

STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT

**Competitive Market Determination
Regarding Medical Malpractice Insurance
for Physicians, Surgeons and Hospitals
Docket No.: Ins 13-029-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. An October 14, 2013 Order of Public Hearing scheduling a hearing on the matter for November 20, 2013, was mailed to the top seven (7) licensed writers of medical malpractice insurance in New Hampshire and known interested parties; and a legal notice was published in the New Hampshire Union Leader, a newspaper of general circulation on November 6 and 13, 2013.

Findings

1. Testimony, presented at the hearing by the Department's Property and Casualty Actuary, focused on updated data and information related to charts and exhibits submitted during the 2012 public hearing that addressed 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 continue to indicate that there is not a reasonable degree of competition in the medical malpractice insurance market. While rates in New Hampshire are rising and there is slightly less concentration, evidence presented shows that the medical malpractice market continues to be unprofitable and the analysis for 2012 continues to indicate that looking at admitted carriers the market remains highly concentrated based on the Herfindalh-Hirschman Index. With consideration of nonadmitted insurers as well as admitted

insurers, the Herfindahl-Hirschman Index indicates the market is moderately concentrated. In addition, testimony presented by the Department's Property and Casualty Actuary also shows that insurers continue to rely on the filings of other insurers to justify or produce filed loss costs. This evidence continues to support a finding that there is not a reasonable degree of competition in the medical malpractice insurance market and therefor the Order dated November 30, 2012, should be renewed.

3. One insurer, ProSelect, provided written testimony prior to the hearing to support its position that a competitive market does exist. Similar testimony was presented by ProSelect at last year's hearing. ProSelect is the lead writer of medical malpractice insurance in New Hampshire, and saw a market share increase of 6.4% (from 27.7% in 2011 to 28.5% in 2012).

4. No other testimony was offered at the hearing or provided during the open comment period (through November 22, 2013).

Conclusions

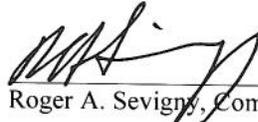
After reviewing the recommendation of the hearing officer and the material and testimony presented at the hearing, I find that there continues to be substantial evidence in support of the conclusion that the medical malpractice insurance market for physicians, surgeons and hospitals is not a competitive 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;
2. Rate filing procedures and standards outlined in RSA 412:15, 412:16 and 412:19, specific to a noncompetitive market, continue to apply; and
3. This Order will expire one year from the date this Order is signed.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: November 27, 2013



Roger A. Seigny, Commissioner