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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Timothy J. Muris, Chairman**
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

In the Matter of **THE MAINE HEALTH ALLIANCE,** **a corporation,** **and** **WILLIAM R. DIGGINS,** **individually.**	**Docket No. C-4095**

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of The Maine Health Alliance (the "Alliance") and William R. Diggins (hereinafter collectively referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34 (2003), now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent Alliance is a taxable not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Maine, and its principal address is 12 Stillwater Avenue, Suite C, Bangor, Maine 04401.

2. Respondent William R. Diggins, an individual, is the Executive Director of the Alliance. His principal address is 12 Stillwater Avenue, Suite C, Bangor, Maine 04401.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent 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. "Respondent Diggins" means William R. Diggins.

C. "Respondents" means Respondent Alliance and Respondent 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 Respondent Alliance, pursuant to Paragraph VI.A.2 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.

II.

IT IS FURTHER ORDERED that Respondents, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

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

1. To negotiate on behalf of any physician with any payor;

2. To deal, refuse to deal, or threaten to refuse to deal with any payor;

3. 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

4. Not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent Alliance;

B. 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;

C. Attempting to engage in any action prohibited by Paragraphs II.A or II.B above; and

D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C above.

PROVIDED, HOWEVER, that, nothing in this Paragraph II shall prohibit any agreement involving, or conduct by:

(i) Respondent 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) Respondent Alliance, subject to the provisions of Paragraph IV below, 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.

III.

IT IS FURTHER ORDERED that Respondents, directly or indirectly, or through any corporate or other device, in connection with the provision of hospital services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

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

1. To negotiate on behalf of any hospital with any payor;

2. To deal, refuse to deal, or threaten to refuse to deal with any payor;

3. 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

4. Not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent Alliance;

B. 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;

C. Attempting to engage in any action prohibited by Paragraphs III.A or III.B above; and

D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs III.A through III.C above.

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

(i) Respondent 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) Respondent Alliance, subject to the provisions of Paragraph IV below, 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.

IV.

IT IS FURTHER ORDERED that:

A. Respondent Alliance shall, pursuant to each purported qualified risk-sharing joint arrangement or purported qualified clinically-integrated joint arrangement ("Arrangement"), for five (5) years from the date this Order becomes final, notify the Secretary of the Commission in writing ("Notification") at least sixty (60) days prior to:

1. Participating in, organizing, or facilitating any discussion or understanding with or among any physicians or hospitals in such Arrangement relating to price or other terms or conditions of dealing with any payor; or

2. Contacting a payor, pursuant to an Arrangement to negotiate or enter into any agreement concerning price or other terms or conditions of dealing with any payor, on behalf of any physician or hospital in such Arrangement. Notification is not required for negotiations or agreements with subsequent payors pursuant to any Arrangement for which this Notification was given;

B. Respondent Alliance shall, with respect to any Arrangement, include the following information in the Notification:

1. for each physician, his or her name, address, telephone number, medical specialty and medical practice group, if applicable, and name of each hospital where he or she has privileges;

2. the name of each hospital and the name and telephone number of the person at each hospital responsible for that hospital's membership relationship with the Alliance;

3. a description of the Arrangement, its purpose, function, and area of operation;

4. a description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;

5. an explanation of the relationship of any agreement on prices or contract terms related to price to furthering the integration and achieving the efficiencies of the Arrangement;

6. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities;

7. all studies, analyses, and reports**,** which were prepared for the purpose of evaluating or analyzing competition for physician or hospital services in any relevant market, including, but not limited to, the market share of physician services in any relevant market, or the market share of hospital services in any relevant market;

C. If, within sixty (60) days from the Commission's receipt of the Notification, a representative of the Commission makes a written request for additional information, Respondent Alliance shall not engage in any conduct described in Paragraph IV.A prior to the expiration of thirty (30) days after substantially complying with such request for additional information, or such shorter waiting period as may be granted in writing from the Bureau of Competition. The expiration of any waiting period described herein without a request for additional information shall not be construed as a determination by the Commission, or its staff, that a violation of the law, or of this Order, may not have occurred. In addition, the absence of notice to the Alliance that the Arrangement has been rejected, regardless of a request for additional information, shall not be construed as a determination by the Commission, or its staff, that the Arrangement has been approved. Further, receipt by the Commission from the Alliance of any Notification of an Arrangement is not to be construed as a determination by the Commission that any such Arrangement does or does not violate this Order or any law enforced by the Commission, including, but not limited to Sections 7 and 7A of the Clayton Act, 15 U.S.C. §§ 18 and 18a.

V.

IT IS FURTHER ORDERED that Respondent Diggins for three (3) years from the date this Order becomes final, directly or indirectly, or through any corporate or other device, in connection with the provision of physician or hospital services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

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

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

PROVIDED, HOWEVER, nothing in this Paragraph V shall prohibit Respondent 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.

VI.

IT IS FURTHER ORDERED that Respondent Alliance shall:

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

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

a. each physician and hospital who participates, or has participated, in Respondent Alliance;

b. each officer, director, manager, and employee of Respondent Alliance;

2. send by first-class mail, return receipt requested, a copy 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 Respondent Alliance for the provision of physician or hospital services;

B. 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 Respondent 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 Respondent Alliance has determined not to exercise its right to terminate pursuant to the terms of the preexisting agreement;

C. For three (3) years from the date this Order becomes final:

1. Distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:

a. each physician or hospital who begins participating in Respondent Alliance, and who did not previously receive a copy of this Order

and the Complaint from Respondent Alliance, within thirty (30) days of the time that such participation begins;

b. each payor who contracts with Respondent Alliance for the provision of physician or hospital services, and who did not previously receive a copy of this Order and the Complaint from Respondent Alliance, within thirty (30) days of the time that such payor enters into such contract;

c. each person who becomes an officer, director, manager, or employee of Respondent Alliance, and who did not previously receive a copy of this Order and the Complaint from Respondent Alliance, within thirty (30) days of the time that he or she assumes such responsibility with Respondent Alliance; and

2. Annually publish in an official annual report or newsletter sent to all physicians and hospitals who participate in Respondent Alliance, a copy of this Order and the Complaint with such prominence as is given to regularly featured articles;

D. Notify the Commission at least thirty (30) days prior to any proposed change in Respondent 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 Respondent Alliance that may affect compliance obligations arising out of this Order;

E. 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 Commission may by written notice require. Each report shall include:

1. a detailed description of the manner and form in which Respondent Alliance has complied and is complying with this Order;

2. the name, address, and telephone number of each payor with which Respondent Alliance has had any contact; and

3. copies of the delivery confirmations required by Paragraph VI.A.1, and copies of the signed return receipts required by Paragraphs VI.A.2 and VI.C.1.

VII.

IT IS FURTHER ORDERED that Respondent Diggins shall:

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

1. all physician groups, hospital groups, and physician-hospital organizations, other than any medical group practice or hospital system, that Respondent Diggins represents for the purpose of contracting, or seeking to contract, with payors for the provision of physician or hospital services, or that Respondent 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 Respondent 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 Respondent Alliance or Respondent Diggins; and

2. each payor with which Respondent 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 Respondent Alliance or Respondent Diggins;

B. 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 Commission may by written notice require, setting forth:

1. in detail, the manner and form in which Respondent Diggins has complied and is complying with this Order;

2. the name, address, and telephone number of each physician, hospital, group of physicians or hospitals, or physician-hospital organization that Respondent Diggins has represented or advised with respect to their dealings with any payor in connection with the provision of physician or hospital services;

3. the name, address, and telephone number of each payor with which Respondent 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

4. copies of the signed return receipt required by this Paragraph VII.A.

VIII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in his or its respective principal address within twenty (20) days of such change in address.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondents shall permit any duly authorized representative of the Commission:

A. 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;

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

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

X.

IT IS FURTHER ORDERED that this Order shall terminate on August 27, 2023.

By the Commission, Commissioner Harbour not participating.

Donald S. Clark
Secretary

SEAL
ISSUED: August 27, 2003

Appendix A

[letterhead of The Maine Health Alliance]

[name of payor's CEO]
[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order issued by the Federal Trade Commission against The Maine Health Alliance.

Pursuant to Paragraph VI.B of the enclosed consent order, the Alliance must allow you, subject to compliance with Maine law, to terminate upon written request, without any penalty or charge, any contracts with the Alliance that were in effect prior to your receipt of this letter.

Paragraph VI.B of the consent order also provides that, if you do not terminate a contract, the contract will terminate on its earliest termination or renewal date (including any automatic renewal date). However, at your request, the contract may be extended to a date no later than [appropriate date to be filled in by Respondent], but only if the Alliance waives its right to terminate the contract.

Any request either to terminate or to extend the contract should be made in writing, and sent to me at the following address: [address].

Sincerely,

[Executive Director of MHA]
Executive Director
Maine Health Alliance