

STATE OF MAINE  
KENNEBEC, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. *CV03-135*

STATE OF MAINE, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 THE MAINE HEALTH ALLIANCE, )  
 a Maine Nonprofit Corporation with Offices in )  
 Bangor, Penobscot County, Maine; )  
 )  
 and WILLIAM R. DIGGINS, )  
 individually, )  
 )  
 Defendants )

**CONSENT ORDER**

Plaintiff State of Maine, having filed its Complaint on June 18, 2003, and Plaintiff and Defendants The Maine Health Alliance (Alliance), and William R. Diggins having consented to the entry of this Consent Order without trial or adjudication of any issue of fact or law herein and without this Order constituting any evidence against, or an admission by, any party 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 herein, and upon consent of the parties hereto, it is hereby ORDERED and DECREED as follows:

**I. JURISDICTION**

This Court has jurisdiction over Plaintiff and Defendants and the subject matter of this action. The Complaint states a claim for relief under 10 M.R.S.A. § 1101 and 1104.

**II. DEFINITIONS**

In this Consent Order, the following definitions shall apply:

A. “Defendant Alliance” means The Maine Health Alliance, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

B. “Defendant Diggins” means William R. Diggins.

C. “Defendants” means Defendant Alliance and Defendant Diggins.

D. “Hospital” means a health care facility licensed by the State of Maine as a hospital.

E. “Hospital system” means an organization comprised of two or more hospitals where the same person or persons control each hospital in the organization. For purposes of this definition, the definition of the term “control” under 16 C.F.R. § 801.1(b) shall apply. Hospital system includes a hospital that is managed under contract, or is leased, by another hospital.

F. “Medical group practice” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.

G. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a payor through such entity. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”

H. “Payor” means any person that pays, or arranges for payment, for all or any part of any physician or hospital services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of physicians or hospitals.

I. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

J. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).

K. “Preexisting Contract” means a contract that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent by Defendant Alliance, pursuant to Paragraph III(E)(1)(b) of this Order, of such payor’s right to terminate such contract.

L. “Principal Address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.

M. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services, hospital services, or both physician and hospital services in which:

1. all physicians and hospitals who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the physicians and hospitals who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.

N. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services, hospital services, or both physician and hospital services in which:

1. all physicians and hospitals who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians and hospitals who participate jointly to control costs and improve quality by managing the provision of physician and hospital services such as risk-sharing involving:
  - a. the provision of physician or hospital services to payors at a capitated rate,
  - b. the provision of physician or hospital services for a predetermined percentage of premium or revenue from payors,
  - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians or hospitals who participate to achieve, as a group, specified cost-containment goals, or
  - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by hospitals or physicians in different specialties offering a complementary mix of services, for a fixed, predetermined price, when the costs of that course of treatment for any individual patient can vary greatly due to the individual patient’s condition, the choice, complexity, or length of treatment, or other factors; and
2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.

### **III. INJUNCTIVE RELIEF**

**A. IT IS FURTHER ORDERED** that Defendants, directly or indirectly or through any corporate or other device, in connection with the provision of physician services, are hereby permanently enjoined pursuant to 10 M.R.S.A. § 1104 from:

1. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any physicians:

- a. To negotiate on behalf of any physician with any payor;
- b. To deal, refuse to deal, or threaten to refuse to deal with any payor;
- c. Regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms; or
- d. Not to deal individually with any payor, or not to deal with any payor through any arrangement other than Defendant Alliance;

2. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician's willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal with a payor;

3. Attempting to engage in any action prohibited by Paragraphs III(A)(1) or III(A)(2) above; and

4. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs III(A)(1) through III(A)(3) above.

**PROVIDED, HOWEVER,** that, nothing in this Paragraph III(A) shall prohibit any agreement involving, or conduct by:

- (i) Defendant Diggins that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, or that solely involves physicians in the same medical group practice; or
- (ii) Defendant Alliance that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, and so long as the arrangement does not restrict the ability, or facilitate the refusal, of physicians who participate in it to deal with payors on an individual basis or through any other arrangement.

**B. IT IS FURTHER ORDERED** that Defendants, directly or indirectly or through any corporate or other device, in connection with the provision of hospital services, are hereby permanently enjoined pursuant to 10 M.R.S.A. § 1104 from:

1. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any hospitals:

- a. To negotiate on behalf of any hospital with any payor;
- b. To deal, refuse to deal, or threaten to refuse to deal with any payor;
- c. Regarding any term, condition, or requirement upon which any hospital deals, or is willing to deal, with any payor, including, but not limited to, price terms; or
- d. Not to deal individually with any payor, or not to deal with any payor through any arrangement other than Defendant Alliance;

2. Exchanging or facilitating in any manner the exchange or transfer of information among hospitals concerning any hospital's willingness to deal with a payor, or the terms or conditions, including price terms, on which the hospital is willing to deal with a payor;

3. Attempting to engage in any action prohibited by Paragraphs III(B)(1) or III(B)(2) above; and

4. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs III(B)(1) through III(B)(3) above.

**PROVIDED, HOWEVER,** that, nothing in this Paragraph III(B) shall prohibit any agreement involving, or conduct by:

- (i) Defendant Diggins that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, or that solely involves hospitals in the same hospital system; or
- (ii) Defendant Alliance that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, and so long as the arrangement does not restrict the ability, or facilitate the refusal, of hospitals who participate in it to deal with payors on an individual basis or through any other arrangement.

**C. IT IS FURTHER ORDERED** that Defendant Alliance shall copy the Maine Department of Attorney General with any Notification provided to the Federal Trade Commission prior to Alliance's negotiating or entering into agreements with payors.

**D. IT IS FURTHER ORDERED** that Defendant Diggins, for a period of three (3) years from the date that this Order becomes final, directly or indirectly or through any corporate or other device, in connection with the provision of physician or hospital services, is hereby permanently enjoined pursuant to 10 M.R.S.A. § 1104 from:

1. Negotiating with any payor on behalf of any physician or hospital who participates, or has participated, in Defendant Alliance, notwithstanding whether such conduct also is prohibited by Paragraph III(A) or Paragraph III(B) of this Order; and

2. Advising any physician or hospital who participates, or has participated, in Defendant Alliance to accept or reject any term, condition, or requirement of dealing with any payor, notwithstanding whether such conduct also is prohibited by Paragraph III(A) or Paragraph III(B) of this Order.

**PROVIDED, HOWEVER,** nothing in this paragraph III(D) shall prohibit Defendant Diggins from forming, participating in, or taking any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement on behalf of the Alliance.

**E. IT IS FURTHER ORDERED** that Defendant Alliance shall:

1. Within thirty (30) days after the date on which this Order becomes final:

a. send by first-class mail, with delivery confirmation, a copy of this Order and the Complaint to:

i. each physician and hospital who participates, or has participated, in Defendant Alliance, and

ii. each officer, director, manager, and employee of Defendant Alliance;

b. send by first class, mail return receipt requested, copies of this Order, the Complaint, and the notice specified in Appendix A to this Order to the chief executive officer of each payor that contracts with Defendant Alliance for the provision of physician or hospital services;

2. Terminate, without penalty or charge, and in compliance with any applicable laws of the State of Maine, any Preexisting Contract with any payor for the provision of physician or hospital services, at the earlier of: (1) receipt by Defendant Alliance of a written request to terminate such contract from any payor that is a party to the contract; or (2) the termination or renewal date (including any automatic renewal date) of such contract; provided, however, a Preexisting Contract may extend beyond the termination or renewal date for a maximum of one

year if the payor provides written affirmation of the preexisting contract prior to the termination or renewal date, and Defendant Alliance has determined not to exercise its right to terminate pursuant to the terms of the preexisting agreement;

3. For a period of three (3) years from the date this Order becomes final:
  - a. Distribute by first class mail, return receipt requested, a copy of this Order and the Complaint to:
    - (i) each physician or hospital who begins participating in Defendant Alliance, and who did not previously receive a copy of this Order and the Complaint from Defendant Alliance, within thirty (30) days of the time that such participation begins;
    - (ii) each payor that contracts with Defendant Alliance for the provision of physician or hospital services, and that did not previously receive a copy of this Order and the Complaint from Defendant Alliance, within thirty (30) days of the time that such payor enters into such contract; and
    - (iii) each person who becomes an officer, director, manager, or employee of Defendant Alliance, and who did not previously receive a copy of this Order and the Complaint from Defendant Alliance, within thirty (30) days of the time that he or she assumes such responsibility with Defendant Alliance; and
  - b. Annually publish in an official annual report or newsletter sent to all physicians and hospitals who participate in Defendant Alliance, a copy of this Order and the Complaint with such prominence as is given to regularly featured articles;

4. Notify the Maine Office of the Attorney General at least thirty (30) days prior to any proposed change in Defendant Alliance, such as dissolution, assignment, sale resulting in the emergence of a successor company or corporation, the creation or dissolution of subsidiaries, or any other change in Defendant Alliance that may affect compliance obligations arising out of this Order; and

5. File verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Maine Office of the Attorney General may by written notice require. Each report shall include:

- a. a detailed description of the manner and form in which Defendant Alliance has complied and is complying with this Order;
- b. the name, address, and telephone number of each payor with which Defendant Alliance has had any contact; and

- c. delivery confirmations required by Paragraph III(E)(1)(a), and copies of the signed return receipts required by Paragraphs III(E)(1)(b) and III(E)(3)(a).

**F. IT IS FURTHER ORDERED** that Defendant Diggins shall:

1. For a period of three (3) years after the date this Order becomes final, distribute by first class mail, return receipt requested, a copy of this Order and the Complaint to:

- a. all physician groups, hospital groups, and physician-hospital organizations, other than any medical group practice or hospital system, that Defendant Diggins represents for the purpose of contracting, or seeking to contract, with payors for the provision of physician or hospital services, or that Defendant Diggins advises with regard to their dealings with payors in connection with the provision of physician or hospital services, within (30) days of the time that Defendant Diggins begins providing such representation or advice, unless such physician group, hospital group, or physician-hospital organization previously received a copy of this Order and the Complaint from Defendant Alliance, or Defendant Diggins, and
- b. each payor with which Defendant Diggins deals, or has dealt, for the purpose of contracting, or seeking to contract, while representing or advising any physician groups, hospital groups, or physician-hospital organizations, other than any medical group practice or hospital system, with regard to their dealings regarding contracting with such payor for the provision of physician or hospital services, within thirty (30) days of such dealing, unless such payor previously received a copy of this Order and the Complaint from Defendant Alliance or Defendant Diggins;

1. File verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Maine Office of the Attorney General may by written notice require; setting forth:

- a. in detail, the manner and form in which Defendant Diggins has complied and is complying with this Order;
- b. the name, address, and telephone number of each physician, hospital, group of physicians or hospitals, or physician-hospital organization that Defendant Diggins has represented or advised with respect to their dealings with any payor in connection with the provision of physician or hospital services;
- c. the name, address, and telephone number of each payor with which Defendant Diggins has dealt while representing any physician, hospital, group of physicians or hospitals, or physician-hospital organization in connection with the provision of physician or hospital services; and

d. copies of the signed return receipt required by this Paragraph III(F)(1).

**G. IT IS FURTHER ORDERED** that each Defendant shall notify the Maine Office of the Attorney General of any change in his or its respective Principal Address within twenty (20) days of such change in address.

**H. IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, Defendants shall permit any duly authorized representative of the Maine Office of the Attorney General:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in their possession, or under their control, relating to any matter contained in this Order;

2. Upon five (5) days' notice to Defendant Alliance, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or employees of Defendant Alliance; and

3. Upon five (5) days' notice to Defendant Diggins, and in the presence of counsel, and without restraint or interference from such Defendant, to interview such Defendant or the employees of such Defendant.

#### **IV. COSTS**

Defendants shall pay to the State of Maine the amount of \$17,500 for State's attorney's fees and costs in this matter pursuant to 10 M.R.S.A. § 1104.

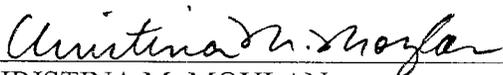
#### **V. RETENTION OF JURISDICTION**

Jurisdiction is retained by the 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 orders or directions as may be necessary or appropriate for the construction or carrying out of the Consent Order, for modifications of or termination of any of the provisions hereof, and for the enforcement of compliance herewith.

CONSENTED to on behalf of the **STATE OF MAINE** by:

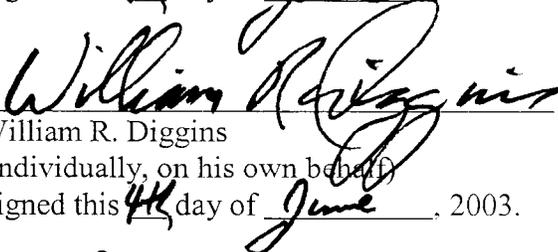
G. STEVEN ROWE  
Attorney General

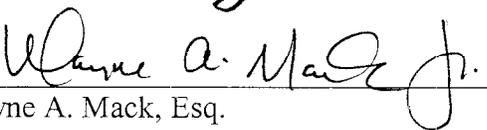
Dated: June 12, 2003

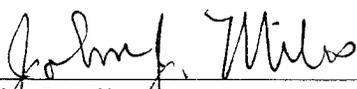
  
CHRISTINA M. MOYLAN  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006  
(207) 626-8800  
Maine Bar No. 7095

CONSENTED to on behalf of **THE MAINE HEALTH ALLIANCE** by:

  
William R. Diggins  
Executive Director,  
The Maine Health Alliance  
Signed this 4<sup>th</sup> day of June, 2003.

  
William R. Diggins  
(individually, on his own behalf)  
Signed this 4<sup>th</sup> day of June, 2003.

  
Wayne A. Mack, Esq.  
Duane Morris LLP  
One Liberty Place  
Philadelphia, PA 19103-7396  
Attorney for The Maine Health Alliance

  
John J. Miles, Esq.  
Ober Kaler  
1401 H Street, NW  
Suite 500

State of Maine v. The Maine Health Alliance et al.  
Consent Order

Washington, DC 20005  
Attorney for William R. Diggins  
Signed this 18<sup>th</sup> day of June, 2003.

It is ORDERED and DECREED as set forth above.

Dated: June 18, 2003

  
JUSTICE, SUPERIOR COURT