

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
MAINE HEART SURGICAL)
ASSOCIATES, P.A.)
Defendant)
)
)

COMPLAINT
(Injunctive Relief Requested)

I. INTRODUCTION

1. This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 10 M.R.S.A. §§ 1102-A and 1104 (Supp. 1995), seeking injunctive relief to prevent the occurrence of adverse effects on competition which would result from the merger of four cardiothoracic surgery practices.

II. PARTIES

2. Plaintiff, the State of Maine, sues in its sovereign capacity. The State, through the Department of the Attorney General, is charged by statute with the enforcement of the antitrust laws, including 10 M.R.S.A. §§ 1102-A and 1104.

3. Defendant Maine Heart Surgical Associates, P.A. is a Maine corporation with offices at 7 Bramhall Street, Portland, Cumberland County, Maine. Maine Heart Surgical Associates, P.A. has the following shareholders: Seth Blank,

M.D., Desmond Donegan, M.D., Saul Katz, M.D., Robert Kramer, M.D., Christopher Lutes, M.D., Jeremy Morton, M.D., Reed Quinn, M.D., Joan Tryzelaar, M.D., and Paul Weldner, M.D.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction of this action pursuant to 4 M.R.S.A. § 105 (1989), 10 M.R.S.A. § 1104 (Supp. 1995), and 14 M.R.S.A. § 6051(13) (1980).

5. Venue is proper in this Court pursuant to 14 M.R.S.A. § 501 (1980).

IV. THE MERGER

6. As of the date of this Complaint, the shareholders of four cardiothoracic surgery practices have merged into one corporate entity. The new corporation includes nine of the ten cardiothoracic surgeons practicing in Portland, Maine. These nine surgeons perform over 80 percent of the cardiac surgery performed at Maine Medical Center.

V. RELEVANT MARKET

7. For purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the merger is the provision of cardiac surgery.

8. For purposes of this Complaint, the relevant section of the country in which to analyze the effects of the merger is southern Maine, defined as that portion of the State of Maine south of a line running east to west from the vicinity of Rockland to Waterville to Rangely.

9. High barriers exist for the entry of new cardiac surgery programs and new physician practices in cardiac surgery in southern Maine.

VI. EFFECTS OF THE MERGER

10. The effect of the merger may be to lessen competition substantially and to tend to create a monopoly in the relevant market, in violation of 10 M.R.S.A. § 1102-A, in the following ways, among others:

- (a) by eliminating direct competition among the four practices that have merged;
- (b) by increasing the likelihood that the Defendant will unilaterally exercise market power, by increasing prices and/or by resisting efforts of managed care payors to negotiate reductions in reimbursement; and
- (c) by increasing the likelihood of collusion in the relevant market.

VII. CAUSE OF ACTION

11. Paragraphs 1 through 10 of this Complaint are realleged and incorporated by reference herein.

12. The merger as described above would violate 10 M.R.S.A. § 1102-A.

VIII. RELIEF REQUESTED

WHEREFORE, the State of Maine requests that this Court:

- A. Subject the merger to terms and conditions which will protect the relevant market from the anticompetitive effects described above; and
- B. Award such further relief as the Court deems just and proper.

ANDREW KETTERER
Attorney General

Dated: July 22, 1996

Mary M. Sauer
By: MARY M. SAUER
Assistant Attorney General
Public Protection Division
Department of Attorney General
6 State House Station
Augusta, Maine 04333
(207) 626-8591

Dated: 7/22/96

Stephen L. Wessler
By: STEPHEN L. WESSLER
Assistant Attorney General
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Augusta, Maine 04333
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STATE OF MAINE
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- (b) by increasing the likelihood that the Defendant will unilaterally exercise market power, by increasing prices and/or by resisting efforts of managed care payors to negotiate reductions in reimbursement; and
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B. Award such further relief as the Court deems just and proper.

ANDREW KETTERER
Attorney General

Dated: July 22, 1996

Mary M. Sauer
By: MARY M. SAUER
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Department of Attorney General
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(207) 626-8591

Dated: 7/22/96

Stephen L. Wessler
By: STEPHEN L. WESSLER
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Chief, Public Protection Division
Department of Attorney General
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Augusta, Maine 04333
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STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. *CV 96-336*

STATE OF MAINE,)
)
 Plaintiff)
)
 v.) CONSENT ORDER
)
 MAINE HEART SURGICAL ASSOCIATES, P.A.,)
)
 Defendant)
)
)
)

WHEREAS, Plaintiff, State of Maine, having filed its Complaint herein on July 22, 1996, and Plaintiff and Defendant, 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 and without this Consent Order constituting any evidence against or admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or 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

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against Defendant pursuant to 10 M.R.S.A. § 1104 (Supp. 1995).

II. DEFINITIONS

In this Consent Order, the following definitions shall apply:

A. "Department" shall mean the Department of the Attorney General for the State of Maine.

B. "Managed care payor" shall mean a health maintenance organization (HMO) licensed in the State of Maine (applicable law currently codified at 24-A M.R.S.A. § 4201 et seq. (1990 & Pamph. 1995)); an employer sponsoring self-funded Employee Retirement Income Security Act (ERISA) plans or a third-party administrator, either of which is seeking to negotiate contracts involving acceptance of significant risk by providers (including but not limited to substantial withholds or capitation); an insurer or administrator who enters into preferred provider arrangements approved by the State of Maine Superintendent of Insurance (applicable law currently codified at 24-A M.R.S.A. § 2670 et seq. (1990 & Pamph. 1995)); or any governmental entity that is seeking to negotiate contracts involving acceptance of significant risk by providers (including but not limited to substantial withholds or capitation).

"Managed care payor" shall also mean, for the purposes of paragraph II.D below, an HMO licensed in the State of Massachusetts (applicable law currently codified at M.G.L.A. c. 176G (1987 & Supp. 1996)); an employer sponsoring self-funded Employee Retirement Income Security Act (ERISA) plans or a third-party administrator, either of which is seeking to negotiate contracts involving acceptance of significant risk by providers (including but not limited to substantial withholds or

capitation); an organization that enters into preferred provider arrangements approved by the State of Massachusetts Commissioner of Insurance (applicable law currently codified at M.G.L.A. c. 176I (Supp. 1996)); or any governmental entity that is seeking to negotiate contracts involving acceptance of significant risk by providers (including but not limited to substantial withholds or capitation).

C. "RBRVS conversion factor" shall mean a monetary conversion factor used in the calculation of fee-for-service payment amounts for physicians' services in a Resource Based Relative Value System (RBRVS), similar in general principle to the system used by the United States Department of Health and Human Services for the Medicare program. See 42 U.S.C.A. § 1395w-4 (Supp. 1995). Under such a system, the payment amount for a particular service is calculated as the product of the relative value units (RVUs) assigned to the service (based on the resources used in providing that service) and a conversion factor (dollars per unit).

D. "Reference RBRVS conversion factor" shall mean the conversion factor determined annually by the Department, in its sole discretion, after consultation with Defendant, and based upon information obtained by the Department or presented to it by Defendant, which is representative of the RBRVS conversion factor used by managed care payors for reimbursing cardiothoracic surgeons on a fee-for-service basis in the Greater Boston, Massachusetts area; but in no event shall the reference RBRVS conversion factor be lower than the lowest RBRVS conversion factor (known to the Department) used by any managed care payor to reimburse cardiothoracic surgeons in the Greater Boston, Massachusetts

area. In guiding the Department's discretion, the Department shall attempt to give greater weight to those RBRVS conversion factors that cover the greater number of individual subscribers in the Greater Boston, Massachusetts area. In establishing a reference RBRVS conversion factor for a given year, the Department shall solicit input from Defendant on a proposed reference RBRVS conversion factor, and shall prepare a draft reference RBRVS conversion factor by September 1, and a final reference RBRVS conversion factor by October 1, to be effective for a period of twelve (12) months starting January 1 of the following year.

E. "Standard specialist fee-for-service contract" shall mean a contract generally used for or offered to specialists, or a subset of specialists including cardiothoracic surgeons, by a managed care payor throughout Maine or for a portion of Maine including the Greater Portland area, which contract shall also include the relative value unit system generally utilized by the managed care payor for specialists.

III. NON-EXCLUSIVITY

Defendant is enjoined from entering into any exclusive contract with any hospital for the provision of cardiothoracic surgical services.

IV. PARTICIPATION WITH MANAGED CARE PAYORS

Defendant, its officers, agents, servants, and employees, are enjoined from refusing to participate in and execute any standard specialist fee-for-service contract at or above the reference RBRVS conversion factor when so requested by a managed care payor, which conversion factor shall be utilized for determining the amount of

reimbursement under the standard specialist fee-for-service contract for cardiothoracic surgery; provided that the Defendant shall not be required to participate with any managed care payor which the Department or this Court concludes, based upon information presented by the Defendant, (a) is not financially sound, (b) has practices or terms which would diminish the quality of patient care, (c) has policies, practices, or terms which conflict with the ethical obligations of physicians, (d) has management, personnel, or policies which jeopardize either quality of patient care or financial soundness of the Defendant, or (e) has terms which shift liability for the managed care payor's own negligence or other misconduct to the physicians. The Department may provide the reference RBRVS conversion factor to managed care payors and others upon written request.

V. COSTS

- A. The Defendant shall reimburse the Department in the amount of \$4,500 for the costs of experts incurred in this matter through the date of this decree.
- B. The Defendant shall reimburse the Department on an annual basis for the reasonable costs of attorneys, consultants, and other expenses for determining the reference RBRVS conversion factor.

VI. PROVISION OF INFORMATION UPON REQUEST

The Defendant shall, within seven (7) days of a written request by the Department, provide any documents maintained by or in the possession of Defendant, but not including clinical or other confidential information relating to

specific patients. This provision is in addition to the authority of the Attorney General pursuant to 10 M.R.S.A. § 1107.

VII. RETENTION OF JURISDICTION

A. Every three (3) years from the date of this Consent Order, the Defendant may submit to the Department a report and recommendation of proposed changes, if any, to the Consent Order. Upon Defendant's filing of such a report with the Department, the Department shall undertake and complete, within ninety (90) days of said date, a review of the terms of the Consent Order and a determination as to whether any or all of the provisions of the Consent Order should be altered or eliminated. This provision shall not preclude either party from requesting at any date that, based upon changed circumstances, the Consent Order should be modified or terminated.

B. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Order to apply to this Court at any time for such further directions as may be necessary or appropriate for the construction or carrying out of this Consent Order, for the modification of any of the provisions hereof, for the enforcement of compliance thereof, and for the punishment of any violations thereof.

MAINE HEART SURGICAL ASSOCIATES, P.A.

Dated: July 17, 1996

John Gleason

By: JOHN D. GLEASON
Curtis Thaxter Stevens Broder & Micoleau
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Portland, ME 04112
(207) 775-2361

ANDREW KETTERER
Attorney General

Dated: July 22, 1996

Mary M. Sauer

By: MARY M. SAUER
Assistant Attorney General
Public Protection Division
Department of Attorney General
6 State House Station
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(207) 626-8591

Dated: 7/22/96

Stephen L. Wessler

By: STEPHEN L. WESSLER
Assistant Attorney General
Chief, Public Protection Division
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6 State House Station
Augusta, Maine 04333
(207) 626-8845

A TRUE COPY
TEST:
Nancy A. Desjardin

Nancy A. Desjardin
Clerk of Courts

It is hereby ORDERED and DECREED as set forth above.

Dated: 7-22-96

[Signature]

Justice, Superior Court

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KENNEBEC, ss.

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DOCKET NO. *CV 96-336*

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MAINE HEART SURGICAL ASSOCIATES, P.A.

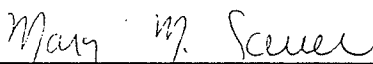
Dated: July 17, 1996



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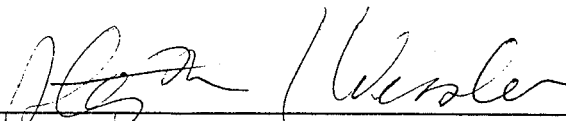
ANDREW KETTERER
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A TRUE COPY
ATTEST:

Nancy A. Desjardin
Clerk of Courts

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