

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SENDERRA RX PARTNERS, LLC,)	
)	
Plaintiff,)	
)	
v.)	1:18-CV-871
)	
BLUE CROSS AND BLUE SHIELD)	
OF NORTH CAROLINA,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Catherine C. Eagles, District Judge.

The plaintiff, Senderra Rx Partners, LLC, contends it suffered lost profits when Blue Cross and Blue Shield of North Carolina did not allow Senderra to participate in its specialty pharmacy network in violation of the North Carolina “Pharmacy of Choice” statute, fraudulently misrepresented the requirements to participate in the network, and committed unfair and deceptive trade practices. Because there are no disputed questions of material fact and the evidence shows that Senderra is not aggrieved by BCBSNC’s allegedly unlawful actions, BCBSNC’s motion for summary judgment will be granted.

FACTS

The evidence material to this motion is largely undisputed. To the extent it is not, the Court states the evidence in the light most favorable to Senderra, the non-moving party. *See Sedar v. Reston Town Ctr. Prop., LLC*, 988 F.3d 756, 761 (4th Cir. 2021). The facts are summarized here and supplemented elsewhere as the need arises.

Senderra is a specialty pharmacy that began participating in BCBSNC's specialty pharmacy network in 2015. Doc. 7-1 at ¶ 8. Senderra filled prescriptions for persons insured under BCBSNC plans by mail from a Texas dispensary. Doc. 49 at ¶ 17; *see* Doc. 137-5 at 6.

In April 2018, BCBSNC notified participating pharmacies, including Senderra, that it was updating its network requirements and contracts effective September 1, 2018. Doc. 17; *see also* Doc. 89 at ¶ 5 (showing receipt by Senderra). BCBSNC also told the pharmacies that they would receive a “notice of removal” pursuant to the existing network agreement unless they submitted a form verifying that they were in compliance with the new network requirements by June 8, 2018. Doc. 17. On May 7, 2018, BCBSNC sent each participating pharmacy, including Senderra, an email with more information on the new network, including the new network participation agreement and the special pharmacy addendum. *Id.* at ¶ 6; *see* Doc. 69-1 at 11–79.

When Senderra joined the network in 2015, BCBSNC required participants to have a “staffed business office” in North Carolina. Doc. 55-2 at 2. The new terms, however, included a requirement that providers have “a dispensing location” in North Carolina. Doc. 69-1 at 71. Senderra immediately recognized that satisfying the in-state dispensing requirement would be difficult, given the short timeframe it had to submit proof of compliance. *See* Doc. 55-2.

In June 2018, Senderra timely applied to join the new network, noting in its application that it had a “staffed business office” in North Carolina without identifying an in-state dispensing location. Doc. 19 at 8. BCBSNC confirmed with Senderra that

Senderra did not have a dispensing pharmacy in North Carolina. Doc. 23 at 2–3. On July 11, 2018, consistent with the provisions of the April letter and existing contract, BCBSNC notified Senderra that the 2015 Agreement would be terminated effective October 15, 2018. Doc. 1-2.

Thereafter, employees of Senderra and BCBSNC exchanged emails and had conversations about the in-state dispensing requirement, and Senderra began the work needed to comply with the requirement. In the fall, Senderra bought a business in North Carolina and converted it into a dispensing pharmacy. Doc. 7-1 at ¶ 15. But as of October 15, 2018, Senderra did not have a permit from the North Carolina Board of Pharmacy to operate this dispensary, *see* Doc. 138-1 (noting the permit was issued November 5, 2018), and the contract with BCBSNC ended. Many pharmacies met the new requirement, and every pharmacy admitted into the new network had an in-state dispensing location with a state permit. *See* Doc. 48 at ¶¶ 9, 15, 32, 49–53.

BCBSNC included as a term of participation that pharmacies seeking to gain entry to the network must “submit all necessary paperwork that BCBSNC requires by 10/1 for a 1/1 entry date, and by 4/1 for a 7/1 entry date.” Doc. 18 at p. 14 ¶ 2.14. Senderra did not provide the necessary paperwork by October 1, as it did not have a state permit on that date. Thus, under the terms of the new agreement, the earliest date BCBSNC would allow Senderra—a pharmacy not in the network seeking to gain entry—to rejoin the network was July 1, 2019, if Senderra met the requirements by April 1, 2019.

After it received its permit from the Board of Pharmacy, Senderra reapplied to participate in the network on November 5, 2018. 138-2 at 7. BCBSNC rejected the

application because Senderra had not shown that the North Carolina location had obtained other credentials required by BCBSNC for the in-state dispensary, specifically a Medicare certification and a URAC credential. Doc. 36-2.

None of the written materials BCBSNC sent to the providers explicitly stated that pharmacies had to obtain a Medicare certification or URAC credential specifically for their North Carolina dispensing location or that pre-existing credentials for other, out-of-state locations owned by the same pharmacy would not suffice. *See* Doc. 69-1 at 11–79. But Senderra was aware from its previous dealings with BCBSNC that it had a credentialing process. *See* Doc. 49 at ¶¶ 15–18; Doc. 55-1 at 3. And the new participation agreement, which was provided to Senderra and others, did say that the provider “agree[d] to participate and comply with all of [BCBSNC’s] Policies and Procedures” and that the policies and procedures would be provided to pharmacies “by hard copy, CD, or other electronic format, or by posting on [BCBSNC’s] website.” Doc. 69-1 at p. 21 §§ 2.3.1, 2.3.1.1. The information on BCBSNC’s website and in the “BlueBook,” the provider manual, specifically discussed credentialing requirements, *see* Doc. 26; Doc. 88 at ¶¶ 6–15, including the URAC credential. Doc. 88 at ¶ 14.

Before October 15, 2018, BCBSNC admitted two pharmacies, Avita Pharmacy and Long’s Drugs, into the new network even though their in-state dispensaries did not have the URAC credential. Doc. 36-3 at 3–4; Doc. 48 at ¶ 41. A BCBSNC manager erroneously assumed that pharmacies with permitted locations also had the URAC credential. Doc. 48 at ¶¶ 23, 41. Those in-state dispensaries had permits from the North Carolina Board of Pharmacy, unlike Senderra. Doc. 48 at ¶¶ 13–15.

In March 2019, Senderra obtained its URAC credential and, in advance of the April 1 deadline, it reapplied to participate in BCBSNC's network. Doc. 89 at ¶¶ 8–9. The parties executed a new participation agreement, and Senderra reentered the network on July 1, 2019. *Id.* at ¶¶ 10–11.

As a result of these events, Senderra did not participate in the network from October 15, 2018, through July 1, 2019. Senderra contends this exclusion caused it to lose millions of dollars in revenue and profits.

ANALYSIS

Senderra has three remaining claims against BCBSNC.¹ First, Senderra contends that BCBSNC violated the North Carolina “Pharmacy of Choice” statute, N.C. Gen. Stat. § 58-51-37, by “failing to provide sufficient information as to the various requirements for a dispensing location” and issuing “vague, incomplete, and conflicting” instructions on how to satisfy the requirements, and by enforcing the requirements with “unequal force and manner.” *See* Doc. 36 at ¶¶ 48–61. Second, Senderra contends BCBSNC falsely represented its credentialing requirements and how Senderra could satisfy the requirements in their communications with Senderra between July 19, 2018, and November 2, 2018. *Id.* at ¶¶ 79–86.² Third, Senderra contends that BCBSNC committed

¹ The Court dismissed parts of Senderra's Chapter 75 and fraud claims in its order granting and denying-in-part BCBSNC's motion for to dismiss. *See generally* Doc. 79. For clarity and ease of reading, the Court has summarized Senderra's causes of actions only as they survived.

² The Court dismissed Senderra's fraud claim to the extent it was based on (1) BCBSNC's failure to affirmatively disclose the credentialing requirements, as BCBSNC had no common law duty to disclose; and (2) concealments or misrepresentations about applying the terms of

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