

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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

**ASSENTED-TO MOTION TO REOPEN ACTION
SOLELY TO AMEND ORDER TO SHOW CAUSE**

The New Hampshire Insurance Department (“NHID”) by and through its counsel, requests that the hearing officer in this matter reopen the proceedings for the limited purpose of amending the NHID’s October 1, 2021, Order to Show Cause and Notice of Hearing (“Show Cause Order”), and in support thereof states as follows:

1. On October 1, 2021, the NHID issued its Show Cause Order against BlueCross BlueShield of Tennessee (“Respondent”), asserting that Respondent had violated and was violating New Hampshire law by failing to cover certain state-mandated fertility treatments.
2. Respondent then initiated litigation against the NHID in the United States District Court for the Eastern District of Tennessee (“U.S. District Court”), and in doing so sought a temporary restraining order and preliminary injunction enjoining this administrative action.
3. In lieu of such preliminary relief, on or about November 8, 2021, Respondent and the NHID agreed to a stay of the administrative action in New Hampshire until final resolution of the litigation in the U.S. District Court; said stay of the administrative action was ordered by the NHID hearing officer that same day.
4. On or about September 18, 2023, the U.S. District Court granted summary judgment to the NHID on Respondent’s claims related to New Hampshire’s fertility treatment mandate, leaving only Respondent’s claim related to New Hampshire’s unfair insurance trade practices law (NH RSA 417) for further consideration by the U.S. District Court.
5. Since that time, Respondent and NHID have noticed to the U.S. District Court the NHID’s intention to amend the original Show Cause Order to remove any references to and allegations concerning NH RSA 417, removing that issue from this matter and causing the U.S. District Court’s decision to be final for the purposes of appeal.
6. On November 7, 2023, the U.S. District Court ordered that the NHID seek to reopen the underlying administrative action by November 16, 2023, “solely for

the purpose of the NHID amending its October 2021 Show Cause Order to remove all claims that Bluecross Blueshield of Tennessee (“BCBST”) violated New Hampshire’s unfair-insurance-practices (“UIP”) law.”

7. A copy of that Order is attached to this motion as Exhibit A.
8. Counsel for Respondent has assented to this motion.

WHEREFORE, the NHID respectfully requests that the Hearing Officer:

- A. Reopen this matter for the limited purpose of amending the Show Cause Order as described in the U.S. District Court’s November 7, 2023, Order; and
- B. For other relief as is just and proper.

NEW HAMSPHIRE INSURANCE DEPARTMENT

By its counsel,

Date: 11/15/23

/s/ Joshua S. Hilliard
Joshua S. Hilliard, Esq.
Compliance and Enforcement Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion was sent to Respondent’s local counsel, Bryan Gould, Esq, at gouldb@cwbp.com.

Date: 11/15/23

/s/ Joshua S. Hilliard
Joshua S. Hilliard, Esq.
Compliance & Enforcement Counsel