

**Agreement for Provision of Information Regarding MaineHealth Affiliates,
Joint Ventures, and Other Agreements,
And Review by the Office of Attorney General**

This is an Agreement of January 14, 2002, between MaineHealth, a Maine non-profit corporation based in Portland, Maine, and the Office of Attorney General of the State of Maine, and is executed contemporaneously with an Agreement entitled Agreement Between MaineHealth and Office of Attorney General Regarding Advertising of Hospital Services.

In consideration of the covenants and promises expressed herein, and in the related Agreement the parties agree as follows:

A. Submission of Information to Office of Attorney General

1. Information Regarding Agreements in Force as of January 1, 2002.
Beginning 45 days from the date of this Agreement, MaineHealth will provide the Office of Attorney General with documentary and other information comprising and fully describing the following agreements to which MaineHealth or a MaineHealth member listed in Appendix A is a party:
 - a. Affiliation Agreements in force as of January 1, 2002
 - b. Agreements in force as of January 1, 2002 with Affiliates pursuant to Affiliation Agreements
 - c. Agreements in force as of January 1, 2002 with other non-member hospitals or home health organizations for the purpose, or with the foreseeable effect, of avoiding duplication of hospital or home health services
 - d. All such submissions shall be completed within 90 days of the date of this Agreement. The Attorney General may request production of further relevant documentation relating to any such affiliation agreements or other agreements, which shall be provided within 30 days of any such request.

2. Information Regarding Future Agreements.
 - a. Not later than 30 days prior to entering into any of the following agreements, MaineHealth will provide the Office of Attorney General with documentary and other information comprising and describing the following Agreements MaineHealth or a MaineHealth member listed in Appendix A is a party:
 - i. New Affiliation Agreement
 - ii. New Joint Venture Agreement

- iii. New Agreements for the purpose or with the foreseeable effect of avoiding duplication of hospital or home health or other services provided by MaineHealth or its members listed in Appendix A
 - iv. New Agreements pursuant to an Affiliation Agreement, except that if the Agreement is not intended to be and will not be implemented until 30 days following submission for Attorney General review, and may be cancelled without penalty by MaineHealth or its members, the Agreement may be submitted for Attorney General review up to 30 days following its execution.
- b. Nothing in this Agreement requires MaineHealth to furnish such information specified in Section A for joint ventures or for agreements with entities listed in Appendix B, or renewals of any agreements that had been previously been furnished to the Office of Attorney General. Nothing in the Agreement limits the exercise of the Attorney General's statutory authority to obtain such information for joint ventures in existence as of December 31, 2001.

B. Office of Attorney General Review. Within 60 days of the completion of a submission described in Paragraph A (1) for any Agreement, or within such reasonable time as the parties may agree upon in view of the volume of such submissions, and within 30 days of the completion of a submission described in Paragraph A (2) for any Agreement, the Office of Attorney General will notify MaineHealth of the results of its review of such Agreement. Specifically, the Office will advise MaineHealth as follows:

- 1. The Office of Attorney General has no present objection to the Agreement
- 2. The Office of Attorney General has an objection to the Agreement which is or may be curable with modifications or conditions
- 3. The Office of Attorney General has an objection to the Agreement, which is not curable with modifications or conditions

C. MaineHealth Response to Office of Attorney General Review.

- 1. If the Office advises MaineHealth pursuant to ¶ B(2) or ¶ B(3) that it objects to an Agreement, then within 30 days thereof, MaineHealth may, at its option:
 - a. Terminate the Agreement, and so notify the Office of Attorney General.
 - b. Modify the Agreement or attach conditions to the Agreement, in a manner that, after discussion between MaineHealth, the parties to

the Agreement, and the Office of Attorney General, is mutually agreeable to the Office of Attorney General and MaineHealth

- c. File a request for a certificate of public advantage for the Agreement, or Agreement as modified, pursuant to the Hospital Co-operation Act, 22 M.R.S.A. § 1881 et seq.
- d. If after efforts made in good faith to resolve its differences with the Office of the Attorney General, MaineHealth concludes (i) that it does not agree with the Office of the Attorney General's objection, or with the modifications or conditions specified by the Attorney General; and (ii) that it does not believe that the conduct subject to review constitutes an antitrust violation of any kind, MaineHealth may notify the Office of the Attorney General that it intends neither to terminate, modify nor file a request for a certificate of public advantage with respect to the Agreement.

2. If MaineHealth chooses the option specified in ¶ C(1)(a), ¶ C(1)(b), or ¶ C(1)(c), the Office of Attorney General shall not file any action challenging the lawfulness of such an Agreement under 10 M.R.S.A. § 1101 et seq or 5 M.R.S.A. § 207 et seq.

D. Enforcement. The Covenants in this Agreement are enforceable through specific performance in Superior Court. Nothing herein shall be construed to bar the Attorney General from taking, in his sole discretion, any prosecutorial action under the antitrust laws he may deem appropriate with respect to any Agreement as to which MaineHealth has declined or failed to submit written information or documentation as provided in paragraph A above, or with respect to any Agreement as to which MaineHealth has informed the Attorney General that it will neither terminate, modify the Agreement nor file a request for a certificate of public advantage with respect thereto; or with respect to any joint venture currently in existence, or any other agreement which is not within the scope of this Agreement.

E. Expense for Review. To defray the Office's expenses in reviewing the Agreements hereunder, MaineHealth will pay \$15,000 to the Office of Attorney General. The Attorney General and MaineHealth jointly acknowledge the importance of education in the area of health care antitrust law. MaineHealth will deposit an additional \$10,000 to a special account created by the Attorney General. This account will be specifically restricted in its use to the funding of conference(s) sponsored by the Office of the Attorney General to educate providers and other stakeholders concerning antitrust law and policy.

F. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

1. Affiliate Agreement. A written agreement between MaineHealth, for itself or on behalf of one or more of its hospital members, with one or more other non-member hospitals or corporate parent of a non-member hospital,

which expresses the parties' agreement to explore opportunities for cooperation or collaboration in the provision of health care services, or through which the parties agree that they may be described as affiliates in materials distributed to the consuming public or press. The Affiliate agreements currently in force are between MaineHealth and each of the following: MaineGeneral, Mid Coast Health Services, Southern Maine Medical Center and Sisters of Charity Health System.

2. Agreements Pursuant to Affiliation Agreements. The phrase "agreement ... pursuant to an affiliation agreement", as used herein, means any written document comprising an agreement, understanding, arrangement, or cooperative project entered into between MaineHealth or any of its members with any affiliated organization, or any of its members or subsidiaries.
3. Agreement for the Purpose or with the Foreseeable Effect of Avoiding Duplication of Hospital Services. A written agreement between MaineHealth or any of its hospital members, and any non-member hospital located in Southern Maine, or non-member hospital located anywhere in Maine and having at least 200 hospital beds, if the agreement has as its purpose or foreseeable effect to avoid duplication of hospital services.
4. Agreement for the Purpose or with the Foreseeable Effect of Avoiding the Duplication of Home Health Services. A written agreement concerning the provision of home health care services between MaineHealth or any of its home health care-providing members, and any home health care service entity located in Southern Maine, if the agreement has as its purpose or foreseeable effect to avoid duplication of home health care services.
5. Agreement for the Purpose or with the Foreseeable Effect of Avoiding Duplication of Other Services. A written agreement concerning the provision of health care services other than educational or laboratory services; provided further that such agreements shall not include agreements or renewal of prior agreements relating solely to the purchase by MaineHealth or its hospital members of physician services to deliver or support hospital services.
6. Southern Maine. The counties of York, Cumberland, Oxford, Sagadahoc, Lincoln, Kennebec, Knox, and Androscoggin.
7. Joint Venture. A business entity established jointly by MaineHealth or a hospital member of MaineHealth, and one or more other non-member hospitals or corporate parent or affiliate of a non-member hospital, for the joint provision of one or more health services, in which MaineHealth or a hospital member of MaineHealth owns at least 20% of the equity, if organized as a for-profit entity, or is a corporate member and has at least 20% of the governing power, if organized as a non-profit entity.

8. Hospital services. Any hospital-provided program, or grouping of clinical services or procedures recognized as a diagnostic-related group under the Medicare reimbursement system. Hospital services include physician services provided in a hospital setting, except as excluded by the provisos in Section F(5).

9. MaineHealth members. The entities listed in Appendix A.

G. Term. This Agreement expires on December 31, 2004.

IN WITNESS WHEREOF, the parties have made this Agreement as of the day and year first above written.

State of Maine

Office of Attorney General

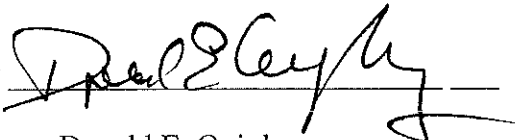
Date: January 14, 2002

By 

Francis Ackerman
Chief, Public Protection Division
Office of Attorney General

MaineHealth, for itself and its
members, including Maine Medical Center

Date: January 14, 2002

By 

Donald E. Quigley
Vice President for Legal Affairs
MaineHealth

Appendix A
Entities Furnishing Information Pursuant to
Agreement for Provision of Information Regarding MaineHealth Affiliates,
Joint Ventures, and Other Agreements,
And Review by the Office of Attorney General
January 14, 2002

MaineHealth
Maine Medical Center
Spring Harbor Hospital
Spring Harbor Counseling
Miles Health Care
St Andrews Hospital
Western Maine Health
Community Health Services Group

St. Andrews
St. Andrews Hospital

Western Maine Health
Stephens Memorial Hospital Association
Western Maine Multi-Medical Specialists
Western Maine Nursing Home, Inc.

Maine Medical Center
MMC Medical Services Corp.
Maine Hospitalist Services, Inc.

Community Health Services Group
Community Health Services, Inc.
Personal Health Services, Inc.

Miles Health Care
Miles Memorial Hospital
Cove's Edge, Inc.
Miles Medical Group

Appendix B
Entities Not Furnishing Information Pursuant to
Agreement for Provision of Information Regarding MaineHealth Affiliates,
Joint Ventures, and Other Agreements,
And Review by the Office of Attorney General
January 14, 2002

NorDx
Practice Partners
Synernet
Maine PHO
Intellicare
Occupational Health and Rehabilitation Services
MainePartners
MMC PHO
New England Rehabilitation Hospital
Maine Heart Center
Maine Cancer Physicians Organization
Management for Home Care, Inc.

STATE OF MAINE
KENNEBEC, SS.

REC'D & FILED

Nancy A. Desjardin

MAY - 5 2000

Clerk of Courts
Kennebec County

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV00-87

STATE OF MAINE,

Plaintiff

v.

BRIDGTON HOSPITAL,
formerly North Cumberland Memorial
Hospital, a Maine nonprofit
corporation with a registered office in
North Bridgton, Maine; *et al.*

Defendants

CONSENT DECREE

WHEREAS Defendant Bridgton Hospital denies all allegations of unlawful conduct, but nevertheless desires to resolve this disputed matter without incurring the costs and uncertainties of litigation; and

WHEREAS Plaintiff, the State of Maine, is filing the Complaint herein concurrently with this Decree; and

WHEREAS Plaintiff and Defendant Bridgton Hospital agree to the entry of this Decree without trial or adjudication of any issue of fact or law raised by the Complaint and without any admission by Defendant with respect to such issues:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law 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. The Complaint states a claim upon which relief may be granted against Defendant Bridgton Hospital under 5 M.R.S.A. §§ 207, 209; and under 10 M.R.S.A. § 1101.

II. RELIEF

1. Defendant Bridgton Hospital, its officers, agents, servants, employees, and other persons in active concert or participation with them are hereby permanently enjoined

(a) from entering into any contract, combination or conspiracy in restraint of trade or commerce in the State of Maine;

(b) from entering into or giving effect to any agreement to allocate or divide territories, customers or advertising markets located partly or wholly within the State of Maine with any competitor.

2. Defendant Bridgton Hospital shall pay to the Attorney General the sum of \$10,000 to be applied to enforcement purposes pursuant to 5 M.R.S.A. § 209.

3. Defendant Bridgton Hospital shall pay to the Attorney General a portion of his costs of investigation in this matter and of the costs of this suit, including an attorney's fee, pursuant to 5 M.R.S.A. § 209, in the amount of \$5,000.

4. Within six months after the entry of this Consent Decree and annually for the succeeding three years, Bridgton Hospital shall conduct an antitrust compliance program for all employees in senior management positions, including without limitation its Chief Executive Officer, Chief Financial Officer, Medical Director and Director of


Nursing. Bridgton Hospital shall inform the Attorney General in writing, within 30 days following each such program, concerning its compliance with this provision.

III. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to the 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 implementation of the Decree, or for the modification of or relief from any of the provisions hereof, and for the enforcement of compliance herewith.


Dated: 4/27/00

**CONSENTED TO ON BEHALF OF
THE STATE OF MAINE:**


FRANCIS ACKERMAN
Chief, Public Protection Unit
Six State House Station
Augusta, ME 04333
(207) 626 8800
Bar No. 2125

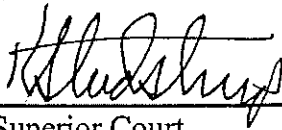
Dated:

**CONSENTED TO ON BEHALF OF
BRIDGTON HOSPITAL:**


MICHAEL R. POULIN, ESQ.
Skelton, Taintor & Abbott
95 Main Street
PO Box 3200
Auburn, ME 04212-3200
(207) 784-3200
Bar No. 2578

It is hereby **ORDERED AND DECREED** as set forth above; judgment shall enter in accordance with the above terms, which are incorporated by reference herein.

Dated: 5/9/00



Justice, Superior Court

**Agreement Between MaineHealth and Office of Attorney General
Regarding Advertising of Hospital Services**

This is an Agreement of January 14, 2002, between MaineHealth, a Maine non-profit corporation based in Portland, Maine, and the Office of Attorney General of the State of Maine.

In consideration of the mutual covenants contained herein, it is hereby agreed as follows:

1. Covenant. MaineHealth covenants, for itself and its current hospital members, and while acting on behalf of its current or future members, that it will not enter into or give effect to any agreement with any non-member hospital, or with persons acting on behalf of a non-member hospital, to refrain from or to reduce or curtail advertising of hospital services in any medium in any market located partly or wholly within the State of Maine.
2. Proviso. Nothing in Paragraph 1 is intended to obligate MaineHealth or its member hospitals to advertise in the service area of other community hospitals, or is intended to prevent MaineHealth or its hospital members from electing not to advertise, or canceling any advertising, if MaineHealth or its member is not so acting pursuant to an agreement with a non-member hospital or with persons acting on behalf of a non-member hospital. Nothing in Paragraph 1 of this Agreement is intended to prohibit MaineHealth, or its tertiary-care hospital member Maine Medical Center, from unilaterally adopting and implementing a policy to assist outlying local hospitals in their efforts to provide hospital services to local residents.
3. Enforcement. Paragraph 1 of this Agreement is specifically enforceable in Superior Court.
4. Dismissal. MaineHealth, for itself and its hospital members, and the Office of Attorney General, on behalf of State of Maine, will execute and file a stipulation of dismissal, with prejudice pursuant to Rule 41(a)(1)(ii) of the Maine Rules of Civil Procedure, in Dkt. No. CV 00-548, now pending in the Superior Court of the State of Maine, Cumberland County.
5. Scope. For purposes of this agreement, a MaineHealth hospital member is a hospital controlled by MaineHealth, through direct corporate control or through corporate control of the parent organization of the hospital. MaineHealth hospital members as of the date of this Agreement as defined herein are the following: Maine Medical Center, Spring Harbor Hospital; Miles Memorial Hospital; St. Andrews Hospital, and Stephens Memorial Hospital.
6. Related Agreement. MaineHealth and the Office of Attorney General are also entering into an Agreement for Provision of Information Regarding MaineHealth

Affiliates, Joint Ventures, and Other Agreements and Review by the Office of Attorney General.

IN WITNESS WHEREOF, the parties have made this Agreement as of the day and year first above written.

State of Maine

Office of Attorney General

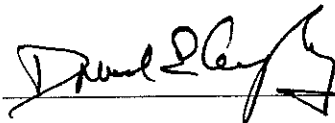
Date: January 14, 2002

By  _____

Francis Ackerman
Chief, Public Protection Division
Office of Attorney General

MaineHealth, for itself and its hospital members (including Maine Medical Center)

Date: January 14, 2002

By  _____

Donald E. Quigley
Vice President for Legal Affairs
MaineHealth

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,

Plaintiff

v.

BRIDGTON HOSPITAL,
formerly North Cumberland Memorial
Hospital, a Maine nonprofit corporation
with a registered office in
North Bridgton, Maine;

MAINEHEALTH, a Maine nonprofit
corporation with a registered office in
Portland, Maine;

MAINE MEDICAL CENTER, a Maine
nonprofit corporation with a registered
office in Portland, Maine;

Defendants

COMPLAINT
(Injunctive Relief Requested)

I. INTRODUCTION

1. In this antitrust enforcement action, brought pursuant to 10 M.R.S.A. §§1101 and 1104 and 5 M.R.S.A. §§207 and 209, the Attorney General of the State of Maine seeks injunctive relief and civil penalties.

II. PARTIES

2. Plaintiff the State of Maine sues, by and through the Attorney General, in its sovereign capacity. The Attorney General is charged by statute with the enforcement of the antitrust laws, including 5 M.R.S.A. §207 and 10 M.R.S.A. 1101.

3. Defendant Bridgton Hospital, a community care hospital facility located in Bridgton, Maine, is now a wholly-owned subsidiary of Central Maine Health Care Corporation (“CMHC”), a health care company headquartered in Lewiston, Maine. At the time of the events described below, Bridgton Hospital was an independent, free-standing company.

4. MaineHealth, a health care company headquartered in Portland, Maine, is the parent corporation of Maine Medical Center, as well as other affiliated entities operating facilities in southern Maine, including Community Health Services, a clinic located in Bridgton.

5. Maine Medical Center (“MMC”), located in Portland, is the largest hospital facility in Maine, providing a full range of services from community care through sophisticated tertiary care. MMC is a subsidiary of MaineHealth. Through MaineHealth, MMC is affiliated with community care hospitals located in Damariscotta and Boothbay, Maine.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. §105, 5 M.R.S.A. §209, 10 M.R.S.A. §1104, and 14 M.R.S.A. §6051 (13).

7. Venue is proper in this Court pursuant to 5 M.R.S.A. §209 and 14 M.R.S.A. §501.

IV. MARKET FACTS

8. At all relevant times, MaineHealth and MMC competed with Bridgton Hospital in the market for the provision of community care services to residents of Bridgton, Maine and surrounding areas (“the relevant market”). Neither MaineHealth nor

MMC was involved, at any relevant time, in any joint venture or contract integration with Bridgton Hospital relating to the provision of community care services.

9. At all relevant times, MaineHealth and MMC competed in the market for referrals for tertiary care from Bridgton Hospital, and other community hospitals in southern Maine with other tertiary care institutions. Neither MMC nor any other tertiary care institution was involved, at any relevant time, in any joint venture or contract integration with Bridgton Hospital relating to the provision of tertiary care services.

10. At all relevant times, Bridgton Hospital possessed a high market share in the relevant market. At all relevant times, Bridgton Hospital, in combination with MMC, possessed market power in the relevant market.

V. VIOLATION OF LAW

11. During the period February through August, 1997, MHC and MMC instituted a program of advertising twice monthly in the Bridgton News, a local weekly with a significant circulation in the relevant market. The program was scheduled to continue through June, 1998. Copies of the advertisements placed by MaineHealth and MMC in the Bridgton News are attached hereto as Exhibit A and incorporated herein by this reference.

12. The advertisements referred to in the foregoing paragraph:

(a) advertised the connection and relationship between MaineHealth and MMC;

(b) advertised primary care services of a kind typically provided by community hospitals, and actually provided by Bridgton Hospital, including, without

limitation, outpatient services such as surgery, mammography and other breast care services; and

(c) advertised the advantages of choosing to obtain health care through an integrated delivery system such as that offered by MaineHealth, MMC and their affiliates, rather than an independent, free-standing community hospital such as Bridgton Hospital.

13. Prior to July, 1997, the advertisements run by MaineHealth and MMC were modest in size. On July 17, 1997, as part of the series, MaineHealth and MMC ran a full-page advertisement which specifically contained all three of the elements described in the foregoing paragraph.

14. On July 25, 1997, John C. Weisendanger, President of Bridgton Hospital wrote a letter to Donald McDowell, President of MaineHealth, enclosing a copy of the July 17 advertisement. In the letter, Weisendanger stated:

(a) "I have had a number of physicians and Board members suggest that this is a direct affront to what has been a strong and growing clinical relationship with [MMC] and its physicians";

(b) "we have become formally affiliated with your internal medicine and pediatric residency programs";

(c) "[e]ven though our hospital has had a close relationship with Central Maine Medical Center, the vast majority of our referrals for specialty consultation and treatment go to [MMC]";

(d) "advertisements of this nature run the risk of being harmful in that they tend to create confusion in the minds of patients";

(e) “your earlier initiative to create a stronger collaboration among hospitals .. is a vastly preferred strategy.”

In closing, Weisendanger stated: “I would appreciate knowing if MaineHealth plans to continue similar advertising plans” (emphasis added). Weisendanger’s letter constituted a solicitation to MaineHealth and MMC to enter into an agreement to cease and refrain from advertising in the Bridgton News, in return for considerations relating to referrals for tertiary care. A copy of Weisendanger’s letter is attached hereto as Exhibit B and incorporated herein by this reference.

15. On July 31, 1997, McDowell responded to Weisendanger by letter. In his response, McDowell apologized “for the unintended problem” and assured Weisendanger that “if these messages are viewed as an attempt to confuse, we will not run them” (emphasis added). McDowell’s letter constituted acceptance of the solicitation described and alleged in the foregoing paragraph. McDowell subsequently confirmed this acceptance in the course of a telephone conversation with Weisendanger in early August, 1997. A copy of McDowell’s letter is attached hereto as Exhibit C and incorporated herein by this reference.

16. On August 11, 1997, through an agent, MaineHealth and MMC directed the Bridgton News to cancel the remaining advertisements which had been scheduled to run as part of its campaign through June 1998. The agent acted pursuant to express instructions from Wayne Clark, Director of Marketing for MaineHealth and MMC.

17. Since August 11, 1997, neither MaineHealth nor MMC has placed any advertising with the Bridgton News.

18. As a result of the agreement by and between MaineHealth, MMC and Bridgton Hospital, competition in the relevant market for community care services has been restrained and reduced.

19. The agreement entered into by and between MaineHealth, MMC and Bridgton Hospital, as set forth in paragraphs 11 through 18 above, constitutes an illegal market allocation or market division and a per se violation of 10 M.R.S.A. §1101. In the alternative, the agreement violates the law under a rule of reason analysis. In addition, the agreement constitutes an intentional unfair trade practice violative of 5 M.R.S.A. §207.

VI. PRAYER

WHEREFORE, Plaintiff the State of Maine respectfully requests that this Court:

- A. Declare that the Defendants' conduct as set forth in this Complaint violates 10 M.R.S.A. §1101 and 5 M.R.S.A. §207;
- B. Permanently enjoin the Defendants, their agents, officers, employees, assigns or other persons acting for them or under their control (i) from entering into any contract, combination or conspiracy in restraint of trade or commerce; and (ii) from engaging in any unfair method of competition;
- C. Permanently enjoin Defendants from entering into or giving effect to any agreement to allocate or divide territories, customers or advertising markets with any horizontal competitor for the purchase or sale of any good or service;
- D. Assess against each Defendant a civil penalty pursuant to 10 M.R.S.A. §1104 and pursuant to 5 M.R.S.A. § 209 for each course of conduct constituting an antitrust violation or an intentional unfair trade practice;

E. Assess against Defendants the costs of suit, and the costs of the investigation of the Defendants, including attorney fees, pursuant to 5 M.R.S.A. §209; and

F. Grant such other and further relief as the Court deems just and proper.

Dated: 5/5/00

ANDREW KETTERER
Attorney General



FRANCIS ACKERMAN
Chief, Public Protection Unit
Six State House Station
Augusta, ME04333
(207) 626 8800

Bar No. 2125

Hanging broom barnum & Bailey
3 PIECES: Misc jewelry lots inc
 nice selection of hand & power
 & more - Lot of jackknives - Lot of
 on - Ideal #16 comp. head doll -

BRIDGTON, ME
 -5770
 x Smoking room
 years Premium
 Rosa Rivard ME Lic. #1155



Coastal Navigation / Piloting
 Drawing for Beginners
 Stained Glass for Beginners
 Watercolor Painting for Beginners

WEDNESDAY

ATV Safety
 Boating Safety
 Quilted Wall Hanging
 Ukrainian Egg Painting
 Woodworking for Beginners

THURSDAY

Umbshade Cutting & Piercing
 Line Dancing
 Perennial Garden Design

March 4 - April 29
 February 25 - April 8
 February 25 - April 8
 April 15 - May 27

March 5 - March 19
 May 7 - May 28
 March 26 - May 7
 March 5 & 12
 February 26 - April 16

March 6 - March 27
 February 27 - April 17
 April 10 - May 22

For information or to register please call:
 627-4578 or 1-800-340-6660

Join Us for a Breast Health Update.

Tuesday, February 11 • 7:00-8:00 pm
 Dana Center Auditorium at Maine Medical Center
 Light refreshments will be served.
 FREE Registration not required. Street parking available.
 For directions or more information, call 871-4339.

What's the latest news in breast health? We invite you to hear from the experts. Please join us for a seminar that will bring you up to date on developments in prevention and detection of breast disease.

The key to breast health is to be familiar with what is normal for you and to recognize any changes. You'll learn the importance of professional exams, mammography, and the new way of doing breast self-exams. Together, we'll share important knowledge in a warm, supportive environment.

Dana Greer, our Nurse Care Coordinator, will lead the discussion. She'll be joined by Dr. Dougald MacGillivray, a noted breast surgeon with a strong interest in multidisciplinary breast cancer care.

Please join us for this and future *WHAT WOMEN NEED to KNOW* seminars from Maine Medical Center's Breast Care Center. Watch for announcements of upcoming topics, dates, and times.

MAINE MEDICAL CENTER



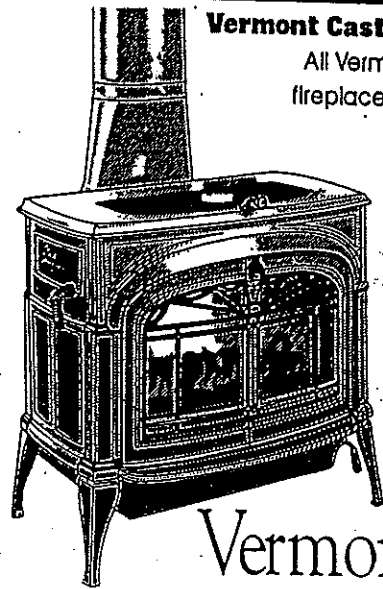
BREAST CARE
 Center

State of Maine
 v.
 Bridgton Hospital
 EXHIBIT A

TUXEDO RENTALS

L.F. PIKE and SON
THE BLUE STORE
 170 MAIN ST., NORWAY • 743-6561
 1-800-861-6561
 Official Boy Scout Distributor

Get 'em while they
Save \$30 - \$



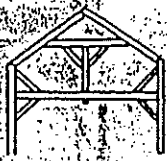
Vermont Castings Wood
 All Vermont Castings
 fireplaces and firepla
 on sale with
 of
 beauti

anyw
 wood
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 17ft

Vermont Ca
 More than Heat. V

Country Hearth &
 Route 16, Village on the Sa
 Conway, NH • 603-447-63
 Monday - Saturday 8:30 a.m. to 5
 Limited to dealer inventory.

2/6/97
 ISSUE



Traditional Joinery

Andy Buck

Timber-Frame Homes and Barns

R.R. 1 Box 533A
Naples, ME 04055

Tel. (207) 787-2248

BO-0

DANCE
with **COUNTRY LINE**
March 29th - 8 to 12

FOR MEMBERS & GUESTS
American Legion Hall
Rte. 11
Naples, ME



You already know all the best names in healthcare, but did you know we're also part of **MaineHealth**? Formerly the **Maine Medical Center Foundation**, **MaineHealth** is a complete family of services delivered by people you know and trust. We're local organizations, working together to make **Maine** the healthiest place in America.

Who are we? We're **Maine Medical Center**,



offering complete inpatient services at our main campus, and

offering outpatient services at our **Brighton** and **Scarborough** campuses. We're the home care professionals of **Community Health Services**, serving you from **Portland**, **Windham**,

You
already
know
us.



and **Bridgton**. We're primary care physicians in **Falmouth**, **South Portland**, **Cape Elizabeth**, **Portland**, **Scarborough**, **Biddeford**, **Gorham**, **Westbrook**, **Yarmouth** and **Windham**. We're specialist physicians serving the needs of the entire state.

We're working harder at working together, sharing information and resources, focusing our energies and technology on your health and medical care. Whether it's high-tech emergency surgery or compassionate home

healthcare, **MaineHealth** has the facilities, the professionals, and the technology to meet your healthcare needs.



MaineHealth

The care you need, the people you trust

Formerly the **Maine Medical Center Foundation**

2T13

3/27/97

Prices, products, promotions, offers and financing may vary by Credit service provided by Husprama & HomeSource and monthly payments based on account balance. Product of Blackstone, Daytona, NA © 1997 HEG 733

WOOD N' SAWS

ROUTE 302 • CENTER CONWAY, NH
603-447-3424

The woman you love is diagnosed with breast cancer.

How do you help?
How do you cope?



MAINE MEDICAL CENTER

Join us for a seminar for husbands, partners, and families presented by Maine Medical Center's Breast Care Center.

"It's My Fight Too"

Tuesday, April 8th

7:00-8:00 pm

Dana Center Auditorium
at Maine Medical Center

Light refreshments will be served.
FREE. Registration not required.

Street parking available.

For more information, call 871-4339.

When a woman is battling breast cancer, her husband and family suffer too. Some mistakenly think they need to be heroes. Some try to deal with their pain alone. Many feel left out of the health-care process just when they need to be most involved. Fortunately, a trend is developing to produce the support families need. Find out what resources are available to you, a partner in the fight against cancer.

Our speaker, Peter Paul Jesep, is the Director of Public Affairs and Government Relations for the Northeast HealthCare Quality Foundation. He contends that people need support in order to support their partners. The seminar will provide comforting advice for any family facing an illness.

Please join us for this and future

and Men
**WHAT WOMEN
NEED to KNOW**
seminars.

Watch for announcements of upcoming topics, dates, and times.

Norman

1996 Sable 8

20K st

\$12,900

DON'T BE FOOLED by others
"We

OVER 200 USED AND P
NO MONEY
Bad Credit • Bankru

Coming Soon! **Norman**

JUST ARRIVED

- '94 Hyundai Excel GS
Loaded, 29K
- '94 Eagle Talon ES
Loaded, 58K
- '95 Nissan King Cab 4x4
30K
- '95 VW Jetta III GL
5 Spd., Air, 30K
- '95 Nissan King Cab
5 Spd., 30K
- '95 Ford F-150 Ext. Cab XLT
20K
- '94 Toyota King Cab 4x4
30K, Loaded
- '96 Ford F-150 XL 4x4
30K
- '95 GMC Sonoma
Auto., 20K, Long Bed
- '93 Mercury Sable Wagon
40K, One Owner, Loaded
- '93 VW Fox GL
One Owner, Loaded
- '92 Mercury Sable
50K, Loaded

- '93 Chevy Cheyenne 1550
30K, 8 Foot Bed, Bedliner
- '94 Nissan Pathfinder 4X4
44K, Cruise, TR, 5 Spd., Blue
- '93 Isuzu Rodeo
5 Spd., Air, V6, 4X4 1 Owner, Low Miles
- '95 GMC Sonoma Ext. Cab
LS, Loaded, 17K
- '94 Nissan 4X2 XE
Rear Slider Window, 20K, 1 Owner
- '93 Nissan 4X4
5 Spd., AM/FM Cassette, 30K
- '94 Dodge Dakota Sport SE
6 Cyl., 5 Spd., 28K, Red Beauty

NORMAN-DAVID USED CARS

Route 302
No. Windham, ME
207-892-8536

*Excludes tax & title. Not responsible for Typogra

4/13/97

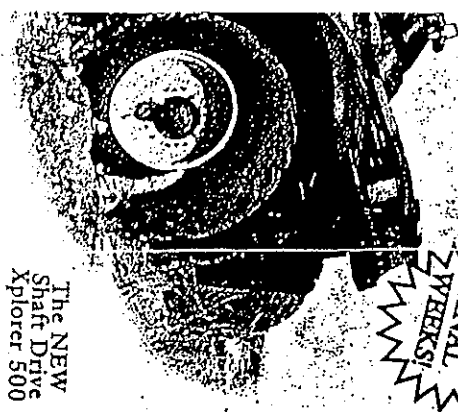
alt Paving

al • Residential
 • Parking Lots
 Estimates

t Pavers, Inc.

itson, President
 urg, Maine
 935-3444

... the ride
 choice.



The NEW Shaft Drive Explorer 500

Inventory of ATV Accessories!

Zero Down
 Zero Payments
 Zero Interest

In welcoming you to the
 Breast Care Center, we invite
 your opinion too.



Maine Medical
 Center's Breast
 Care Center, we

give you a voice in your care.
 We encourage you to share your

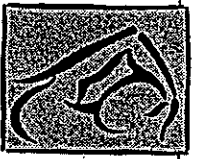
thoughts about how we can serve you

better. The Center is founded on sug-
 gestions from hundreds of women in
 the community. And we continue to

meet on a quarterly basis with breast
 cancer survivors and other concerned

at 871-4339

MAINE MEDICAL CENTER



BREAST
 CARE

We

keep listening to your ideas, there's

always more we can

learn. You can reach

us directly, or through

your personal physician



We meet regularly with our Community Advisory Group

5/15/97



Husqvarna

www.husqvarna.com

SPRING INTO SPRING

LTH130 Lawn Tractor

13 hp Kohler™ Command OHV engine
 Hydrostatic drive
 42" Air Induction deck

179995

225R CAT Trimmer

NEW! E-tech™ engine
 1.5 cu in. 25cc
 Ergonomic handle
 Lifetime shaft & electronic
 ignition warranty

\$11 per month*

36 Chain Saw-16"

22 cu in. - 22 hp
 Inertia chain brake
 Lifetime ignition warranty
 ALSO AVAILABLE
 41 Chain Saw-16" for 2399*

19995

*Bring in ANY used

\$10

NORTH WIN

NORTH WIN

95 Nissan Sentra
 5 Spd. auto, 4 dr, air cond,
 1.5 to choose from, low miles
 starting at \$8,995

96 Sable Station Wgn.
 7 pass. auto, a/c, pwr seat,
 pwr windows. Much more!
 \$12,999

94 Eagle Talon, ES
 Loaded, 5 Speed, Sunroof, Air, 50K
 \$8
 95 Nissan King Cab
 4 Wheel Drive, 5 Speed, Cruise, TR
 \$12
 95 Pontiac Grand Am SE
 4 Door, ABS, Loaded, 30K
 \$9
 95 Ford F150 Ext. Cab XLT
 20K Automatic, Loaded
 \$14
 95 GMC Sonoma
 3 Spd, X-tra Cab, 20K, Loaded
 Custom Paint, So. Comfort Edition
 \$12
 93 Ford Explorer
 53K, 4x4 Automatic, Air, teal
 \$12
 94 Dodge Dakota Sport SE
 6 Cyl, 5 Speed, 28K, Red Beauty
 \$9
 94 Ford Ranger XLT Ext. Cab
 Bedliner, Custom Wheels, Low Miles
 \$9
 94 Chevy 1500 w/8 Ft. Bed
 5 Speed, 29K, Step & Tow Bumper
 \$9
 94 GMC 1500
 Auto., 8 Ft. Bed, Bedliner, Low Miles
 \$10
 94 Chevy Cavalier
 Red Beauty, Only 30K
 \$6
 94 Toyota Corolla DX
 4 Door, Low Miles
 \$8
 95 Honda Civic Coupe EX
 2 Door, 30K, Power Sider
 \$10
 95 Toyota Corolla
 4 Door Automatic, Pwr. Windows

AVATION, INC.

& Residential

- ❖ Complete Sitework
- ❖ Foundations
- ❖ Septic Systems
- Septic Tank Pumping
- ❖ Gravel & Paved Drives
- ❖ Snow Plowing

Bridgton, ME 04009

COCK
ESTATE

**VISIT OUR
HOME PLANNING
CENTER
TODAY!**

1724



Windham, Maine
207-893-0444



CASCO - You can enjoy summer on Thompson Lake! Very private end unit with 2BR, 2B, fireplace, appliances, kitchen, 2nd floor laundry area, 3 season screened porch, and deck. Let others mow the lawn while you enjoy the sandy beaches, tennis courts and the grove w/barbecue. Offered at \$200,000 - Call now for a showing.



WISFIELD - Affordable Country living within easy commuting distance to Lewiston-Auburn! This well-maintained 3BR Ranch is located on a lovely lot with a swimming pool, backyard ready for the kids to play or for you to relax or garden. Home features hardwood floors and daylight basement. Offered at \$69,900.

WISFIELD - Circa 1800 - complete with corner posts and raised paneling, pine floors, many original doors, and planed wainscoting, 2 fireplaces and beehive oven. Home has 4BR, attached shed and 20 x 25 barn, all on 4 acres. A real value at this price! Offered at \$69,500.

House lot in area of lovely homes. Each on desirable Thompson Lake in quiet area, lakeside barbecue area and boat dock. Easy commute to Portland.

Large view of Shawnee Peak and surrounding fields and woods! Soils tested.

BOB "UD" WISER

CARPENTER - CONTRACTOR

25 years experience

- Additions • Remodeling • Kitchens • Baths • Repairs

Welch's Discount Store

SUMMER STREET KEZAR FALLS, MAINE

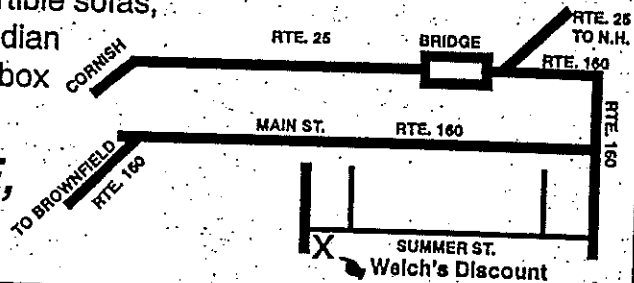
We Are Open 7 Days A Week 9 AM to 9 PM

Gifts For The Whole Family

Fishing equipment, tools, yarn, scatter rugs, wallpaper and linoleum, sneakers for the whole family, men's leather work boots, and men's work pants, housewares, jewelry, candy, novelties & knick knacks, Maine T-shirts & caps, and toys.

Furniture: Dinette sets, convertible sofas, living room sets, swivels, Canadian rockers, recliners, mattresses, box springs, chests of drawers...

**DRIVE A LITTLE,
SAVE A LOT!**



Talk to us and find out
how little you could
have to fear.



Sometimes the toughest part of

breast care is getting past your fears, especially if you have a family history of breast disease.



BREAST CARE
Center

At Maine Medical Center's Breast Care Center, we'll help ease your worries. The first step is a consultation with Dr. Tracey Weisberg, an oncologist specializing in cancer risk assessment and DNA testing; or Dr. Dixie Mills, a sur-

geon specializing in treating high-risk patients. If you are found to be at higher risk, we'll discuss your options with you. But like many women, you may

find your risk is lower than you thought. For more information, call us directly or through your physician at 871-4339.



Medical oncologist Tracey Weisberg, M.D., and breast surgeon Dixie Mills, M.D.

MAINE MEDICAL CENTER

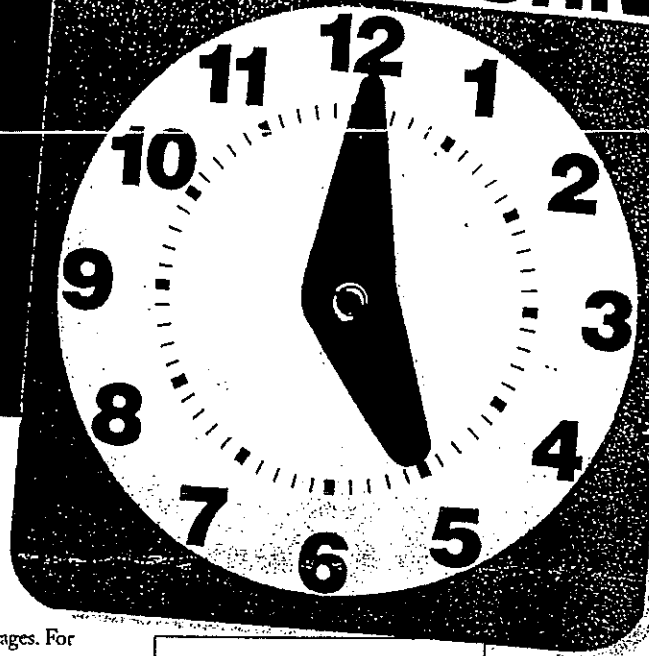
6/19/97

WILL RETURN

SURGERY at 9:00AM.

HOME by 5:00PM.

CLEARLY, TIMES are
CHANGING in HEALTHCARE.



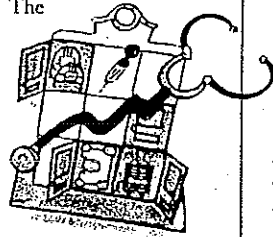
Call for our quick update.

We've come a long way since basic surgery meant a week-long stay in the hospital. As technology improves, more surgery can be done on an outpatient basis. You might go to a surgical center for treatment that takes just hours. Then, with home care and rehabilitation you can continue your recovery at home. To some people, it may appear rushed. (There's not even time to send flowers!) But like most, you might be happy to trade a hospital bed for your own. What's important is that you have trusted, local clinicians to help you make healthcare decisions.

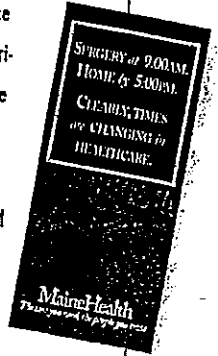


Each involves trade-offs. In some cases, your choices may grow. Managed care does have its advantages. For one thing, most plans put new focus on staying well. So more people may make the choice to stop smoking and start going to the gym.

These days it seems like everyone's merging. Even hospitals. What we're seeing is a trend toward healthcare families or "integrated delivery systems." The system is made up of various healthcare providers: hospitals, labs, home health agencies, doctors' offices, and others. The idea is that by working together, they can offer you better, more convenient care. And won't it be nice if — someday — there's just one simple bill to pay?



If it's been a while since your last medical experience, you're in for some surprises. Healthcare is being streamlined, improved, and changed practically every day. For a quick summary of what you need to know, call for our free brochure.



1-888-312-2733

MaineHealth, a family of health-care services, includes Maine Medical Center, Brighton Surgical Center (Portland), Community Health Services (Portland, Windham, Bridgton), and MMC Diagnostic Centers (Scarborough, Falmouth).

Managed care is another change that's raising a few eyebrows. In Maine, we don't like being told what to do — or where to go for care. Under the umbrella of managed care, choice takes many forms. All plans are different.

MaineHealth

The care you need, the people you trust

7/17/97

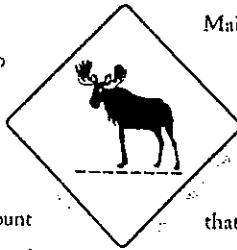
①

LOVELORN MOOSE, FRIED DOUGH, PEA-SOUP FOG, *and* OTHER SPECIAL HAZARDS *of* LIVING IN MAINE



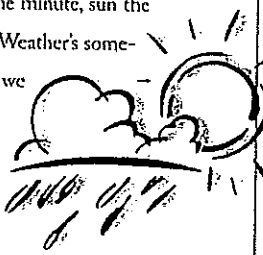
We can all improve the state of our health.

There's nothing quite like life in Maine. Where else do you have to worry about sharing the road with a moose? Straying moose don't account for most accidents, but they do make a dent (to say the least). And our failure to wear seat belts puts us at greater risk of injuries and fatalities. Only half of Maine's residents wear seat belts, far below the national average. By wearing seat belts and obeying traffic laws, we greatly improve our safety. With proper precautions, you could meet up with a moose and live to tell about it.

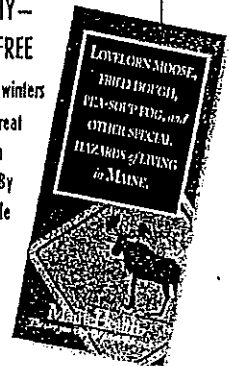


has high cholesterol. No wonder Maine has a high rate of heart disease. Fortunately, we grow some of the healthiest foods right here in Maine. Good thing, because suddenly that fried dough doesn't look too appetizing.

Fog one minute, sun the next. Weather's something we can't change. But there is something we can do to help clear the air. Maine has the tenth highest smoking rate in the country and the highest rate of smokers age 18-30. Not surprisingly, we have a long list of health problems to match. The good news is, smoking is 100% preventable. And quitting is a sure-fire way to improve your health forecast.



FOR MORE WAYS TO STAY SAFE, FIT, AND HEALTHY—CALL FOR OUR FREE BROCHURE. Long winters and all, Maine is a great place to live. You can make it even better. By changing your lifestyle and making smart choices, you can improve the state of your health.



1-888-312-2733

Or visit our web site at www.mainehealth.org

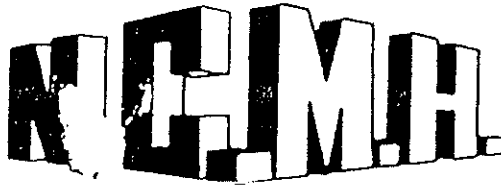
MaineHealth is a family of health-care services that includes Maine Medical Center, Miles Memorial Hospital, St. Andrews Hospital, and leading surgical centers, home health agencies, specialists, diagnostic centers, and primary care physicians serving Southern and Central Maine.

Here in Maine, we love fried dough. But fried dough doesn't love us. It and other high-fat foods are behind Maine's tendency toward overweight (24% of Mainers are considered obese). Add to that the fact that one in four residents



MaineHealth

The care you need, the people you trust



NORTHERN CUMBERLAND MEMORIAL HOSPITAL

P.O. Box 230 • South High Street • Bridgton, Maine 04009-0230 • Tel. (207) 647-8841 • Facsimile (207) 647-8703

July 25, 1997

Donald McDowell
President, MaineHealth
465 Congress Street, Suite 600
Portland, Maine 04102

Dear Don:

I call your attention to the enclosed advertisement from a recent edition of the *Bridgton News*. I have had a number of physicians and Board members suggest that this is a direct affront to what has been a strong and growing clinical relationship with Maine Medical Center and its physicians.

Even though our hospital has had a close relationship with Central Maine Medical Center, the vast majority of our referrals for specialty consultation and treatment go to Maine Medical Center. We have always maintained that patients have a choice when referrals are made and the natural travel pattern to Portland almost always prevails.

In recent years we have become formally affiliated with your internal medicine and pediatric residency programs. We have been fortunate to have two graduates of your internal medicine residency join our hospital staff, Dr. Henry Roy and Dr. Paul Laband. I think the decision that these two physicians made to join our medical community is largely based on what they view as not only challenging practice opportunities, but also the opportunity to become colleagues with other high quality physicians who are extremely dedicated to their patients.

We are proud of our hospital and its ability to help residents of our area maintain good health. I think advertisements of this nature run the risk of being harmful in that they tend to create confusion in the minds of patients. I think your earlier initiative to create a stronger collaboration among hospitals and their doctors is a vastly preferred strategy.

I would appreciate knowing if MaineHealth plans to continue similar advertising plans. Thank you.

With personal regards,

A handwritten signature in black ink, appearing to read "John C. Wiesendanger".

John C. Wiesendanger
President/Chief Executive Officer

JCW/rd

Enc.

0327

C: William Young, Jr., President, Central Maine Health Care
William Chalmers, Chairman of the Board of Directors, NCMH

MaineHealth

465 Congress Street • Suite 600 • Portland, ME 04101-3537
(207) 775-7001 • fax (207) 775-7020

State of Maine
v.
Bridgton Hospital

EXHIBIT C

Confidential Pursuant to
16 M.R.S.A 614

July 31, 1997

Mr. John C. Wiesendanger
President/Chief Executive Officer
Northern Cumberland Memorial Hospital
P.O. Box 230
Bridgton, Maine 04009-0230

Dear John,

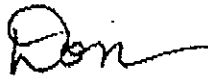
Wow, was I surprised. Your letter of July 25 really shocked me. I really had no idea that our MaineHealth introduction ads would be considered "competitive". They carefully stayed away from soliciting business, rather they were meant to let people know we existed and we only ran them in areas where a MaineHealth affiliate had a location. In the case of Bridgton, it was CHS.

I want to quickly apologize for the unintended problem and assure you that if these messages are viewed as an attempt to confuse, we will not run them. We very much appreciate the relationship we have with Northern Cumberland and its medical staff and we would do nothing (on purpose) to damage that relationship.

Would you please convey my apologies to anyone that has expressed concern. I tried to call you today, but you were out. Hopefully, we can talk soon.

Again, I am sorry for the confusion.

Sincerely,



Donald L. McDowell
President

DLM/dla

cc: William Chalmers, Chairman of the Board, NCMH
William Young, Jr., President, Central Maine Healthcare Corporation

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-00-548

STATE OF MAINE,
Plaintiff,

v.

BRIDGTON HOSPITAL, et al.,
Defendants,

STIPULATION OF DISMISSAL
M.R.Civ.P. 41(a)(1)(ii)

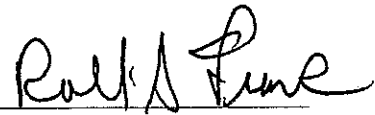
The under signed, counsel respectively for plaintiff and defendant in the above referenced action, stipulate to the dismissal of this action, with prejudice.

Date: January 14, 2002



Counsel for
State of Maine

Date: January 14, 2002



Counsel for
MaineHealth and Maine Medical Center

STATE OF MAINE
CUMBERLAND, ss.

STATE OF MAINE,

Plaintiff

v.

MAINEHEALTH and
MAINE MEDICAL CENTER,

Defendants

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-00-548

ORDER ON PLAINTIFF'S
MOTION FOR
SUMMARY JUDGMENT

FACTUAL BACKGROUND

Defendant Maine Medical Center ("MMC"), a non-profit and charitable corporation, is a community hospital¹ and tertiary center for southern and central Maine. PSMF ¶ 2; Defendant's Statement of Material Facts ("DSMF") ¶ 11. Defendant MaineHealth, formerly known as Maine Medical Center Foundation, is a tax-exempt and charitable corporation. DSMF ¶ 9. MaineHealth is the sole member of its corporate affiliates, which include MMC, Miles Health Care Center in Damariscotta, St. Andrew's Hospital in Boothbay Harbor, and Community Health Services in Bridgton, Portland and Windham. PSMF ¶¶ 3, 4.

In 1997, MMC and MaineHealth published advertising in *The Bridgton News*, a weekly newspaper with a circulation area including Bridgton, Brownfield, Casco, Denmark, Fryeburg, Harrison, Lovell, Naples and Sebago. *Id.* ¶¶ 6, 9. On July 25,

¹ The parties have identified three levels of hospital services. Primary care, the first level, is received on an ambulatory basis or a very simple hospitalization basis. Hospitals providing secondary care have an "increasingly complex ability to deal with disease and mental problems." Tertiary care represents the highest level and deals with the very complex procedures such as cardiovascular surgery, high-level oncology and bone marrow transplants. PSMF ¶ 2 & McDowell Dep. at 15. Community hospitals meet the primary care and secondary care service needs of a specific geographic area but do not offer tertiary care. PSMF ¶ 2 & McDowell Dep. at 16.

1997, John Weisendanger, the chief executive officer ("CEO") of Bridgton Hospital,² wrote to Donald McDowell, CEO of MaineHealth, to inform him that he considered MaineHealth's advertising to be a "direct affront" to his hospital's relationship with MMC. Id. ¶ 12. Mr. Weisendanger requested to be informed as to MaineHealth's plans to continue similar advertising. Id. McDowell responded by letter dated July 31, 1997 that he had no idea that the MaineHealth introduction advertisements would be considered "competitive" and that MaineHealth would no longer run the advertisements. Id. ¶ 13.

Creative Design & Marketing ("CD&M"), a company providing advertising-related services to MMC and MaineHealth, was instructed to cancel MaineHealth's advertising in *The Bridgton News* in August, 1997. Id. ¶ 14. A CD&M memorandum was then faxed to *The Bridgton News* conveying this cancellation. Id. Prior to these events, MaineHealth had reserved four insertion dates for the fall of 1997 and six dates for the spring and summer of 1998 for its advertisements in *The Bridgton News*. Id. ¶ 10. Neither MMC nor MaineHealth placed any advertisements other than "help wanted" advertisements in that newspaper between August 11, 1997 and June, 2000. Id. ¶ 15. Both entities did continue to run advertising in other media, however. Id. ¶¶ 14, 15. MMC continued to advertise in the *Portland Press Herald* and *Maine Sunday Telegram*, both of which are sold to residents in Bridgton and surrounding towns. DSMF ¶¶ 4, 5.

² Bridgton Hospital, formerly known as North Cumberland Memorial Hospital, is a general and acute care community hospital. PSMF ¶ 1.

On May 5, 2000, the State of Maine filed a complaint alleging that an agreement had been entered into by and between MaineHealth, MMC and Bridgton Hospital which constituted a per se illegal market allocation in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A-213, and the Maine mini-Sherman Act, 10 M.R.S.A. § 1101. Alternatively, the complaint alleges that there was an agreement which violated the law under a rule of reason analysis. On May 5, 2000, the State and Bridgton Hospital submitted a Consent Decree resolving the charges against that defendant. The State, MaineHealth and MMC then filed a Stipulation of Partial Dismissal as to the alleged violation under the rule of reason on May 14, 2001.

The State now seeks summary judgment on its complaint against MaineHealth.³ Because the Court finds an issue of fact exists as to whether MaineHealth and Bridgton Hospital were actual or potential competitors, the State's motion is denied.⁴

DISCUSSION

Pursuant to section 1101 of the Maine mini-Sherman Act, 10 M.R.S.A. §§ 1101-1109 (1997), "[e]very contract, combination in the form of trusts or otherwise, or

³ No summary judgment as against MMC has been sought.

⁴ Because an issue of fact exists as to whether Bridgton Hospital and MaineHealth were competitors, it is not necessary to decide whether an agreement between the two entities was formed. Therefore, the Court need not determine whether the facts allegedly showing MaineHealth's unilateral decision to terminate advertising were properly before the Court. See M.R. Civ. P. 56(h)(4). At trial it will be the Plaintiff's burden to establish the existence of the agreement that it has alleged between MaineHealth and Bridgton Hospital.

conspiracy, in restraint of trade or commerce in this State" is illegal. The similar provision of the Sherman Act⁵ has been interpreted to prohibit only unreasonable restraints of trade. Bus. Elec. Corp. v. Sharp Elec. Corp., 485 U.S. 717, 723 (1988). Courts therefore ordinarily apply the "rule of reason"⁶ to determine whether the particular business combination or contract is a restraint on trade. Id. Certain categories of agreements are presumed to be per se unreasonable, however, due to their "pernicious effect on competition and lack of any redeeming virtue." N. Pac. Ry. Co. v. United States, 356 U.S. 1, 5 (1958). Once an agreement is determined to be per se unreasonable, an antitrust plaintiff need not provide proof of intent or anticompetitive effect. See Nynex Corp. v. Discon, Inc., 525 U.S. 128, 133 (1998); L. Ray Packing Co. v. Commercial Union Ins. Co., 469 A.2d 832, 834 (Me. 1983).

One category of per se violations are those agreements between actual or potential competitors to divide the market in order to reduce competition. See Palmer v. BRG of Georgia, Inc., 498 U.S. 46, 49-50 (1990) (market allocation agreements are anticompetitive "regardless of whether the parties split a market within which both do business or whether they merely reserve one market for one and another for the other"). Such an agreement is termed a "horizontal restraint,"

⁵ The Sherman Act declares illegal "[e]very contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations. . . ." 15 U.S.C.A. § 1 (1997).

⁶ Rule of reason analysis, unlike per se analysis, requires a case-by-case determination that the particular restraint is anticompetitive. Bus. Elec. Corp. v. Sharp Elec. Corp., 485 U.S. 717, 723 (1988). This analysis requires the factfinder to weigh all the circumstances of a particular case to determine whether the restrictive practice should be prohibited because it imposes an unreasonable restraint on competition. Cont'l T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 49 (1977).

in contradistinction to a "vertical restraint" which requires an agreement between parties at different levels of distribution such as a manufacturer and its distributor. United States v. Topco Assoc., Inc., 405 U.S. 596, 608 (1972).

The Supreme Court has declared horizontal territory limitations to be "naked restraints of trade with no purpose except stifling of competition." Id. (citation omitted). The horizontal agreement need not foreclose all possible avenues of competition to be designated per se illegal. See, e.g., id. at 600 (agreement between stores to sell only Topco-controlled brands within certain territories held per se illegal even though the stores competed with regard to other products); Blackburn v. Sweeney, 53 F.3d 825, 827-29 (7th Cir. 1995) (mutual agreement between two law firms to restrict advertising to designated geographic areas in Indiana held per se illegal even though the firms were still able to practice law in all parts of the state).

The State contends that Bridgton Hospital and MaineHealth agreed to allocate Bridgton Hospital's prospective customers who read *The Bridgton News*. The alleged agreement is only illegal, however, if Bridgton Hospital and MaineHealth were actual or potential competitors in 1997. See Transource Int'l, Inc. v. Trinity Indus., Inc., 725 F.2d 274, 280 (5th Cir. 1984) (affirming district court's determination that agreement did not constitute a per se violation because the two parties were not actual or potential competitors). Actual competitors do business in the same product and geographic markets. See Palmer, 498 U.S. at 49. Even if Bridgton Hospital and MaineHealth were not actual competitors, the State may prove that MaineHealth was a potential competitor by showing a "desire, intent, and

capability" to enter the market. Engine Specialties, Inc. v. Bombardier Ltd., 605 F.2d 1, 9 (1st Cir. 1979).

A. MaineHealth as an Actual or Potential Competitor

The State contends that MaineHealth was an actual or potential competitor in the delivery of hospital services market because it was or aspired to be an integrated delivery system ("IDS") in 1997. An issue of fact exists as to whether an IDS provides hospital services or merely packages and promotes hospital services.⁷ Compare PSMF ¶ 8 & Clark Dep. Ex. WC4 at 4 (IDS is an umbrella under which MMC and all other components of the system exist), and Defendant's Responsive Statement of Material Facts ("DRSMF") ¶ 8(2) & Clark Aff. Ex. A (members of the MaineHealth system provide care while MaineHealth provides information to healthcare consumers), with PSMF ¶ 9(b) & Ex. A ("MaineHealth has the facilities, the professionals, and the technology to meet your healthcare needs."), and DRSMF ¶ 3(1) & McDowell Aff. ¶ 13 (IDS provides the full continuum of health care services, including hospital services). An issue of fact also exists as to whether MaineHealth was an IDS in 1997. Compare DRSMF ¶ 3(2) (MaineHealth was not an IDS at the time of the alleged agreement), with PSMF ¶ 9(b) & (f) (MaineHealth's advertisements in 1997 asserting it was an IDS).

B. Imputing MMC's Status as an Actual Competitor to MaineHealth

The State seeks to impute MMC's alleged status as Bridgton Hospital's

⁷ Whether, in the context of this case, an IDS provides hospital services or merely packages and promotes the services of its component parts is of great significance. Because a promoter of hospital services is likely at a different distribution level than a provider of hospital services, an agreement between the two may not necessarily be horizontal in nature.

competitor to MaineHealth. An issue of fact exists as to whether MaineHealth and MMC were functionally one entity. The two corporations had separate management at the time of the alleged anticompetitive agreement. DRSMF ¶ 3(1). McDowell, in his capacity as President of MaineHealth, made the determination that MaineHealth should cease advertising in *The Bridgton News*. *Id.* ¶ 7(2). MaineHealth's March 27, 1997 advertisement in *The Bridgton News* suggests that it did control MMC at the time of the alleged anticompetitive agreement, however. That advertisement states: "Who are we? We're Maine Medical Center, offering complete inpatient services at our main campus, and offering outpatient services at our Brighton and Scarborough campuses." PSMF ¶ 9(b) & Ex. A (emphasis added).

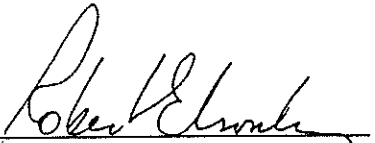
MaineHealth's status as the sole member of its corporate affiliates, including MMC, also raises an issue of fact regarding the relationship between MaineHealth and MMC. Pursuant to the Maine Nonprofit Corporations Act, 13-B M.R.S.A. §§ 402-805 (1981 & Supp. 2000), a nonprofit corporation "may have one or more classes of members or may have no members." *Id.* § 402. The articles of incorporation designate the class or classes of members and identify a member's rights and qualifications, including a member's voting privileges. *Id.* §§ 402, 604. A nonprofit corporation's bylaws provide for the regulation and management of the corporation. *Id.* § 601. Neither party has provided the Court with MMC's articles of incorporation or bylaws. The Court is therefore unable to determine whether, pursuant to those documents, MaineHealth manages MMC's corporate affairs. There also is no evidence before the Court that the two corporations have common directors or

officers.

The entry is

Plaintiff's Motion for Summary Judgment is DENIED.

Dated at Portland, Maine this 26th day of July, 2001.


Robert E. Crowley
Justice, Superior Court