

State of Maine v. Associated Hospital Services, et al
Complaint

Blue Shield of Maine (BCBS), is a non-profit hospital and medical services organization with offices in South Portland, Maine.

4. Maine Partners Health Plan (MPHP) is a stock-for-profit corporation formed as a joint venture between BCBS and Maine Medical Center.

5. Central Maine Partners Health Plan (CMPHP) is a stock-for-profit corporation formed as a joint venture between Central Maine Health Care and BCBS.

6. This Court has jurisdiction of this action pursuant to 4 M.R.S.A. §152 and 5 M.R.S.A. §194.

III. FACTS

A. Blue Cross Blue Shield of Maine.

7. BCBS is a non-profit corporation formed by private and special law of the Maine Legislature in 1939.

8. BCBS is a public charity which holds its assets in trust for the beneficiaries of its charitable purposes.

B. The Partners Health Plans.

9. MPHP is a stock-for-profit corporation organized as a joint venture between Maine Medical Center and BCBS for the purpose of providing health insurance as an HMO to persons living in southern Maine. Maine Medical Center and BCBS each own 50% of the outstanding shares of MPHP.

10. CMPHP is a stock-for-profit corporation organized as a joint venture by Central Maine Health Care and BCBS for the purpose of providing health insurance as an HMO to persons living in central Maine. Central Maine Health Care and

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BCBS each own 50% of the outstanding shares of CMPHP.

11. Both MPHP and CMPHP have applications pending with the Superintendent of Insurance to obtain a Certificate of Authority to operate as an HMO.

12. If the Superintendent of Insurance grants Certificates of Authority to the two Partners Plans, the Plans will provide health insurance to current and future customers of BCBS and to others without being subject to the charitable obligations currently imposed upon BCBS as a non-profit charitable corporation.

C. Settlement Negotiations Between the Parties.

13. The Department of the Attorney General, BCBS, the two Partners Plans the two medical centers have been and continue to be involved in intensive negotiations on the issues raised by the creation of the Partners Plans as stock-for-profit corporations.

14. The Department of the Attorney General is optimistic that these negotiations will result in a resolution that adequately protects the public interest in maintaining the charitable direction and control of BCBS's health insurance business while at the same time permitting the joint ventures to begin operation.

15. The Department of the Attorney General is filing its Complaint at this time in order to have its suit before the Court prior to the issuance of a decision by the Superintendent of Insurance on the pending applications of the two Partners Plans.

IV. CAUSE OF ACTION

16. Plaintiff realleges and incorporates herein by reference paragraphs 1

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through 15 of this Complaint.

17. The formation by BCBS of MPHP and CMPHP violates BCBS's obligations as a non-profit charitable organization.


18. The Attorney General brings this action to obtain appropriate relief under 5.M.R.S.A. § 194, the Attorney General's common law authority to protect the interests of beneficiaries of charities and the Attorney General's authority to bring actions in *quo warranto*.

WHEREFORE, The Attorney General requests this Court:

1. Approve any negotiated settlement of the issues raised in this Complaint subsequently reached by the parties.
2. In the absence of a negotiated settlement, enjoin the operation of the Plans, or in the alternative, subject the Plans to such conditions as will protect the public interest.
3. Grant such other relief as may be just and equitable.

ANDREW KETTERER
Attorney General

Dated: April 16, 1997



STEPHEN L. WESSLER
Assistant Attorney General
Chief, Public Protection Division
6 State House Station
Augusta, Maine 04333
(207) 626-8800

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

ASSOCIATED HOSPITAL SERVICES,

Plaintiff

v.

ANDREW KETTERER,
ATTORNEY GENERAL of the
STATE OF MAINE,

Defendant

CONSENT ORDER

ANDREW KETTERER,
ATTORNEY GENERAL of the
STATE OF MAINE,

Plaintiff

v.

ASSOCIATED HOSPITAL SERVICES,

Defendant

and

CENTRAL MAINE PARTNERS HEALTH PLAN
and CENTRAL MAINE HEALTH CARE, INC.

Defendants Joined
Pursuant to
Me.R.Civ.P. 19(a)

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WHEREAS, Plaintiff, Associated Hospital Services ("AHS"), having filed its Complaint for Declaratory Judgment herein on _____, 1997, and Plaintiff, Andrew Ketterer, Attorney General of the State of Maine having filed its Complaint on _____, 1997, and all Parties by their respective attorneys, having consented to the entry of this Consent Order without trial or adjudication of any issue of fact or law herein;

NOW, THEREFORE, before the taking of any testimony and without trial and adjudication of any issue of fact or law herein, and on consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I. JURISDICTION

The Superior Court has jurisdiction over the subject matter of this action, under _____.

II. DEFINITIONS

1. "AHS"
2. "CMHC"
3. "CMPHP"
4. "Charitable Authority" shall mean the Attorney General's authority under 5 M.R.S.A. §194, under the Attorney General's corresponding common law authority, under the non-profit corporation statute and under the Attorney General's common law quo warranto authority.

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III. EFFECT OF PARTNERS HEALTH PLANS ON CLAIMS AND DEFENSES

A. In any action by the Attorney General under its charitable authority against AHS the Attorney General shall be entitled to obtain any relief otherwise legally permissible against AHS, including relief against AHS's stock in CMPHP. In any such action against AHS, AHS shall not defend on the grounds that its stock in CMPHP has a legal status different than AHS's legal status as of the date of this Consent Order. In any such action against AHS the Attorney General shall not be entitled to obtain relief transferring ownership or control of stock in CMPHP held by CMHC.

B. If the Attorney General brings any claims under its charitable authority against AHS, the Attorney General shall be entitled to name CMPHP as an additional defendant for the purpose of seeking any relief otherwise legally permissible against CMPHP and the Attorney General shall be entitled to obtain such relief to the extent that such relief reasonably effectuates a meaningful remedy against AHS; except that the Attorney General shall not be entitled to obtain relief transferring title or control of assets of AMPHP exceeding in aggregate AHS's proportionate ownership interest.

C. If the Attorney General brings any claim under its charitable authority against AHS, or against CMPHP for the purpose of effectuating meaningful relief against AHS, AHS, CMPHP and CMHC shall not defend on the grounds that:

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1. The Attorney General lacks authority to bring such claim because (a) CMPHP was organized as a for-profit corporation or (b) CMPHP was not organized as a non-profit charitable corporation; and

2. The Attorney General is barred under the doctrines of res judicata, waiver, estoppel, collateral estoppel or laches by reason of: (a) the Attorney General's failure to assert any claim in a judicial proceeding at the time of the establishment or licensing or acquisition of any shares of CMPHP; or (b) the Attorney General's failure to participate in any proceeding before the Superintendent of the Bureau of Insurance concerning the establishment or licensing of CMPHP.

D. Subject only to this Consent Order, AHS, CMPHP and CMHC reserve to themselves any and all defenses, affirmative defenses and other legal positions with respect to any subsequent proceedings in any court or administrative agency.

IV. PRIOR APPROVAL AND NOTICE

A. AHS, CMPHP and CMHC shall not sell, convey or transfer any ownership interest, including stock, in CMPHP to any for-profit entity or to any non-profit entity which is not charitable, without receiving prior written approval of the Attorney General. AHS, CMPHP and CMHC shall not sell, convey or transfer any ownership interest, including stock, in CMPHP to any non-profit charitable entity without (a) providing the Attorney General with written notice at least 120 days prior to such sale, conveyance or transfer and (b) binding that non-profit

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charitable entity to the terms of this Consent Decree in a manner approved by the Attorney General. The Attorney General acknowledges that CMHC intends to seek its approval for the transfer of a portion of its stock ownership interest to physicians practicing in the service area of CMPHP.

B. AHS, CMHC and CMPHP shall, within 30 days of the date of this Consent Order, amend the by laws of CMPHP to require that the provisions of paragraph A apply as restrictions on the transferability of shares and that those restrictions be noted on the face or back of the share certificates in a manner approved by the Attorney General.

V. NO EFFECT ON OTHER ACTIONS

Nothing in this Consent Order shall limit the right of any party at any time to commence an action or bring a claim under the Attorney General's charitable authority, or under any other authority, against AHS, CMPHC, CMHC, the Attorney General or any other person.

VI. COSTS

AHS shall pay the Attorney General for its reasonable costs for the services of experts in connection with any investigation or litigation initiated by the Attorney General against AHS under his charitable authority.

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ANDREW KETTERER
Attorney General

Dated:

STEPHEN L. WESSLER
Assistant Attorney General
Chief, Public Protection Division
6 State House Station
Augusta, Maine 04333
(207) 626-8800

ASSOCIATED HOSPITAL SERVICES

Dated:

CENTRAL MAINE PARTNERS HEALTH PLAN

Dated:

CENTRAL MAINE HEALTH CARE, INC.

Dated:

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It is hereby Ordered and Decreed:

Dated:

Justice, Superior Court

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-98-041

RECEIVED
STATE OF MAINE
ATTORNEY GENERAL
JUL 28 1998
STATE HOUSE
AUGUSTA, MAINE

ANDREW KETTERER,
ATTORNEY GENERAL,
STATE OF MAINE,

Plaintiff

v.

ORDER

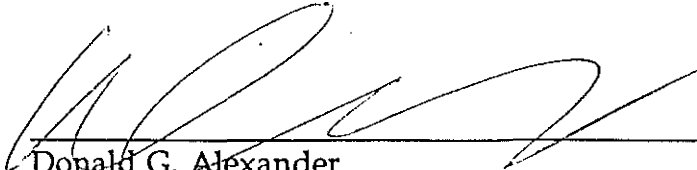
ASSOCIATED HOSPITAL
SERVICE,

Defendant

After hearing, and as discussed at hearing, the court ORDERS:

1. The State shall file a motion and supporting papers proposing final disposition of this matter by August 28, 1998.
2. Associated Hospital Service, also known as Blue Cross and Blue Shield of Maine, shall file any response and proposed final disposition of this matter by October 2, 1998.
3. Any other interested person who filed a written notice with the court before the July 17, 1998 hearing shall also file any response and proposed final disposition of this matter by October 2, 1998.
4. Any materials addressing issues raised in the October 2 filings shall be filed by October 16, 1998.
5. Hearing on final disposition of this matter is scheduled for Tuesday, October 27, 1998, at 9 :00 a.m.

Dated: 7-21-98


Donald G. Alexander
Justice, Superior Court