

- ✓ CHARLES F. ADAMS, an)
individual residing in)
Cumberland, Cumberland)
County, Maine,)
- ✓ ANNELIESE ANDREWS, an)
individual residing in)
Scarborough Beach, Cumberland)
County, Maine,)
- ✓ ELIO BALDINI, an)
individual residing in)
Cape Elizabeth, Cumberland)
County, Maine,)
- ✓ RICHARD M. FLOWERDEW, an)
individual residing in)
Falmouth, Cumberland County,)
Maine,)
- ✓ RONALD E. FRITZ, an)
individual residing in)
Cape Elizabeth, Cumberland,)
County, Maine,)
- ✓ HERBERT E. HAMEL, an)
individual residing in)
Falmouth, Cumberland County,)
Maine,)
- ✓ JAY G. HAYDEN, an)
individual residing in)
Cape Neddick, York County,)
Maine,)
- ✓ CHARLES W. HIGGINS, JR.)
an individual residing in)
Portland, Cumberland County,)
Maine,)
- ✓ ANTHONY J. HORSTMAN, an)
individual residing in)
Portland, Cumberland County,)
Maine,)
- ✓ DONALD W. KLOPP, an)
individual residing in)
Peaks Island, Cumberland)
County, Maine,)
- ✓ JEFFREY C. MORSE, an)
individual residing in)
Falmouth, Cumberland County,)
Maine,)
- ✓ JAMES W. RIECHEL, an)
individual residing in)
Raymond, Cumberland County,)
Maine,)
- ✓ HOWARD P. SAWYER, JR. an)
individual residing in)
Standish, Cumberland County,)
Maine,)

✓ KATE SEWALL, an)
individual residing in)
Cumberland Center, Cumberland)
County, Maine,)
✓ JOHN H. SIEGLE, an)
individual residing in)
Falmouth, Cumberland County,)
Maine,)
✓ THOMAS R. VERLEE, an)
individual residing in)
Falmouth, Cumberland County,)
Maine,)
✓ PHILIP J. VILLANDRY, an)
individual residing in)
Cape Elizabeth, Cumberland,)
County, Maine,)
✓ NORMAN E. WILSON, an)
individual residing in)
Portland, Cumberland County,)
Maine,)
Defendants)

I. INTRODUCTION

1. This is an action under 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1983) and 10 M.R.S.A. § 1104 (Supp. 1983) to obtain a preliminary and permanent injunction.

II. PARTIES AND JURISDICTION

2. Plaintiff STATE OF MAINE, a sovereign state, by and through the Attorney General, commences this action under 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1983) and 10 M.R.S.A. § 1104 (Supp. 1983).

3. Defendant, ANESTHESIA PROFESSIONAL ASSOCIATION (hereinafter referred to as Professional Association), is a Maine professional corporation with offices in Portland,

Cumberland County, Maine. The Professional Association provides anesthesiology services to patients in hospitals in Portland, Maine, and collects fees for these services directly from patients and from third-party payors (such as Blue Shield of Maine, commercial insurance companies, the State of Maine under the Medicaid program and the United States under the Medicare program).

4. Defendant CHARLES F. ADAMS, a physician licensed to practice medicine in this state, resides in Cumberland, Cumberland County, Maine. Defendant CHARLES F. ADAMS, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

5. Defendant ANNELIESE ANDREWS, a physician licensed to practice medicine in this state, resides in Scarborough Beach, Cumberland County, Maine. Defendant ANNELIESE ANDREWS, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

6. Defendant ELIO BALDINI, a physician licensed to practice medicine in this state, resides in Cape Elizabeth, Cumberland County, Maine. Defendant ELIO BALDINI, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital. Dr. Baldini is Chief of the Department of Anesthesiology at Mercy Hospital.

7. Defendant RICHARD M. FLOWERDEW, a physician licensed to practice medicine in this state, resides in Falmouth,

Cumberland County, Maine. Defendant RICHARD M. FLOWERDEW, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

8. Defendant RONALD E. FRITZ, a physician licensed to practice medicine in this state, resides in Cape Elizabeth, Cumberland County, Maine. Defendant RONALD E. FRITZ, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

9. Defendant HERBERT E. HAMEL, a physician licensed to practice medicine in this state, resides in Falmouth, Cumberland County, Maine. Defendant HERBERT E. HAMEL, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

10. Defendant JAY G. HAYDEN, a physician licensed to practice medicine in this state, resides in Cape Neddick, York County, Maine. Defendant JAY G. HAYDEN, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

11. Defendant CHARLES W. HIGGINS, a physician licensed to practice medicine in this state, resides in Portland, Cumberland County, Maine. Defendant CHARLES W. HIGGINS, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

12. Defendant ANTHONY J. HORSTMAN, a physician licensed to practice medicine in this state, resides in Portland,

Cumberland County, Maine. Defendant ANTHONY J. HORSTMAN, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

13. Defendant DONALD W. KLOPP, a physician licensed to practice medicine in this state, resides in Peaks Island, Cumberland County, Maine. Defendant DONALD W. KLOPP, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital. Dr. Klopp is Chief of the Department of Anesthesiology at Maine Medical Center and is President of the Professional Association.

14. Defendant JEFFREY C. MORSE, a physician licensed to practice medicine in this state, resides in Falmouth, Cumberland County, Maine. Defendant JEFFREY C. MORSE, is a shareholder and the Treasurer of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

15. Defendant JAMES W. RIECHEL, a physician licensed to practice medicine in this state, resides in Raymond, Cumberland County, Maine. Defendant JAMES W. RIECHEL, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

16. Defendant HOWARD P. SAWYER, JR., a physician licensed to practice medicine in this state, resides in Standish, Cumberland County, Maine. Defendant HOWARD P. SAWYER, JR., is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

17. Defendant KATE SEWALL, a physician licensed to practice medicine in this state, resides in Cumberland Center, Cumberland County, Maine. Defendant KATE SEWALL, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

18. Defendant JOHN H. SIEGLE, a physician licensed to practice medicine in this state, resides in Falmouth, Cumberland County, Maine. Defendant JOHN H. SIEGLE, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

19. Defendant THOMAS R. VERLEE, a physician licensed to practice medicine in this state, resides in Falmouth, Cumberland County, Maine. Defendant THOMAS R. VERLEE, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

20. Defendant PHILIP J. VILLANDRY, a physician licensed to practice medicine in this state, resides in Cape Elizabeth, Cumberland County, Maine. Defendant PHILIP J. VILLANDRY, is a shareholder of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

21. Defendant NORMAN E. WILSON, a physician licensed to practice medicine in this state, resides in Portland, Cumberland County, Maine. Defendant NORMAN E. WILSON, is a shareholder and the Secretary of the Professional Association and practices anesthesiology at Maine Medical Center and Mercy Hospital.

22. This Court has jurisdiction over this action pursuant to 5 M.R.S.A. § 209 (1979), 10 M.R.S.A. § 1104 (Supp. 1983), 4 M.R.S.A. § 105 (Supp. 1983) and 14 M.R.S.A. § 6051 (1980).

III. NATURE OF TRADE AND COMMERCE

23. Prior to September 15, 1983, the defendant anesthesiologists were salaried employees of Maine Medical Center working as staff physicians in the Department of Anesthesiology. Defendant anesthesiologists provided or supervised the provision of all anesthesia services at Maine Medical Center.

24. Maine Medical Center is a non-profit hospital located in Portland, Maine. Maine Medical Center is the largest hospital in the State of Maine.

25. Prior to September 15, 1983, pursuant to a contract between Maine Medical Center and Mercy Hospital, the defendant anesthesiologists provided or supervised the provision of all anesthesia services at Mercy Hospital. Mercy Hospital is a non-profit hospital located in Portland, Maine.

26. During this time period, defendant anesthesiologists did not collect fees from patients or third party payors. Instead, Maine Medical Center paid the anesthesiologists for their services through salary and other benefits, and Maine Medical Center and Mercy Hospital billed patients and third party payors directly for anesthesiology services.

27. On September 15, 1983, the defendant anesthesiologists left the employ of the Maine Medical Center and formed a professional corporation known as Anesthesia Professional Association. The Professional Association is a for profit professional corporation, the shares of which are owned by defendant anesthesiologists. Collectively, the defendant anesthesiologists comprise all of the anesthesiologists practicing at Maine Medical Center and Mercy Hospital. The Professional Association now bills patients and third-party payors directly for anesthesiology services provided by its members. The Professional Association has established and continues to establish uniform prices for the numerous services provided by its members.

28. Since the formation of the Professional Association, defendant anesthesiologists, through the Professional Association, have provided or supervised the provision of all anesthesia services at both Maine Medical Center and Mercy Hospital. The Professional Association is also paid a fee by Maine Medical Center and Mercy Hospital to administer the Departments of Anesthesiology at each hospital.

29. The defendant anesthesiologists train and lecture nursing students from the Mercy Hospital School of Nurse Anesthesia and anesthesiology residents at Maine Medical Center. Both nurse anesthetists and anesthesiology residents may administer anesthesia to patients under the supervision of defendant anesthesiologists.

30. The Chiefs of the Departments of Anesthesiology at Maine Medical Center and Mercy Hospital, Defendant DONALD W. KLOPP and Defendant ELIO BALDINI, respectively, are shareholders in the Professional Association. The Chiefs of the Departments are responsible for assigning cases to the anesthesiologists in their Departments and for recommending whether to grant staff privileges to applying anesthesiologists.

IV. MARKET DEFINITION AND CONCENTRATION

31. The relevant line of commerce in which to assess Defendants' conduct is the provision of anesthesia services in non-osteopathic hospitals (known as allopathic hospitals). Allopathic physicians (M.D.s) generally refer their patients only to such hospitals for surgery.

32. The relevant geographical area in which to assess Defendants' conduct is the area in and around Portland, Maine, including the following municipalities: Baldwin, Buxton, Cape Elizabeth, Casco, Cornish, Cumberland, Falmouth, Gorham, Gray, Hollis, Limington, North Yarmouth, Parsonsfield, Porter, Portland, Raymond, Scarborough, Sebago, South Portland, Standish, Westbrook, Windham and Yarmouth.

33. Defendants provide approximately 90% of the anesthesiology services to residents of the Portland area who seek anesthesiology services at allopathic hospitals. Defendants provide 100% of the anesthesiology services at Maine Medical Center and Mercy Hospital.

34. For certain specialized procedures the relevant geographical area in which to assess Defendants' conduct includes substantial sections of Maine outside the Portland area. For example, Defendants provide over 69% of anesthesiology services administered in connection with cardiac surgery for residents of the entire State of Maine. Most of these specialized procedures are performed at Maine Medical Center which serves as a referral hospital for complicated procedures.

V. CHARGES AND REIMBURSEMENT FOR ANESTHESIA SERVICES

35. Defendant anesthesiologists, through the Professional Association, have adopted uniform policies and practices for charging for anesthesiology services.

A. Relative Value Units

36. Defendants establish the prices for most anesthesiology services through use of a complex pricing formula, common to the profession, known as a relative value guide. The relative value guide is not itself a price but, rather, is a system that measures the time and difficulty of most anesthesiology procedures through the assignment of points known as relative value units. Longer and more difficult procedures are assigned a higher number of units than are shorter and less difficult procedures. The price of a

procedure is determined by multiplying the total number of units by a standard dollar amount per unit (this dollar amount is not contained in the relative value guide).

37. Defendants have agreed among themselves to establish and fix a uniform dollar amount per unit. The unit charge agreed upon by Defendants places their charges in the upper 15% of anesthesiologist charges in the State of Maine.

38. Defendants do not use the relative value guide for determining the fees for all procedures. For certain procedures, such as therapeutic blocks, Defendants have established and fixed flat fees applicable to all defendant anesthesiologists.

B. Medicare

39. Under the Medicare program the United States pays physicians for medical services provided to persons over age 65 (and in certain limited categories, persons under age 65). These payments are generally at a level below the amount charged by physicians to patients without insurance or with commercial insurance.

40. Physicians have the option to accept assignment from Medicare patients. By accepting assignment, a physician agrees not to bill Medicare patients for amounts above the level of Medicare reimbursement. In return for accepting assignment, a physician may bill the United States (or its fiscal

intermediary) directly without having to collect from the patient. A physician choosing not to accept assignment must collect his fees from the patient and will not be paid by the United States directly for the Medicare component of his charge.

41. Until about January 1984, Defendants collectively agreed not to accept assignment (and, therefore, to bill Medicare patients in excess of the amount of Medicare reimbursement) for all but a few categories of Medicare patients: patients over age 80, deceased patients, mentally ill patients (as evidenced by the medical procedure provided to the patient, such as electro-shock treatment), Medicaid recipients, clinic patients at Mercy Hospital and patients declared indigent by Maine Medical Center. Patients in these categories constitute approximately 30% of Medicare patients served by Defendants.

42. By agreeing not to accept assignment, Defendants agreed to bill most Medicare recipients for the full amount of Defendants' charges. Defendants' charges exceed both the amount of Medicare reimbursement and the amount of supplemental insurance coverage available to most patients. Until Defendants reversed their policy not to accept assignment, the effect of that policy would have been for Defendants to charge Medicare patients for whom they refused to accept assignment approximately \$150,000 above the amount of Medicare reimbursement plus any supplemental insurance coverage during 1984.

C. Blue Shield

43. Blue Cross-Blue Shield of Maine, a non-profit hospital and medical service organization, reimburses "participating" physicians directly for services provided to Blue Shield subscribers. Under certain Blue Shield policies, "participating" physicians agree to accept Blue Shield's level of reimbursement as payment in full. Blue Shield's level of reimbursement for anesthesiology services is less than the amount charged by Defendants to patients covered by commercial insurance.

44. From February 13, 1984, until approximately April 23, 1984, Defendants did not participate in the Blue Shield program because of their collective agreement to seek from Blue Shield higher fees than Blue Shield has agreed to pay for supervising anesthesia services provided by nurses and residents. On or about April 23, 1984, Defendants agreed to participate in the Blue Shield program.

45. If Defendants had not reversed their policy concerning Blue Shield participation, Defendants would have sought to charge patients insured with Blue Shield a higher fee for anesthesiology services than Blue Shield would have reimbursed for those services.

VI. CRNAs

46. In Maine, as elsewhere throughout the United States, certified registered nurse anesthetists, or CRNAs, provide anesthesia services directly to patients. In some small Maine hospitals CRNAs (under supervision of physicians other than anesthesiologists) provide all of the anesthesia services.

47. CRNAs receive lower compensation for their services than do anesthesiologists for their services. As a result, hospitals, or other payors, realize a cost savings when CRNAs, as opposed to anesthesiologists, provide anesthesia services. To this extent, CRNAs actually and potentially compete with anesthesiologists in the provision of anesthesia services.

48. CRNAs obtain their certification by completing a general nursing curriculum and an additional 24 month course of instruction at an accredited school of nurse anesthesia. Mercy Hospital operates an accredited School of Nurse Anesthesia. Some of the graduates of the School have been employed as CRNAs at Maine Medical Center, Mercy Hospital and other hospitals throughout the State. The present and future graduates of the School actually and potentially compete with defendant anesthesiologists.

49. Certain of the Defendant anesthesiologists have acted to oppose efforts of the School of Nurse Anesthesia to increase the number of nurse anesthetists trained at the School and to restrict the breadth of services which the students are

qualified to perform. Specifically, certain Defendants had agreed not to permit the School of Nurse Anesthesia to train its students to perform regional anesthesia (a particular type of anesthesia in which only a portion of the body is anesthetized) and indicated that they would curtail the clinical training opportunities of students if the School of Nurse Anesthesia increased its enrollment.

VIII. FIRST CAUSE OF ACTION

(UNREASONABLE RESTRAINT OF TRADE)

50. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 51.

51. The agreement of Defendant anesthesiologists to form the Professional Association and the subsequent agreements of defendants to abide by their policies and practices, including such policies and practices relating to charges and pricing, CRNAs, Medicare assignment, and Blue Shield participation, have had and threaten to have anticompetitive effects including the following:

A. Charges for anesthesia services being fixed, established and maintained at artificial and non-competitive levels;

B. Patients and payors of anesthesiology services, including Medicare recipients and Blue Shield subscribers, being deprived of the benefits of free and open competition;

C. Competition among anesthesiologists being restrained, suppressed and eliminated; and

D. Entry of competing anesthesiologists and CRNAs into practice in the Portland area being restrained and suppressed; and

E. CRNAs being restricted in their ability to effectively compete with anesthesiologists.

52. Defendants' conduct constitutes an unreasonable restraint of trade and an unfair method of competition in violation of 10 M.R.S.A. § 1101 (1980) and 5 M.R.S.A. § 207 (1979).

IX. SECOND CAUSE OF ACTION

(Monopolization)

53. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 51.

54. Defendants have monopoly power in the provision of anesthesiology services to persons who utilize allopathic hospitals in Portland, Maine.

55. Defendants acquired their monopoly power by use of unlawful acts including, but not limited to:

A. Agreeing to form the Professional Association and abide by its by-laws, articles and policies;

B. Agreeing to charge patients and third-party payers a uniform fee for professional services;

C. Agreeing to refuse to accept assignment for most Medicare patients;

D. Agreeing to refuse to participate as Blue Shield providers; and

E. Impeding and limiting the ability of CRNAs to compete with anesthesiologists.

56. Defendants have maintained and expanded their monopoly power by means of unlawful, coercive or unfair practices, including, but not limited to:

A. Agreeing to form the Professional Association and abide by its by-laws, articles and policies;

B. Agreeing to charge patients and third-party payors a uniform fee for professional services;

C. Agreeing to refuse to accept assignment for most Medicare patients;

D. Agreeing to refuse to participate as Blue Shield providers; and

E. Impeding and limiting the ability of CRNAs to compete with anesthesiologists.

57. Defendants' conduct has had or likely will have anti-competitive effects, including, but not limited to:

A. Charges for anesthesiology services being or likely to be fixed, established and maintained at artificial and non-competitive levels;

B. Patients and payors of anesthesiology services being or likely to be deprived of the benefits of free and open competition;

C. Competition among anesthesiologists being or likely to be restrained, suppressed and eliminated; and

D. Entry of competing anesthesiologists and CRNAs being or likely to be restrained and suppressed.

58. Defendants have engaged in the monopolization of anesthesiology services in the Portland area and other areas of the State in violation of 10 M.R.S.A. § 1102 (1980) and 5 M.R.S.A. § 207 (1979).

RELIEF REQUESTED

WHEREFORE, Plaintiff STATE OF MAINE, respectfully requests that this Court:

1. Find Defendants' conduct as described in this Complaint to constitute:

A. Unfair methods of competition in violation of 5 M.R.S.A. § 207 (1979);

B. Contracts, combinations or conspiracies in restraint of trade in violation of 10 M.R.S.A. § 1101 (1980); and

C. Monopolization in violation of 10 M.R.S.A. § 1102 (1980).

2. Enjoin Defendants, their agents, employees, assigns or other persons acting for Defendants or under their control from:

A. Monopolizing or attempting to monopolize the provision of anesthesiology services;

B. Fixing, maintaining or establishing the charges for anesthesiology services;

C. Engaging in any concerted effort to restrain or limit the ability of CRNAs to compete with anesthesiologists;

D. Refusing to accept assignment for all Medicare patients; and

E. Refusing to participate in the Blue Shield program.

3. Enter such orders as are necessary to remedy and preclude the actual and potential anti-competitive effects of Defendants' conduct.

4. Order Defendants to pay the Department of the Attorney General the costs of this investigation of Defendants and the costs of this suit.

5. Enter such other Orders as this Court deems just and equitable.

DATED: June 15 1984

JAMES E. TIERNEY
Attorney General

Robert S. Frank
ROBERT FRANK
Assistant Attorney General

Stephen L. Wessler
STEPHEN L. WESSLER
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6/15/84

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 ANESTHESIA PROFESSIONAL)
 ASSOCIATION, et. al.,)
)
 Defendants)

STATEMENT OF THE CASE

I. INTRODUCTION

The State of Maine, through Attorney General James E. Tierney, has filed a complaint under State antitrust statutes against Anesthesia Professional Association and the 18 anesthesiologists who are members of the Professional Association. The Professional Association and its individual members provide anesthesia services at Maine Medical Center and Mercy Hospital in Portland. The State also has filed a proposed Consent Decree resolving the issues raised in the complaint. The State contends that the proposed Consent Decree is in the public interest and requests this Court to approve the Decree.

This case involves the application of traditional antitrust principles to the health care industry: an industry which has only recently begun to be analyzed in traditional economic

terms. Application of antitrust principles to the health care industry involves a number of conceptual and practical difficulties, the most crucial of which is how to preserve high quality care while promoting an optimal competitive atmosphere. The proposed Consent Decree, now before the Court and signed by all parties to this case, provides the primary benefit of a competitive economy - reasonable prices - while maintaining the high quality of anesthesia services presently being provided in the Portland area by the Defendants.

II. THE ATTORNEY GENERAL'S INVESTIGATION.

The Attorney General's investigation into the structure and activities of the Professional Association and its members began in the fall of 1983, sometime after the formation of the Professional Association on September 15, 1983. The Department has reviewed thousands of pages of documents submitted to the Department pursuant to subpoenas issued under 10 M.R.S.A. § 1107 (1980). In addition, the Department has met at length with the principals of the Professional Association on two occasions and has consulted with and interviewed a large number of persons, including representatives of Maine Medical Center, Mercy Hospital, Blue Cross/Blue Shield and hospital regulators.

In March 1984, the Department concluded that the Professional Association and its members had violated State

antitrust laws. Immediately after reaching this conclusion, the Department entered into intensive negotiations with Defendants through their counsel. The result of these negotiations is the proposed Consent Decree which is now before the Court for its approval.

III. CHRONOLOGY OF EVENTS.

Prior to September 15, 1983, the anesthesiologists at Maine Medical Center were employees of the Medical Center. The Medical Center, and not the physicians, billed patients for anesthesia services and then paid its staff anesthesiologists on a salary basis. The anesthesiologists at Maine Medical Center, pursuant to an agreement between Maine Medical Center and Mercy Hospital, also provided anesthesia services at Mercy Hospital.

On September 15, 1983, the anesthesiologists at the Medical Center left the employ of the Medical Center and formed the Anesthesia Professional Association. Thereafter, the Professional Association provided all of the anesthesia services (except those services provided by nurses and residents) at Maine Medical Center and Mercy Hospital. Defendants provide approximately 90% of the anesthesia services to residents of the Portland area. For certain specialized procedures the Defendants provide the substantial portion of anesthesiology services for patients in the entire state. For

example, Defendants provide over 69% of the anesthesiology services administered in connection with cardiac surgery for residents of the entire state of Maine.

The Professional Association, since its creation in September 1983, has adopted uniform charges for anesthesiology services provided by its members. Defendants' charges are in the upper 15% of anesthesiology charges in the state.

For a period of time prior to January 1984, the Professional Association and its members agreed not to accept assignment for most Medicare patients. By refusing to accept assignment for Medicare patients, the anesthesiologists permitted themselves to bill Medicare recipients for the full amount of their charges: an amount significantly in excess of the amount of Medicare reimbursement. If the Defendants had continued to refuse to accept assignment, rather than to enter into the proposed settlement, they would have collected approximately \$150,000 in balance billing from Medicare recipients in 1984.

The Defendants collectively decided not to enter into a "participating agreement" with Blue Cross/Blue Shield of Maine. As a result of not participating in Blue Shield, Defendants would retain the right to bill Blue Shield recipients directly for the full amount of their charges: an amount significantly in excess of the amount of Blue Shield authorized reimbursement. Within the past few weeks Defendants have agreed to participate in Blue Shield.

In Maine, as elsewhere in the United States, certified registered nurse anesthetists, or CRNAs, provide anesthesia services directly to patients. In fact, in some small hospitals in rural areas of the State, CRNAs provide all of the anesthesia services. Mercy Hospital currently has a School of Nurse Anesthesia. Since September 15, 1983, Defendants have taken steps to restrict the breadth of services which nurse anesthesia students are qualified to perform and to oppose efforts of the School of Nurse Anesthesia to increase the size of its classes.

III. PROPOSED CONSENT DECREE.

The proposed Consent Decree does not utilize the traditional antitrust remedy of divestiture to address the anticompetitive effects of the monopoly enjoyed by the Professional Association. Rather, the Consent Decree permits the Professional Association to remain as one group serving both hospitals in Portland while imposing significant restraints on the Professional Association's freedom with regard to pricing and its freedom to take steps to limit the training, education and practice of nurse anesthetists.

During the negotiations leading to the filing of the proposed Consent Decree arguments were made by Defendants and both Maine Medical Center and Mercy Hospital that the existence

of one anesthesiology group in Portland permitted a higher quality of care than would exist with two or more competing groups of anesthesiologists. The Department, without conceding the validity of those arguments, has structured a settlement agreement with the Defendants which permits the Professional Association to continue to provide services to both hospitals in Portland, yet achieves many of the benefits of a competitive market.

Specifically, the Decree imposes significant constraints on Defendants ability to raise prices through September 15, 1986, and flatly prohibits the Association from refusing to participate in Blue Shield or from refusing to accept Medicare assignment through that same date. In addition, from September 15, 1986 until September 15, 1993, Defendants must provide the Attorney General with 45 days written advanced notice of any decision to increase prices, to refuse to accept Medicare assignment and to refuse to participate in Blue Shield.

The Department expects that, in the period following September 15, 1986, Defendants will act reasonably with respect to establishing charges for their services. However, the existence of the prior notice provision will permit the Attorney General to evaluate the reasonableness of Defendants' charges and decide whether a renewed challenge under antitrust laws is necessary.

Over the life of this Consent Decree, charges for anesthesiology services will be reduced significantly, Medicare recipients will not be billed above the amount of Medicare reimbursement and any supplemental insurance, and Blue Shield subscribers will not be billed above the level of Blue Shield reimbursement. These financial safeguards for the recipients of anesthesia services, however, will not interfere with the high quality of anesthesia services provided at Maine Medical Center and Mercy Hospital.

The Consent Decree also prohibits Defendants from negotiating an exclusive contract with either Maine Medical Center or Mercy Hospital for a period of ten years, thus, permitting other anesthesiologists to enter the Portland area and establish a practice. Finally, the Decree requires Defendants to pay \$5,000 towards the Attorney General's investigative costs.

The investigation, negotiation and settlement of this matter have been conducted in a spirit of cooperation and good faith. The Department has never questioned the skills, qualifications and integrity of the anesthesiologists practicing at Maine Medical Center and Mercy Hospital and believes that residents of Portland, and indeed of the entire state, benefit from the high quality of anesthesia services provided by the Professional Association and its members.

The Department has concluded that the proposed Consent Decree provides patients receiving anesthesia services with protection against unreasonably high medical bills while at the same time allowing them to continue receiving the superior quality anesthesia services offered at Maine Medical and Mercy Hospital.

Date: *JUNE 15, 1984*

JAMES E. TIERNEY
Attorney General



ROBERT S. FRANK
Assistant Attorney General



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Chief, Consumer & Antitrust Div.
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6/12/84

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV- 84-250

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 ANESTHESIA PROFESSIONAL)
 ASSOCIATION, et. al.,)
)
 Defendants)

CONSENT DECREE

Plaintiff, the State of Maine, having filed this Complaint on June 15, 1984, and Plaintiff and Defendants having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law hereip and without this Decree constituting any evidence against, or an admission by, any party with respect to such issue (except Section I); now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered and decreed as follows:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action. This Complaint states a claim upon which relief may be granted against Defendants under 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1983) and 10 M.R.S.A. § 1104 (Supp. 1983).

II. DEFINITIONS

As used in this Consent Decree:

A. "Professional Association" means Anesthesia Professional Association, a Maine professional corporation with offices in Portland, Cumberland County, Maine, and a Defendant in this action.

B. "Defendant anesthesiologists" means each of the individual physicians who are named defendants in this action.

C. "Defendants" means the Professional Association and the defendant anesthesiologists.

D. "Portland area" means the following municipalities in and around Portland, Maine: Baldwin, Buxton, Cape Elizabeth, Casco, Cornish, Cumberland, Falmouth, Gorham, Gray, Hollis, Limington, North Yarmouth, Parsonsfield, Porter, Portland, Raymond, Scarborough, Sebago, South Portland, Standish, Westbrook, Windham and Yarmouth.

E. "Hospital" or "hospitals" shall mean any hospital located in the Portland area including Maine Medical Center, Mercy Hospital and Westbrook Hospital.

F. "Indices" shall mean the Consumer Price Index - All Urban, All Items (U.S.) (hereinafter referred to as CPI) and the Employment Cost Index - Wages and Salaries, Private Industry Workers, White-Collar Workers, Professional and Technical Workers (U.S.) (hereinafter referred to as ECI), both published by the United States Department of Labor, Bureau of Labor Statistics.

G. "Designated percentage" shall mean the average of the increases in the indices, expressed as a percentage, for the most recent 12 month period for which complete information on the indices is available; provided that (i) if the increase in the CPI is greater than the increase in the ECI, the designated percentage shall not exceed the increase in the ECI plus 2.0 percentage points, and (ii) if the increase in the CPI is less than the increase in the ECI, the designated percentage shall not be less than the increase in the ECI minus 2.0 percentage points.

H. "Department" shall mean the Department of the Attorney General of the State of Maine.

I. "Court" means the Superior Court of Kennebec County.

III. RELIEF

Defendants hereby are subject to a permanent injunction on the following terms:

A. Reimbursement.

1. From the date of this Decree until September 15, 1986, Defendants shall not bill any person receiving reimbursement under the Medicare program for anesthesia services for any excess in Defendants' charges over the full amount of Medicare reimbursement and other insurance amounts payable on behalf of such persons, except for the amount of any co-insurance or deductible authorized under the Medicare program.

2. From the date of this Decree until September 15, 1986, Defendants shall enter into and remain a party to a "Blue Cross and Blue Shield of Maine Agreement with Participating Professionals," in the form attached hereto as Exhibit A, provided that the method used by Blue Cross and Blue Shield of Maine to determine the rate and amount of reimbursement to Defendants conforms with the provisions set forth in Exhibit B and in all other respects is no less favorable to Defendants than the method used by Blue Cross and Blue Shield of Maine to determine the rate and amount of reimbursement to other anesthesiologists in the State of Maine.

3. Defendants shall limit any increase in their charges for anesthesia services as follows:

a. Defendants shall not increase their existing charges for anesthesia services prior to September 15, 1985; and

b. Defendants, from September 15, 1985 until September 15, 1986, shall limit the percentage of any annual increase in their charges for anesthesia services to the designated percentage.

4. From the date of this Decree until September 15, 1986, Defendants shall limit any annual increase in their compensation from any hospital for administering the anesthesia department, supervising residents, or teaching medical students or student nurses to a percentage not exceeding the designated percentage. Nothing in the preceding sentence shall prohibit

Defendants from negotiating with any hospital at any time for compensation for duties and responsibilities which Defendants have not provided to the hospital between September 15, 1983 and the date of this Decree.

5. Defendants shall retain whatever rights they may have under Maine law and applicable precedent to provide input and advice to any third-party payor regarding reimbursement or other issues of common interest.

B. Staff Privileges and Exclusivity.

1. Any decision to grant, deny or terminate hospital staff privileges for an anesthesiologist shall be made by the hospital administration and shall not be made by the Defendants. Any individual Defendant anesthesiologist shall be permitted to provide recommendations to any hospital concerning the granting, denial or termination of staff privileges. In addition, the Chairman of the Department of Anesthesia at any hospital or his designee shall be permitted to relate to the hospital administration the opinions or recommendations of any individual defendant anesthesiologist concerning those matters expressed at meetings of the Department of Anesthesia.

2. Defendants shall not enter into an exclusive contract with any hospital for the provision of anesthesia services.

C. CRNAs.

1. The following decisions shall be made by the hospital administration and shall not be made by the Defendants:

- a. the decision to increase or reduce the number of CRNAs in the hospital;
- b. the decision to employ or terminate any CRNAs; and,
- c. the policy decision to change the regular responsibilities and duties of CRNAs.

Any individual Defendant anesthesiologist shall be permitted to provide recommendations to any hospital concerning the matters listed in the preceding sentence. In addition, the Chairman of the Department of Anesthesia at any hospital or his designee shall be permitted to relate to the hospital administration the opinions or recommendations of any individual defendant anesthesiologist concerning those matters expressed at meetings of the Department of Anesthesia.

D. School of Nurse Anesthesia.

1. Defendant Professional Association shall assist in teaching regional anesthesia to students in the Mercy Hospital School of Nurse Anesthesia if so requested by Mercy Hospital.

2. Defendants shall not take any action to limit or to discontinue or to give prior notice of their intent to limit or to discontinue the rotation of student nurses to Maine Medical Center for training.

3. Defendants shall not take any action to prevent the Mercy Hospital School of Nurse Anesthesia from increasing the size of each class up to 8 students per class.

4. Defendants collectively shall continue to teach at the Mercy Hospital School of Nurse Anesthesia, if requested by Mercy Hospital, at a minimum, the same number of hours which Defendants taught in the 1982-1983 school year. If anesthesiologists who are not members of the Professional Association are granted staff privileges at either Maine Medical Center or Mercy Hospital, Defendants' teaching obligations under this Decree shall be reduced on a pro-rata basis.

5. Defendants shall not engage in any concerted , anticompetitive conduct to restrict the educational opportunities of students in the Mercy Hospital School of Nurse Anesthesia. Any individual Defendant anesthesiologist shall be permitted to make recommendations to any hospital on matters relating to the education or training of student nurses. In addition, the Chairman of the Department of Anesthesia at any hospital or his designee shall be permitted to relate to the hospital administration the opinions or recommendations of any individual defendant anesthesiologist concerning those matters expressed at meetings of the Department of Anesthesia.

E. Investigative Costs.

1. Defendants shall pay to the Department for the costs of its investigation the amount of \$5,000. This sum shall be paid within two weeks after the entry of this Decree.

F. Notice.

1. From September 15, 1986, until September 15, 1993, Defendants shall provide the Department with written notice at least 45 days prior to instituting any increase in fees for anesthesia services charged by any of Defendants. This notice shall specify the amount of increase in any charges, the particular services involved, and the effective date of the increase.

2. From September 15, 1986 until September 15, 1993, Defendants shall provide the Department with written notice at least 45 days prior to instituting any decision by any of Defendants to bill Medicare patients for any amount in excess of the full sum of Medicare reimbursement and other insurance amounts payable on behalf of such person, except for the amount of any co-insurance or deductible authorized as payable by such person under the Medicare program. This notice shall specify the categories of patients for whom Defendants will bill in excess of such Medicare reimbursement, the amount of said excess or balance billing, and the effective date such balance billing is to commence.

3. From September 15, 1986 until September 15, 1993, Defendants shall provide the Department with written notice at least 45 days prior to instituting any decision by any of Defendants to terminate, or to refuse to enter into, a "Blue Cross and Blue Shield of Maine Agreement with Participating

Professionals." This notice shall specify the date upon which any of Defendants will no longer be parties to the "Agreement with Participating Professionals."

4. From September 15, 1986 until September 15, 1993, Defendants shall provide the Department with written notice at least 45 days prior to instituting any increase in their compensation from the hospitals for administering the anesthesiology departments or teaching residents or nursing students. This notice shall specify the amount of the requested increase, the duties for which compensation is being requested, and the date on which the increase will be effective.

5. From the date of this Decree until September 15, 1993, the Professional Association shall provide the Attorney General with at least 45 days written notice prior to providing regular anesthesia services at any hospital or other facility located in Maine, but outside the Portland area. This notice shall specify the hospital or facility at which regular services are to be provided, the nature of those services, and the date on which the Professional Association will commence providing those services.

6. From the date of this Decree until September 15, 1993, any individual Defendant anesthesiologist who is no longer a member of the Professional Association and who provides regular anesthesia services at any hospital or other facility located inside the Portland area, shall provide the Attorney General

with written notice within 10 days of commencing to provide such regular anesthesia services. This notice shall specify the hospital or facility at which regular services are to be provided, the nature of these services, and the date on which Defendant will commence or commenced providing those services.

IV. TERM OF DECREE

The Consent Decree shall expire on October 31, 1993, or, with respect to any particular provision, on such earlier date as may be specified by such provision itself.

V. GEOGRAPHICAL SCOPE

The Consent Decree shall apply to Defendants' practice of anesthesiology in the Portland area.

VI. RETENTION OF JURISDICTION

Jursidiction is retained by the Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of the Consent Decree, for the modification of or termination of any of the provisions hereof, and for the enforcement of compliance herewith.

VII. PUBLIC INTEREST

Entry of this Consent Decree is in the public interest.

Consented to on behalf of the State
of Maine by

JAMES E. TIERNEY
Attorney General

DATED:

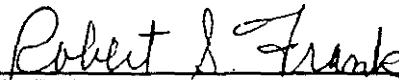
June 12, 1984



STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

DATED:

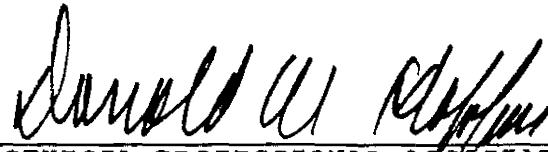
June 12, 1984



ROBERT S. FRANK
Assistant Attorney General
State House Station 6
Augusta, Maine 04333
(207) 289-3661

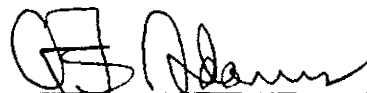
Consented to on behalf of Defendants
by

DATED:



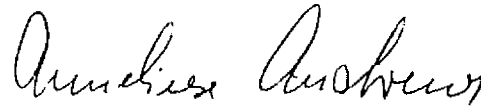
ANESTHESIA PROFESSIONAL ASSOCIATION
By Donald W. Klopp, President

DATED:



CHARLES F. ADAMS

DATED:



ANNELIESE ANDREWS

DATED: Elio Baldini
ELIO BALDINI

DATED: Richard M. Flowerdeu
RICHARD M. FLOWERDEW

DATED: Ronald E. Fritz
RONALD E. FRITZ

DATED: Herbert E. Hamel
HERBERT E. HAMEL

DATED: Jay G. Hayden
JAY G. HAYDEN

DATED: Charles W. Higgins, Jr.
CHARLES W. HIGGINS, JR.

DATED: Anthony J. Horstman
ANTHONY J. HORSTMAN

DATED: Donald W. Klopp
DONALD W. KLOPP

DATED: Jeffrey E. Morse
JEFFREY E. MORSE

DATED: James W. Riechel
JAMES W. RIECHEL

DATED:

Howard P. Sawyer, Jr.
HOWARD P. SAWYER, JR.

DATED:

Kate Sewall
KATE SEWALL

DATED:

John H. Siegle
JOHN H. SIEGLE

DATED:

Thomas R. Verlee
THOMAS R. VERLEE

DATED:

Philip J. Millandry
PHILIP J. MILLANDRY

DATED:

Norman E. Wilson
NORMAN E. WILSON

DATED:

June 4, 1984

Charles Kadish
CHARLES KADISH, Esq.
VERRILL & DANA
Two Canal Plaza
Portland, Maine 04112
(207) 774-4000
Attorney for Defendants

~~SO ORDERED AND DECREED.~~ Judgment shall be entered in accordance with the above court decree

DATED:

6-28-84

[Signature]
Justice, Maine Superior Court

FILED & FILED
JUN 10 1984