

STATE of NEW HAMPSHIRE  
INSURANCE DEPARTMENT

**ORDER**  
**Competitive Market Determination**  
**Regarding Medical Malpractice Insurance**  
**for Physicians, Surgeons and Hospitals**  
**Docket No.: Ins 15-063-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 23, 2015 Order of Public Hearing scheduling a hearing on the matter for November 16, 2015 was sent by certified mail to the top nine (9) licensed writers of medical malpractice insurance in New Hampshire and known interested parties; and a legal notice was published in twelve (12) New Hampshire daily newspapers on November 2nd and November 9th.

**Findings**

1. Testimony presented at the hearing by Christian Citarella, the Department's Assistant Property and Casualty Actuary, focused on updated data and exhibits that address the following considerations 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.

Mr. Citarella presented evidence showing that rates in New Hampshire decreased slightly in the last year, yet the market remains moderately concentrated for admitted carriers based on the Herfindahl-Hirschman Index (HHI). He testified that although there is slightly less concentration than in previous years, the number of admitted carriers is limited and the surplus lines market remains active. He also stated that the impending closure of the JUA at the end of the year will cause the market to become more concentrated over the next 12 months. In addition, many companies continue to rely on each other's filings to justify or produce their selected and filed loss costs, supporting the need to ensure that the data and methodology is appropriately reviewed. Mr. Citarella testified that requiring companies to submit such rate filings under a prior approval basis has not impacted any company's ability to implement actuarially justified changes at the levels they wanted and when they wanted. Written testimony and exhibits were provided at the hearing which support the conclusion that there has not been significant change to the New Hampshire market in the last year with respect to the considerations in RSA 412:14 II, and that there is not a reasonable degree of competition in the medical malpractice insurance marketplace.

2. Testimony was also presented at the hearing by Joel D. Whitcraft, Vice President and Actuary at Medical Protective. Mr. Whitcraft testified that the HHI continues to decline. He testified that the level of filing submissions for new products and rate/rule modifications provide evidence that carriers are competing to differentiate themselves in the market. Mr. Whitcraft testified that the New Hampshire Market is represented by a significant number of agents and brokers that represent multiple carriers, and that the relatively modest spread in physician rates is indicative of a competitive market.

3. No other testimony was offered at the hearing or provided during the open comment period (through November 20, 2015).

**Conclusions**

After reviewing the material and testimony presented at the hearing, I find that, while some indicators of competition have been improving in recent years, 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. Pursuant to 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



Alexander K. Feldvebel, Deputy Commissioner

Dated: November 23, 2015,