

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903**

In the Matter of:	:	
	:	
	:	DBR No. 05-I-0139
The Petition of Patrick C. Lynch, Attorney	:	
General of the State of Rhode Island, Petition	:	
For a Declaratory Ruling concerning Blue Cross	:	
And Blue Shield of Rhode Island establishing	:	
The Health & Wellness Institute	:	
	:	
Respondent.	:	

DECISION

On July 15, 2005 the Attorney General filed the instant petition with the Director of the Department of Business Regulation pursuant to Central Management Regulation 3 and R.I.G.L. § 42-35-8. As discussed in this Decision, the Director has no jurisdiction over the issues raised and, therefore, denies the Petition.

The Petition seems to confuse the statutory jurisdiction over the issues raised with respect to Blue Cross and Blue Shield of Rhode Island (“Blue Cross”). The Attorney General cites to R.I.G.L. § 42-14-5(d) which provides in relevant part “[t]he health insurance commissioner *shall have sole and exclusive jurisdiction* over those statutes with respect to all matters related to health insurance.” As expressed by the Attorney General, the issue upon which the Petition is filed relates solely to the ability of a non-profit hospital and medical service corporation to establish a “health and wellness” subsidiary. The Health Insurance Commissioner is a separate gubernatorial appointment.

The Health Insurance Commissioner neither “reports to” the Director nor is he “under” the jurisdiction of the Department. In fact, the Health Insurance Commissioner reports directly to the Governor and is a completely separate cabinet officer from the Director. Rather than provide infrastructure for the Health Insurance Commissioner, the legislature decreed that the Health Insurance Commissioners Office shall be “within” the Department of Business Regulation. Of course, the physical location of an agency’s office does not affect its statutory jurisdiction. The sole jurisdiction over this issue (other than the Attorney General’s totally separate jurisdiction under R.I.G.L. § 27-19-29.1 and 27-20-25.1) is vested with the Health Insurance Commissioner.

The ability of an agency to issue a Declaratory Ruling is totally dependent upon that agency having statutory jurisdiction over the subject matter. R.I.G.L. § 42-35-8 provides that each agency will provide for a procedure as to “...any statutory provision or of any rule or order of the agency.” In this case, no statute, rule or order applicable to the Department is at issue. Therefore, the only “declaration” which can be made by this agency is a denial of the petition.

Since the Department’s interaction on this issue is discussed in the Petition, the simultaneously-issued press release and the letter to the Governor, the Department feels required to set the record straight with regard to the Department’s actions relative to the health and wellness institute. As the staff of the Attorney General is well-aware, prior to the enactment of the portion of R.I.G.L. § 42-14-5(d) cited above, Department staff had numerous conversations with the Attorney General’s staff and representatives of Blue Cross regarding the health and wellness institute. In fact, on October 7, 2004 Department staff met with the Attorney General’s staff, at which time this issue and the impending

appointment of the Health Insurance Commissioner were discussed. The amendments to Title 42 of the General Laws, which established the Health Insurance Commissioner, were enacted in July 2004. The statute became effective upon the confirmation of the Health Insurance Commissioner, which occurred on February 17, 2005.

The Petition, however, suggests that the Department took no action other than to send the February 11, 2005 letter from the Director to the Attorney General. This is simply not the case. Between July 2004 and February 17, 2005, neither the current Director nor the former Director believed that it was appropriate to take action under statutory authority which was to be transferred to a soon to be appointed gubernatorial appointee. This position was communicated to both Blue Cross and the staff of the Attorney General's office. The Department sought and received assurances from Blue Cross that no funds would be transferred from Blue Cross to the proposed health and wellness subsidiary until the Health Insurance Commissioner had a chance to consider the issue. This fact was communicated to the Attorney General's staff. Thus, there was no pressing need for the Department to take a position with respect to the health and wellness institute. The Department is disappointed that none of these facts are reported in the Petition.

Finally, the cover letter to the Petition seems to take exception to the fact that the Department "has not revised its regulations to reflect the newly created Office of Health Insurance Commissioner." The Department knows of no statutory or practical reason why such amendments would be made. The Department's regulations apply to the subject areas over which it has statutory authority. The regulations do not expand that authority, which is strictly limited to that which is delegated by the legislature. It is the

Department's understanding that the Health Insurance Commissioner, who has been in office for only a few months and has had the assistance of legal counsel for approximately one month, will be promulgating regulations in the immediate future. In fact, the Health Insurance Commissioner received permission from the Secretary of State to make such filings the week the Petition was filed.

Therefore, it is hereby ORDERED that:

The Petition is Denied.

Issued this 13th day of September, 2005.

__ original signature on file ____
A. Michael Marques
Director