimum aggregate deductibles: (1) Kimark: application v. 8, p.9; policy v. 8 p. 19; (2) New England Mountain Ventures: application v. 8, p. 39; policy v. 8 p. 50; (3) Skaff Cryogenics: application v. 8, p.70; policy v. 8 p. 81; (4) Henry's Auto Body: application v. 8, p.102; policy v. 8 p. 113; (5) Humphrey's Industrial Products: application v. 8, p. 131; policy v. 8 p. 142; (6) Middlesex Mechanical: application v. 8, p.162; policy v. 8 p. 173; (7) The Anthony Galluzzo Corporation: application v. 8, p. 226; policy v. 8 p. 237; and (8) the Pine Hill Waldorf School: application v. 8, p. 256; policy v. 8 p. 266.

137. FACT/LAW: Because HMA Direct created the data on which the actuarial certifications were based, HMA Direct, acting as an underwriter of stop loss insurance in New Hampshire, shares responsibility with HM Life for filing two inaccurate actuarial certifications. Accordingly, HMA Direct violated Ins 4401.04 (b).

II. PRAYER FOR RELIEF

The New Hampshire Insurance Department respectfully requests that the Hearing Officer:

A. Grant each of the foregoing Requests for Findings of Fact and Rulings of Law;

B. Rule that all of the companies conducting business in New Hampshire as “HMA Direct” engaged in the business of insurance as defined in RSA 406-B:2;

C. Rule that all of the companies conducting business in New Hampshire as “HMA Direct” engaged in unfair insurance trade practices in New Hampshire;

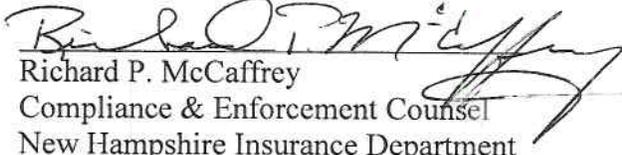
D. Order, pursuant to RSA 417:10, I and RSA 400-A:15, III, that the New Hampshire insurance producer’s license of New England Custom Health Plan Administrators, LLC (aka NECHPA) be revoked effective immediately; and

E. Order, pursuant to RSA 417:10, I, RSA 400-A:15, III and RSA 406-B:12 that HMA Direct pay an administrative penalty of \$145,000, payable within ten (10) days of the date of the Order. (This penalty may be itemized as follows: \$30,000 for each HMA Direct company engaged in the unauthorized business of insurance (3 x \$10,000); \$2,500 for the violation related to the Kimark transaction; \$2,500 for the violation related to the Bronze Craft transaction; \$110,000 for the multiple violations related to the Amherst Label transaction (\$2,500 for referring an employee to the high risk pool; \$7,500 for misrepresenting that three employees were “guaranteed” coverage under individual Anthem policies; \$7,500 for unreasonably distinguishing between the three “carved out” employees and the 33 remaining employees based on

the health of the 3 “carve outs”; \$2,500 for wrongfully withholding funds from Mr. Calvetti and then misrepresenting why the funds had been withheld; and \$90,000 for misrepresenting to 36 Amherst Label employees why HMA Direct was collecting their health status information)).

Respectfully submitted,

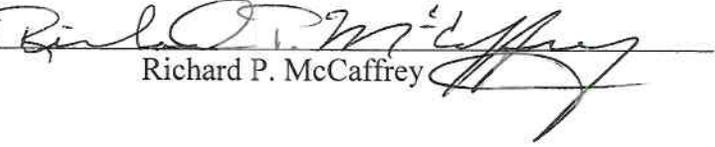
Date: February 19, 2010


Richard P. McCaffrey
Compliance & Enforcement Counsel
New Hampshire Insurance Department
21 South Fruit Street
Concord, NH 03301
(603) 271-2261

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing Revised Request for Findings of Fact and Rulings, and Prayer for Relief was sent today electronically and by first-class mail this day to Martha Van Oot, Esquire.

Date: 2/19/2010

By: 
Richard P. McCaffrey