

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BETA HEALTHCARE
GROUP RISK MANAGEMENT
AUTHORITY for an Expedited Order
Deeming Its Liability Coverage in
Compliance With the Insurance
Requirements for Private Carriers of
Passengers.

Application 08-03-019
(Filed March 24, 2008)

**DECISION FINDING THAT INSURANCE COMPLIES WITH
GENERAL ORDER 160-A**

1. Summary

This decision finds that the automobile liability insurance issued by BETA Healthcare Group Risk Management Authority (BETA) is the substantial equivalent of the insurance required by General Order (GO) 160-A for private carriers.

2. Relief Requested

BETA seeks a determination that the liability coverage provided to its members is adequate evidence of liability protection required by § 4001¹ and GO 160-A for “not-for-hire” private carriers. BETA is not a California licensed insurer, *per se*, as is required by GO 160-A.

¹ All citations are to the Public Utilities Code, unless otherwise indicated.

BETA states that it is similarly situated to the Nonprofits Insurance Alliance of California (NIAC), and that the Commission has found that insurance issued by NIAC meets the GO 160-A requirements. In Decision (D.) 01-07-021, the Commission concluded that Corporations Code § 5005.1(a)(4) authorized NIAC to issue the very form of liability insurance GO 160-A requires of private carriers of passengers. Unfortunately, for purposes of GO 160-A, Corporations Code § 5005.1(b) also specifically provides that the coverage is not “insurance” and is not regulated under the Insurance Code. Thus, the coverage available from NIAC pursuant to Corporations Code § 5005.1 did not meet the strict definitional requirements of GO 160-A.

The Commission went on, however, to note that the Legislature had amended the Vehicle Code to resolve a similar inconsistency between the Vehicle Code and Corporations Code § 5005.1. Vehicle Code § 4000.37 mandates that when renewing a motor vehicle registration, the Department of Motor Vehicles (DMV) must require each applicant to submit documentation of insurance or other form of financial responsibility. Prior to its amendment, Vehicle Code § 4000.37 limited the DMV to accepting automobile liability coverage from companies regulated under the Insurance Code. Effective January 2, 2001, however, Vehicle Code § 4000.37 was amended to add charitable risk pools, such as NIAC.

The Commission concluded in D.01-07-021 that Vehicle Code § 4000.37 directs the DMV to accept automobile insurance policies issued by NIAC, and any other Corporations Code § 5005.1 entity. Having found that the Legislature had determined that automobile insurance, in the proper amounts, issued by NIAC is equivalent to that issued by companies regulated under the Insurance Code, the Commission extended this determination to GO 160-A, and

determined that NIAC's insurance policies meet the requirements of GO 160-A. We followed D.01-07-021 when we issued D.04-01-041, finding that the NonProfits' United Vehicle Insurance Pool complied with GO 160-A.

The instant applicant, BETA, requests that we determine that it, too, is equivalent to a "company licensed to write such [liability] insurance in the State of California." Consistent with the statutory analysis and our findings in D.01-07-021 and D.04-01-041, we will grant BETA's request.

3. Need for Hearing

No protests were filed, and no hearing is necessary.

4. Background

BETA's application shows:

BETA is a joint powers insurance authority created pursuant to the Joint Exercise of Powers Act (Section 6500 *et seq.*) of the Government Code (Gov. Code) for health care districts, counties, other governmental entities, and qualified non-profit corporations which operate hospitals, clinics, and other health-related facilities.

BETA is one of the oldest and largest joint powers insurance authorities in California. It was originally established in 1979 by a group of 17 hospital districts (now healthcare districts). Since then, it has grown to include more than eighty members across the state, including local healthcare districts, counties, other governmental entities, and qualified non-profit corporations which operate hospitals, clinics, and other health-related facilities.

As a public entity separate from its members, BETA operates group self-insurance programs under the legislative authority of Gov. Code §§ 990.8 and 6527. In addition to covering healthcare entity comprehensive liability, directors and officers' liability, medical group professional liability, and offering a

property/casualty risk sharing pool, BETA issues automobile liability and physical damage coverage specifically designed for hospitals and health care facilities. Under these statutory provisions, BETA may only write coverage for governmental organizations and qualifying non-profit hospitals, such as Mission Community Hospital.

BETA asserts that as of December 31, 2006, its assets were valued at over \$307 million. During 2006, it had a net income of over \$8 million and a fund balance of nearly \$69 million. Although it is a public entity, BETA has maintained an A. M. Best rating of A- (Excellent) for over ten years. This rating reflects an independent opinion, based upon an evaluation of BETA's balance sheet strength, operating profile and business profile, that it has an ability to meet its ongoing obligations to its member/insureds.

4.1. BETA's Non-Profit Members May Need to Register as Private Carriers

The Private Carriers of Passengers Registration Act (Act), Section 4000 *et seq.* of the Public Utilities Code, provides that no "private carrier" of passengers may operate a motor vehicle on any public highway in California unless its operation is currently registered with the Commission. (*See Pub. Util. Code § 4005.*) A "private carrier" means a not-for-hire motor carrier, as defined in Section 408 of the Vehicle Code, who transports passengers and is required to display a carrier identification number pursuant to Section 34507.5 of the Vehicle Code. (*See Pub. Util. Code § 4001(a).*)

The vast majority of BETA's members are exempt from the Act's private carrier registration requirements as political subdivisions of the state because they are counties, health care districts, or other local governmental agencies. (*See Pub. Util. Code § 4008.*) By virtue of Gov. Code § 6527, BETA's non-profit

members are considered “public agencies” for purposes of participating in its self-insurance pools. However, § 4008 does not address non-profit hospital corporations. Therefore, depending on the types of transportation services they provide to their patients, BETA’s non-profit members may need to register as private carriers of passengers.

In order to register with the Commission, a private carrier must provide evidence that it has the requisite protection against liability imposed by law for the payment of damages or personal injury to, or death of, any person or property damage, or both. (*See* Pub. Util. Code § 4010.) GO 160-A requires one of the following as evidence of coverage: (1) a certificate issued by a company licensed to write insurance in the State of California, or by a nonadmitted insurer subject to Sections 1763 and 1765.1 of the Insurance Code; (2) a bond issued by a surety company licensed to write surety bonds in the State of California; or (3) a certificate of self-insurance issued by the California Department of Motor Vehicles. (*See* GO 160-A(3) and (7).)

The auto liability and physical damage coverage issued by BETA to non-profit hospitals falls outside of a purely literal reading of the statutory language. In particular, the coverage issued by BETA is not issued by a “licensed” carrier, because BETA is expressly exempt from the licensing jurisdiction of the Department of Insurance. (*See* Gov. Code § 990(c).)

In exempting BETA from regulation by the Department of Insurance, the Legislature expressly provided that it is to be treated as “insurance” for every other legal purpose. Gov. Code § 991 provides in pertinent part that, “[w]here an enactment, other than this part, authorizes or requires a local public entity to insure against its liability or the liability of its employees ... (b) Such other enactment does not limit or restrict the authority to insure under this part...”

Thus, the Legislature intended that self-insurance through governmental risk pools satisfies the legal requirements of statutes such as § 4008. Here, Mission Community Hospital has been deemed by the Legislature to be a public agency for the purposes of obtaining insurance through its participation in BETA. (Gov. Code § 6527.) Thus, the private carrier insurance requirements set forth at § 4010, and further described in GO 160-A, do not limit BETA's ability to provide auto liability and physical damage coverage to its members.

4.2. BETA Provides Automobile Liability and Physical Damage Coverage in Excess of the Minimum Limits Required by GO 160-A

The automobile liability and physical damage coverage issued by BETA under the express legislative authority of Gov. Code §§ 990.8 and 6527 is well in excess of the required insurance limits set forth at GO 160-A(1).² BETA offers automobile liability and physical damage coverage with a combined single limit of liability for bodily injury and property damage between \$1 and \$40 million through reinsurance treaties. BETA also offers uninsured/underinsured motorist coverage with a limit of \$1 million, medical payments of \$5,000 per accident, and hired/non-owned auto coverage between \$1 and \$40 million dollars per occurrence.

Commission staff recently notified one of BETA's non-profit hospital members, Mission Community Hospital, that it must register as a private carrier

² GO 160-A(1) requires minimum limits of: at least fifteen thousand dollars (\$15,000) for payment of damages for bodily injury to, or death of, one person in any one accident; and subject to the limit for one person, in the amount of at least thirty thousand dollars (\$30,000) for bodily injury to, or death of, two or more persons in any one accident; and for injury to or destruction of property of others in the amount of at least five thousand dollars (\$5,000) for any one accident.

of passengers. When the hospital attempted to comply, Commission staff rejected the certificate evidencing automobile liability coverage issued by BETA because it is a governmental self-insurance pool which is not regulated under the Insurance Code, and solely for that reason does not meet the definitional requirements of GO 160-A. However, the Legislature has expressly provided that the coverage afforded the hospital through its participation in BETA is insurance satisfying the legal requirements of “any other enactment” – including private carrier insurance requirements. For these reasons, BETA seeks an order from the Commission deeming BETA-issued automobile liability coverage to meet the insurance requirements for private carriers of passengers.

5. Discussion

In D.01-07-021, we carefully reviewed the statutes and regulations applicable to insurance organizations like BETA and determined that such organizations are substantially equivalent to “a company licensed to write such [liability] insurance in the State of California” as used in GO 160-A. We, therefore, directed our staff to accept proof of coverage from these organizations as complying with GO 160-A, subject to the conditions imposed in that order.

In D.01-07-021, we found that Corporations Code § 5005.1 requires an insurance pool to: (1) be composed of two or more corporations, (2) have an initial pool of resources of \$250,000 or more, and (3) require members to pay premiums necessary to “ensure a financially sound risk pool.” BETA’s application shows that it has met these requirements. The application should be granted.

6. Waiver of Comment Period

Pursuant to Rule 14.6(b) of the Commission’s Rules of Practice and Procedure, all parties stipulated to waive the 30-day public review and comment

period required by Section 311 of the Public Utilities Code and the opportunity to file comments on the proposed decision. Accordingly, this matter was placed on the Commission's agenda directly for prompt action.

7. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. BETA's members have had difficulty registering with the Commission because a California licensed insurer, as required by GO 160-A, does not write their liability insurance.

2. BETA provides insurance to nonprofits by the pooling of premium contributions; in doing so, it is not an "insurance company" regulated by the Department of Insurance, but rather is regulated by the Attorney General as a charitable, nonprofit corporation, pursuant to § 5005.1 of the Corporations Code.

3. BETA's application includes detail about its current financial resources and its recent claims handling history; this information indicates that it insures liability in excess of \$1 million.

4. The liability coverage issued by BETA to its members complies with the insurance requirements of Pub. Util. Code § 4010, as described in GO 160-A, for private carriers of passengers.

Conclusions of Law

1. Vehicle Code § 4000.37 directs the DMV to accept automobile insurance policies issued by BETA, and any other Corporations Code § 5005.1 entity; thus, the Legislature has determined that automobile insurance, in the proper amounts, issued by BETA is equivalent to that issued by companies regulated under the Insurance Code.

2. BETA is substantially equivalent to “a company licensed to write such [liability] insurance in the State of California” as used in GO 160-A.
3. The Commission staff should be directed to accept proof of coverage from BETA as complying with GO 160-A.

O R D E R

IT IS ORDERED that:

1. Proof of liability coverage in no less than the required amounts from BETA Healthcare Group Risk Management Authority (BETA) shall be accepted as complying with General Order 160-A.
2. BETA shall notify the Director of the Consumer Protection and Safety Division, in writing, of any material change in its present reinsurance coverage arrangement.
3. Application 08-03-019 is closed.

This order is effective today.

Dated _____, at San Francisco, California.