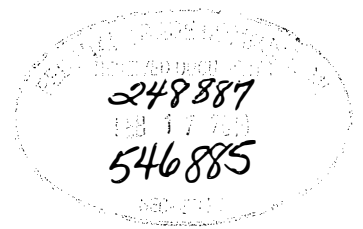


ORIGINAL



UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Jon Leibowitz, Chairman  
Pamela Jones Harbour  
William E. Kovacic  
J. Thomas Rosch

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**Investigation of the Proposed  
Acquisition by MaineHealth of  
Maine Cardiology Associates and  
Cardiovascular Consultants of Maine, P.A.**

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**File No. 101-0010**

**PETITION TO LIMIT COMPULSORY PROCESS**

***Introduction***

On Monday, January 25, 2010 MaineHealth (“the Respondent”) received a subpoena and a Civil Investigative Demand (“CID”) from the Federal Trade Commission (“FTC”). Both the subpoena and the CID demanded that all documents and information responsive to the FTC’s demands for information be provided to the FTC by February 10, 2010 – a mere sixteen days after the receipt of each.<sup>1</sup> Because it was impossible to comply either with the specified return date, or the subsequent February 12, 2010 extension, because, as drafted, the data requirements impose an overwhelming and unfair burden on the Respondent, and because the specifications, as written, wander impermissibly far beyond cardiology services, the proposed transaction under scrutiny, we respectfully request limitations on the FTC’s demands, as required by the FTC’s regulations. Failure to limit the scope of the subpoena and CID is unreasonable, given the enormous and unfair burden in terms of the cost and effort required in comparison to the incremental value of the information relative to that which will be turned over. Indeed,

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<sup>1</sup> Both the CID and subpoena were issued on January 22, 2010 but received by the Respondent on January 25, 2010.

unless our proposed limitations are accepted the cost of searching the requisite files and producing the required information will be a substantial multiple of the value of the proposed transaction.

If the substantive limitations of our letter of February 4, 2010 are accepted, however, we request that the return date be changed from the initial return date of February 10, 2010 to June 1, 2010. We recognize that in the letter submitted to FTC staff in connection with our efforts to limit the scope of the FTC's demands we proposed a return date of April 1, 2010 if the scope of the demands was limited consistent with our letter proposal of February 4, 2010. However, further investigation indicates that date was overly ambitious. We will work diligently to have the material produced by April 1, 2010; and, if the FTC elects to participate as an intervenor in the state administrative proceedings governing approval of the transaction at issue, we will work to provide FTC staff with the essential documentary information before the record closes in that proceeding. However, even if our modifications are accepted, we can only commit to having the full production completed by June 1, 2010.<sup>2</sup> On the other hand, if, our proposal is not accepted, at this time we have no way of making a reasonable estimate of the time we could complete our response.

In any event, the Respondent commits to producing information on a rolling basis as soon as it becomes available. Indeed, in response to the subpoena, last week we produced to the FTC staff all of the data and information that has been produced to the Maine Department of Attorney General and the Maine Governor's Office of Health Policy & Finance in connection with the regulatory approval process regarding the proposed transaction identified in the FTC's demands for compulsory process. (Responsive to Subpoena Specification #9). Additionally,

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<sup>2</sup> The documentary information produced might inform the positions taken by the staff in the state proceedings, but may not be otherwise usable in state proceedings. 15 U.S.C. § 57b-2.

Respondent already has agreed to allow the FTC to utilize other information provided to the FTC in connection with other proposed transactions.<sup>3</sup> See our letter of February, 4, 2010, which is attached as Exhibit A..

***Respondent Has Made A Good Faith Proposal to the Staff***

With respect to our proposed limitations on the scope of FTC's substantive demands for information our proposals remain consistent with the proposals included in our letter to the FTC Staff which we provided on February 4, 2010 after a meeting with the Staff on February 2, 2010. As noted, that letter is attached as Exhibit A.<sup>4</sup> The differences between that letter and this request involve Specifications 6, 7, and 8 of the CID and the date for returning documents. With respect to the identified Specifications, the Respondent now agrees to provide both responsive documents and narrative responses, but only to the extent the narrative responses can be provided from information currently available to the Respondent, and don't require additional investigation or research by the Respondent. In that regard, responsive information is contained in the request for regulatory approval submitted to the State of Maine on February 8, 2010. That application was filed on with the State of Maine's Department of Health and Human Services on February 8, 2010, and also has been provided to the FTC Staff.

***The Subpoena and Civil Investigative Demand are Overly Burdensome***

There can be no doubt that, as drafted and served, the FTC demands for

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<sup>3</sup> In the letter submitted to FTC staff in connection with our efforts to limit the scope of the FTC's demands we proposed a return date of April 1, 2010, but that date assumed that the scope of the demands would be limited consistent with our proposal, with is attached as Exhibit A. Further investigation indicates that date is likely to be overly ambitious. While we would work diligently to have the material produced by April 1, 2010; we would commit to having the production completed by June 1, 2010. If however, our proposal is not accepted, at this time we have no way of making a reasonable estimate of the time we could complete response. Further, failure to limit the scope of the subpoena and CID is unreasonable, given the enormous and unfair burden in terms of the cost and effort required in comparison to the incremental value of the information relative to that which will be turned over.

<sup>4</sup> On February 5, 2010 the FTC Staff rejected our proposal, and asserted that did not make a good faith effort to resolve our differences with the Staff. We do not agree with that assertion. See Exhibit B, attached. (Letter from W. Kopit to S. Sheinberg, February 5, 2010).

documents and other information could not possibly be satisfied by the original return date, which was February 10, 2010, or the subsequent extension which extended that date until February 12, 2010.<sup>5</sup> The applicable statute requires, in pertinent part, that each CID for the production of documentary material “will provide a reasonable period of time within which the material so demanded may be assembled and made available for . . . copying or reproduction . . .” 15 U.S.C. § 57b-1(c)(3)(B). Even a cursory glance at the CID and subpoena served on Respondent will reveal that satisfying either the original February 10, 2010 deadline or the extension until February 12, 2010 deadline imposed is beyond impossible. Similarly, the enormously broad sweep of the CID and subpoena served on Respondent, on its face, plainly imposes an inordinate and oppressive burden on the Respondent. Indeed, a burden of the magnitude that would be highly questionable if imposed on a hospital merger between two large hospitals subject to the advance review requirements of the Hart-Scott-Rodino Pre-Merger notification Act. However, it is truly unfathomable to attempt to impose this burden on a transaction involving the acquisition of hard assets valued at approximately \$2,000,000 (excluding the value of accounts receivable and accounts payable).

During our meeting of February 2, 2010 with the FTC Staff we attempted to explain the burden that would be imposed on Respondent, and suggested that the search be limited to key individuals employed in MaineHealth and certain of its subsidiaries (including Maine Medical Center) that were involved in the proposed transaction and/or in issues relating to the supply and demand for cardiologist services, the relevant service described in the compulsory process served on the Respondent by the FTC. We also included Southern Maine Medical

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<sup>5</sup> Counsel for MaineHealth had a conference call scheduled with FTC staff on Monday February 9, 2010. Given the inclement weather, the FTC staff did not join that call. For that reason, counsel emailed the Director, the Deputy Director and the Assistant Director requesting an extension to file this petition. Deputy Director Norman Armstrong gave Respondent until February 12, 2010 to file this petition. (See Exhibit C).

Center within the scope of this proposal, because it is within 20 miles of Maine Medical Center, the hospital where the two cardiology groups perform over 70% of their hospital-based services.<sup>6</sup> As the organizational chart provided to the FTC Staff during the meeting of February 2, 2010 demonstrates, MaineHealth is a non-profit health care corporation with 31 subsidiary companies that are either wholly controlled by MaineHealth, or by one of MaineHealth's subsidiaries. Seven of those subsidiaries are hospitals, widely dispersed in disparate geographic areas of the state. The hospitals are:

- \* Maine Medical Center in Portland, Maine with 557 staffed inpatient beds.
- \* St. Andrews Hospital in Boothbay Harbor, Maine with 72 staffed inpatient beds.
- \* Miles Memorial Hospital in Damariscotta, Maine with 38 staffed inpatient beds.
- \* Waldo County General Hospital in Belfast, Maine with 25 staffed inpatient beds.
- \* Stephens Memorial Hospital in Norway, Maine with 50 staffed inpatient beds.
- \* Southern Maine Medical Center in Biddeford, Maine with 138 staffed inpatient beds.
- \* Spring Harbor Hospital in Westbrook, Maine a facility exclusively providing inpatient services for individuals who experience acute mental illness or dual disorders issues and which has 100 staffed inpatient beds.

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<sup>6</sup> Southern Maine Medical Center became a member of MaineHealth in 2009, following a Hart-Scott-Rodino Antitrust Improvements Act Notice and Report filing and the production of extensive information on a voluntary basis to the Federal Trade Commission. The transaction was the subject of administrative proceedings for Maine's health regulatory authorities, which issued a Certificate of Public Advantage under Maine's Hospital and Health Care Provider Cooperation Act for the transaction. Respondent has informed FTC staff that in connection with the proposed MaineHealth transaction with the cardiologists, the Respondent has no objection to the staff's access to the documentation produced in connection with the staff's HSR review of the MaineHealth/Southern Maine Medical Center transaction.

In total, the MaineHealth entities employ 12,492 employees. Yet in a call with Respondent's counsel on February 4, 2010, FTC staff indicated that counsel should provide a list of all employees with an explanation of why each employee should be excluded, in spite of that fact that only a very few individuals within the organization are likely to have any information relating to the proposed transaction, or the supply and demand for cardiologist services.

As explained to the Staff during our meeting of February 2, 2010 MaineHealth does not have a single unified electronic information system; rather most of the MaineHealth subsidiaries have separate and distinct information systems of varying levels of sophistication. Moreover, the volume of information housed on those various electronic systems is truly mind boggling. The best estimates are that the information system for the MaineHealth corporate office (excluding the subsidiaries) alone holds 200 terabytes of information. Maine Medical Center's information systems have 532 terabytes of information. One terabyte is equivalent to 1000 gigabytes.

To put those numbers in perspective, industry estimates are that if files are emails, one gigabyte is roughly 100,000 pages, for Word files one gigabyte is roughly 65,000 pages. Thus, if we assumed that all documents were Word documents rather than e-mails, Maine Medical Center's data alone would still translate into 34 billion pages (roughly 11,333,333 bankers' boxes of information), that would have to be searched.<sup>7</sup> Moreover, a number of the documents assuredly would be e-mails. In this regard, MaineHealth, Maine Medical Center, and its other subsidiaries utilize "Groupwise" a system that is far more unwieldy and difficult to search than other e-mail systems, for example "Outlook." And of course, our estimate of the number of pages that would have to be searched within Maine Medical excludes the amount of

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<sup>7</sup> To be sure, not all of the information housed on the Maine Medical Center's information system is comprised of Word documents, but even if the estimate is 1000x more than expected, Maine Medical Center's system still would be housing 34 million pages which would have to be searched.

information in other MaineHealth general acute-care hospitals. Indeed, the initial estimate for maintaining, searching and producing relevant documents at Maine Medical *alone*, excluding the other subsidiaries, or the corporate office. Thus, if there is no limitation in scope of the entities and custodians whose files need to be searched the cost of meeting the FTC's demands would be over \$6 million. Moreover, that estimate excludes any attorney time that might be needed to review documents for privileged content. Plainly the magnitude of that demand would be unreasonable on its face regardless of the size of transaction—but given the size of transaction at issue here, the demand is untenable.

In addition, MaineHealth has participated in joint ventures with five additional entities in which it would have 25% or more ownership or control.<sup>8</sup> While it is correct to assert that MaineHealth would not ultimately need to produce the full volume of documents searched (e.g., would not have to provide the FTC over 34 billion pages of documents), what the staff seems to ignore, is that MaineHealth would have to devise a manner in which to search and review information from all the disparate organizations and ultimately produce any information that would be responsive, an enormous task that is unlikely to produced any more responsive information than would be provided through a far more targeted review.<sup>9</sup>

For that reason Respondents have proposed limiting the required searches to those individuals with knowledge of the proposed transaction, and/or knowledge of the supply and demand for inpatient and outpatient services provided by cardiologists, the “relevant service” defined by the FTC, in order to reduce the time and cost of the searches and make them manageable. Given the number of employees employed by MaineHealth and its subsidiaries,

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<sup>8</sup> The definitions of the CID and the subpoena define MaineHealth to include any joint ventures or subsidiaries for which MaineHealth has 25% or more control.

<sup>9</sup> The subpoena and CID proscribe the electronic format in which the information must be produced. For large volumes of information, this often necessitates the employment of outside vendors, at an enormous cost which is hardly justified given the de minimus value of the asset acquisition at issue.

listing each employee and the reason for excluding each employee (a request from the FTC staff) in and of itself would be time-consuming, costly, unduly burdensome and impossible to complete by the return date of the subpoena and CID.

***The Demands are Unreasonable Given that Competition will not be Significantly Reduced***

The overreaching and inordinate sweep of the FTC's burdensome discovery demands is even more inexplicable in view of the fact that the proposed transaction, if it takes place at all, demonstrably will not significantly reduce competition in the market for cardiology services, and, will be exempt from the operation of the federal antitrust laws by virtue of State Action Immunity. Even more fundamentally, however, the FTC is, on its face, without subject matter jurisdiction over the only portion of the proposed transaction that could provide any plausible basis for antitrust review, the employment of the formerly independent cardiologists by a subsidiary of MaineHealth.

Presumably, the FTC is concerned with a supposed reduction in competition in cardiology services (the relevant service defined in the FTC's discovery demands) that would result if the proposed transaction is completed. Under the terms of the proposed transaction, MaineHealth would offer employment to the cardiologists currently employed by two independent groups of cardiologists located primarily in the Portland, Maine area. However, any loss in competition between the two currently independent groups of cardiologists resulting from the proposed transaction would be only temporary because Mercy Hospital, located in Portland, has now announced that it plans to employ its own cardiologists to perform cardiology procedures at Mercy. Any of the cardiologists to be employed by MaineHealth would remain fair game for employment in the Mercy Group because none of the employment contracts between Respondent and the cardiologists it seeks to employ would contain non-compete clauses.



It also should be noted that there is not currently any price competition in the market for cardiology services between the two groups. Specifically, the groups report that managed care plans do not attempt to play the groups off against each other. One group currently accepts the default rate offered by managed care organizations, and the other group has its contracts negotiated by an organization that negotiates for several different (non-competing) groups of physicians. Moreover, consumer welfare in the market for cardiology services, the reason to be concerned with a reduction in competition in this market, is unlikely to be adversely affected.

The price of cardiology services is unlikely to increase because, under the terms of the Application for the Certificate of Public Advantage (COPA) filed with the State on February 8, 2010 the cardiologists to be employed by the Respondent will accept the default rates offered by managed care organizations for cardiology services. More importantly, the output for cardiology services is actually likely to increase because, under the terms of the COPA Application, the Respondent has committed to continue providing cardiology services in outlying areas, and to provide services to all potential patients, regardless of their ability to pay. If the groups were to remain independent it is unlikely that the same level of services could continue to be provided.

Significantly, the transaction will only occur if the State grants the COPA. Thus, if the State refuses to grant the COPA there can be no violation of the antitrust laws. On the other hand, if the State grants the COPA the transaction would be immune from the operation of the antitrust laws by virtue of the State Action Exception. The existence of the COPA statute, 22 M.R.S.A. §§ 1841 *et seq.*, is, by itself, sufficient to demonstrate an affirmative State policy to substitute regulatory solutions for the unfettered operation of the market, and there can be little

doubt that the continuing regulatory oversight of the State, inter alia, with the pricing of cardiology services and the continued provision of those services in all existing locations without regard to the ability to pay is sufficient to demonstrate active State supervision.<sup>10</sup>

***The FTC Has No Jurisdiction over Employment Contracts***

Finally, the FTC is without subject matter jurisdiction with respect to any potentially anticompetitive effects that may be caused by the Respondent's conduct in proceeding with the transaction. Clearly, the FTC has no jurisdiction over the Respondent and the subsidiaries involved in the proposed transaction under the FTC Act because they are all non-profit charitable corporations. *F.T.C. v. Freeman Hospital*, 69 F.3d 260, 266 (8th Cir. 1995), citing *Community Blood Bank v. F.T.C.*, 405 F.2d 1011, 1022 (8th Cir. 1969). Nor does the FTC have jurisdiction over Respondent's proposed employment of physicians under Section 7 of the Clayton Act because that provision, in pertinent part, is limited to the acquisition of assets and the employment of physicians is not the acquisition of assets.

***FTC's Jurisdiction over Asset Acquisitions by Non-Profit Hospitals is Questionable***

While the FTC may have jurisdiction over the acquisition of equipment the Respondent intends to purchase from the groups as part of the proposed transaction that acquisition of assets is of no competitive significance.<sup>11</sup> On the other hand, a good argument can be made that the FTC does not have jurisdiction over the Respondent's conduct with respect to

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<sup>10</sup> The Maine statute contains the following legislative finding: "The Legislature finds that it is necessary and appropriate to encourage hospitals and other health care providers to cooperate and enter into agreements that will facilitate cost containment, improve quality of care and increase access to health care services. This Act provides processes for state review of overall public benefit, for approval through certificates of public advantage and for continuing supervision. It is the intent of the Legislature that a certificate of public advantage approved under this chapter provide state action immunity under applicable federal antitrust laws. 22 M.R.S.A. §1842.

<sup>11</sup> Indeed, all that asset acquisition demonstrates is that sufficient equipment to enter the market for cardiology services can be purchased for approximately \$1,000,000. Plainly, there are no barriers to entry associated with the acquisition of sufficient equipment to enter the market for the provision of cardiology services, as Mercy's plans amply demonstrate.

any aspect of the proposed transaction, including the acquisition of assets. Section 7 of the Clayton Act states, in pertinent part, “no person subject to the jurisdiction of the Federal Trade Commission shall acquire...the assets of another person...[where] the effect of acquisition may be to lessen competition....” 15 U.S.C. §18 (emphasis supplied). If the reference to the “jurisdiction of the FTC” is a reference to the jurisdiction of the FTC under the FTC Act, then, of course, the FTC would have no jurisdiction over the acquisition of assets. In that regard, the Supreme Court has, in fact, defined the FTC’s jurisdiction over acquisitions of assets under Section 7 by reference to the jurisdiction of the FTC under the FTC Act. *U.S. v. Philadelphia National Bank*, 374 U.S. 321, 336 (1963) (“The FTC under . . . the FTC Act, has no jurisdiction over banks. Therefore, if the proposed merger be deemed an assets acquisition, it is not within Sec 7”). Nevertheless, several courts have concluded, at the urging of the FTC, that the limiting language “subject to the jurisdiction of the FTC” is a reference, not to the FTC Act, but to Section 11 of the Clayton Act, which lists certain classes of commerce subject to the jurisdiction of other agencies and then states that the FTC has jurisdiction over all other types of commerce. See, e.g., *F. T. C. v. Freeman Hospital*, 69 F 3d 260, 266-267 (8th Cir. 1995). The problem with interpreting the language of Section 7 by reference to Section 11, however, is that it plainly disregards the text of the relevant statutory provisions, and their history. It also would mean that when Congress amended Section 7 of the Clayton Act in 1950 to cover acquisitions of assets for the first time it somehow intended to exclude those acquisitions of assets that were within the jurisdiction of any of the other agencies listed in Section 11, a result that make no sense at all.

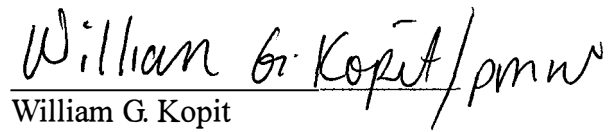
The Clayton Act was initially enacted in 1914, and, at that time, Section 7 covered only stock acquisition, and not the acquisition of assets. Because of that limitation Section 7 was amended in 1950 to cover the acquisition of assets by persons “subject to the jurisdiction of the

FTC.” However, no change was made, at that or any other time, to Section 11. Thus, the FTC’s expansive interpretation of its jurisdiction to include the acquisition of assets by non-profit hospitals requires a court to agree that by adding the limiting words “assets of persons subject to the jurisdiction of the FTC” to a statutory provision that previously did not cover any assets at all, Congress really intended to include all assets despite the explicit limiting language to the contrary. Yet, if that actually represented Congressional intent then Congress easily could have said so by simply substituting the word “assets” for the phrase “assets of persons subject to the jurisdiction of the FTC.” Then the jurisdiction of the FTC and all of the other agencies listed in Section 11 would have been expanded to cover all assets, as well as stock acquisitions, a far more plausible explanation of the Congressional intent in amending Section 7 to cover asset acquisitions as well as acquisitions of stock.

For the reasons set forth above, we request that the subpoena and CID for each group be limited as described above.

February 12, 2010

Respectfully submitted  
Counsel for Respondent MaineHealth

  
William G. Kopit  
Epstein Becker & Green, P.C.  
1227 25<sup>th</sup> Street NW  
Washington D.C., 20037  
(202) 861-1803



**EPSTEIN BECKER & GREEN, P.C.**

ATTORNEYS AT LAW

1227 25TH STREET, NW, SUITE 700  
WASHINGTON, DC 20037-1175  
202.861.0900  
FAX: 202.296.2882  
EBGLAW.COM

WILLIAM G. KOPIT  
TEL: 202.861.1803  
FAX: 202.296.2882  
WKOPIT@EBGLAW.COM

February 4, 2010

**VIA ELECTRONIC MAIL**

Ms. Nancy Park  
Federal Trade Commission  
601 New Jersey Ave., N.W.  
Washington, D.C. 20001

Re: Proposed limitations of CID and Subpoena issued on MaineHealth

Dear Nancy:

Below is our initial proposal for limitations on the CID and Subpoena issued to MaineHealth. Unless unforeseen difficulties arise with respect to the production of any of the above MaineHealth would commit to provide the information described by April 1, 2010. MaineHealth further will commit not to close the transaction with the cardiology groups any earlier than June 1, 2010. In addition, to the extent the FTC disagrees with the proposals listed below, we request an extension of time (beyond February 10, 2010) to determine whether further negotiations can resolve any such disagreements. In return, MaineHealth would begin production of the materials proposed below.

Because of the limited amount of time that MaineHealth has had to evaluate the burden of all of these requests, we have not had the chance to canvass the knowledgeable persons within the MaineHealth system about the availability and burdens associated with the production of information covered by the requests. In this regard, we understand that various entities within the MaineHealth system utilize different information technologies, some of which are no longer state of the art, so what may be producible by one entity may not be producible at all, or only with great burden, by another. Accordingly, MaineHealth reserves the right to raise a concern of undue burden with any of the proposals below, if MaineHealth can demonstrate that responding to any particular request as described below would cause undue burden.

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Further, to the extent any information resides only on "back-up tapes", MaineHealth objects to producing documents from those back-up tapes as being unduly burdensome and time consuming and requests that the FTC agree that the scope of the requests is limited to documents that exist only on a "live" system.

MaineHealth also requests that the FTC work with MaineHealth to establish a method of production that will not be unduly time-consuming or burdensome. The email systems of MaineHealth and Maine Medical Center, for example, use Groupwise, which can be particularly costly and difficult to process electronically. MaineHealth requests that the FTC staff engage in discussions related to the format in which those emails may be delivered.

Subject to the above qualifications, as a fundamental matter, we would like to limit the search to the following entities: first, those entities that have been involved in the discussions with the two cardiology groups: MaineHealth (as a corporate parent), Maine Medical and Maine Medical Partners. We would also agree to include the Maine Heart Center, Maine Medical Center PHO, and Southern Maine Medical Center ("SMMC"). As used throughout the rest of the letter, the term "MH" refers only to those entities.

We would further like to limit the custodians searched to those non-attorney employees who have been involved in cardiology strategic planning and/or the transaction at issue. Those individuals are:

1. Maine Health
  - a. William Caron, President of MaineHealth
  - b. Francis McGinty, Executive VP and Treasurer of MaineHealth
  - c. Paul Gray, VP Planning of MaineHealth
2. Maine Medical Center (subsidiary of MaineHealth)
  - a. Richard Petersen, President and CEO
  - b. Mirle ("Bud") Kellett, M.D., Chief of Cardiac Services.
  - c. Daniel Moynihan – Manager, Managed Care
  - d. Finance Department. The potential individuals are
    - i. John Heye, VP Finance.
    - ii. Albert Swallow – Associate VP Finance.
3. Maine Medical Partners (subsidiary of Maine Medical Center)

- a. Stephen Kasabian, President, Maine Medical
- b. Jeff Kirby, Director of Finance, Maine Medical Partners (Executive
- c. John Bosse, Director of Patient Accounts, Maine Medical Partners

Specific limitations of the Subpoena and Civil Investigative Demand are below.

*Subpoena Duces Tecum*

*Specification 1:*

*Submit: (a) one copy of each organization chart and personnel directory for the Company as a whole and for each of the Company's facilities or divisions involved in any activity relating to any relevant service in the relevant area, and (b) a list of all agents and representatives of the Company, including, but not limited to, all attorneys, consultants, investment bankers, and other persons retained by the Company in any capacity relating to the relevant transaction or any relevant service covered by this Subpoena Duces Tecum (excluding those retained solely in connection with environmental, tax, human resources, pensions, benefits, ERISA, OSHA issues).*

**Proposal:**

- (a) MaineHealth has provided you with an organizational chart at the facility level. MaineHealth will also provide an organizational chart for SMMC.
- (b) MH will provide a list of outside consultants and attorneys that were involved in the Cardiology Initiative (e.g. the present transaction).

*Specification 2:*

*Submit all documents relating to competition for any relevant service in the relevant area, including, but not limited to, market studies, forecasts and surveys, and all other documents relating to: (a) the market share or competitive position of the Company or any of its competitors, including discussions of service areas and patient origins; (b) the relative strength or weakness of companies providing any relevant service; (c) supply and demand conditions; (d) attempts to gain or retain individual patients, contracts with health plans, or physicians' patient admissions; (e) allegations by any person that any hospital or any other provider of any relevant service is not behaving in a competitive manner, including, but not limited to, patient complaints, threatened, pending, or completed lawsuits, and federal and state investigations; (f) any actual or potential effect on the supply, demand, cost or price of any relevant service as a result of competition from any other possible substitute service; and (g) the geographic areas in which MaineHealth competes or identifying the firms with which it competes.*

**Objections:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege. This request is overly broad and



unduly burdensome in that it seeks "all documents" relating to competition for any relevant service. In addition, the request for *patient complaints, threatened, pending, or completed lawsuits* is unduly burdensome and unreasonable. Patient complaints and lawsuits are a fact of life for a health care provider. They have little or nothing to do with competition. Lawsuits in Maine begin with a notice of claim and a medical malpractice screening process, all of which is confidential by law. There is broad statutory protection of peer review and self-critical evaluations. 24 M.R.S.A. §2510-A; 32 M.R.S.A. § 3296. Patient confidentiality protections -- HIPAA and state law, 22 M.R.S.A. §§ 1711-C -- would require an unreasonably burdensome redaction exercise.

**Proposal:**

To the extent the provision of such documents would not violate work-product, attorney client or any other applicable privilege, MH will provide strategic planning documents that refer to the provision of cardiology services.

*Specification 3.*

*Submit all documents relating to the Company's plans relating to any relevant service in the relevant area, including, but not limited to, business plans, short-term and long-term strategies and objectives; physician recruitment; budgets and financial projections; expansion or retrenchment plans; research and development efforts; and presentations to management committees, executive committees, and boards of directors. For regularly prepared budgets and financial projections, the Company need only submit one copy of final year-end documents and cumulative year-to-date documents for the current year.*

**Objections**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege. This request is overly broad and unduly burdensome in that it seeks "all documents" relating to MaineHealth's plans.

**Proposal:**

To the extent the provision of such documents would not violate work-product, attorney client or any other applicable privilege, MH will provide strategic planning documents that refer to the provision of cardiology services. MH will also provide budgets or financial projections that contain line items for cardiology services. In addition, MH will provide presentations to management committees, executive committees, and boards of directors that refer to the impact of the proposed transaction on projections for cardiology services. Finally, to the extent the Federal Trade Commission already has in its possession documents that are responsive to the above specification which have been provided by MaineHealth in connection with the MaineHealth/Southern Maine Medical Center transaction (2009) or proposed MaineHealth/Goodall Hospital transaction, MH has no objection to treating those documents as having been produced in response to the instant requests.

*Specification 4.*

*Submit all documents relating to the Company's price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions relating to any relevant service in the relevant area.*

**Objection:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege.

**Proposal:**

In general, hospital contracts with payors have the same conversion factor for all employed physicians, regardless of specialty, and are not cardiologist specific. Nevertheless, MH will confirm whether there are any separate charge masters for cardiology services, and, to the extent any such separate charge masters exist MH will provide them.

*Specification 5.*

*Submit all contracts with health plans (including, but not limited to, direct contracts with employer or union health plans) or physician organizations, now in effect or that were in effect at any time since January 1, 2007, for the provision of any relevant service, as well as all documents relating to the development or negotiation of such contracts (including, but not limited to, communications with health plans, and internal Company decisions regarding negotiating positions), planned contracts (including, but not limited to, contracts not entered into, not yet finalized or in force, or no longer in force), or contract amendments or modifications.*

**Objections:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege. This request is unduly burdensome in that it requests documents "relating to the development or negotiation of such contracts (including, but not limited to, communications with health plans, and internal Company decisions regarding negotiating positions), planned contracts (including, but not limited to, contracts not entered into, not yet finalized or in force, or no longer in force), or contract amendments or modifications".

None of the contracts at issue are specifically related to cardiologist services, and therefore negotiations are not specific to cardiologist services. It would be unduly burdensome to have to mine files and e-mails in each MaineHealth entity for narrative documents that might "refer to" cardiologist services negotiations, particularly as, for the most part, MH does not provide cardiologist services..

**Proposal:**

The contracts for Maine Medical Center, PHO (Maine PHO and MMC PHO) and Maine Heart Center already have been provided to the FTC. If the contracts at SMMC (through the acquisition of PrimeCare) include contracts specific for cardiology services, MH will also provide those contracts.

*Specification 6.*

*Submit, by hospital, Company-generated descriptions, summaries and interpretations of contract terms and methodologies (including, but not limited to, per diem formulas, discount of charges formulas, or stop loss provisions or any other formulas, codes, or templates containing the relevant terms of the contract between the hospital and health plans), used by any Company-owned or Company-affiliated hospital in the relevant area to determine the payment due the hospital under a contract with a health plan in effect at any time during the time period beginning January 1, 2007, for each admission, outpatient treatment, physician office visit, or other service.*

**Objections:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege. This request is unduly burdensome. No analysis would be related specifically to cardiology services charges.

**Proposal**

To the extent the provision of such documents would not violate work-product, attorney client or any other applicable privilege, and if Maine Medical Center, Maine Heart Center, MaineHealth, SMMC, or Maine Medical Center PHO have summaries of financial terms for any contracts, MH will provide those summaries.

*Specification 7.*

*Submit all documents relating to quality of care at any hospital operated by the Company, including, but not limited to, data or reports submitted to or received from Company or by quality rating organizations; quality of care initiatives; quality assurance or quality improvement systems; and the effect of changes in hospital quality on patient volume and revenue.*

**Objections:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege. This request is unduly burdensome and unlikely to lead to information relevant to the relevant transaction (as that term is defined by the subpoena).

**Proposal:** Subject to the foregoing, to the extent any such documents have been prepared in connection with the proposed transaction MH will provide those documents.

*Specification 8.*

*Submit all documents relating to the Company's application for a Certificate of Public Advantage relating to the relevant transaction.*

**Objection:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege.

**Proposal:**

Subject to the foregoing MH will provide the documents provided to the state Department of Health and to the Attorney General's office relating to the relevant transaction

*Specification 9.*

*Submit all documents relating to the relevant transaction that the Company has provided to the Maine Attorney General's Office, the Department of Health and Human Services of Maine, or the Governor's Office of Health Policy and Finance relating to the relevant transaction.*

**Proposal:**

MH will provide the documents provided to the state Department of Health and to the Attorney General's office relating to the relevant transaction.

*Specification 10.*

*Submit all documents (except engineering and architectural plans and blueprints) relating to any plans of the Company or any other person for the construction of new facilities the closing of any existing facilities, or the expansion, conversion, or modification (if such modification has a planned or actual cost of more than \$500,000) of current facilities for providing any relevant service in the relevant area.*

**Objection:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege.

**Proposal**

To the extent the provision of such documents would not violate work-product, attorney client or any other applicable privilege, and to the extent such information exists, MH will provide documents sufficient to show any plans of MH or any other person for the construction of new facilities the closing of any existing facilities, or the expansion, conversion, or modification (if

such modification has a planned or actual cost of more than \$500,000) of current facilities for providing cardiology services.

*Specification 11.*

*Submit all documents relating to any plans of, interest in, or efforts undertaken by the Company or any other person for any acquisition, divestiture, joint venture, alliance or merger of any kind involving physician groups in the relevant area other than the relevant transaction.*

**Objection:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege. This request is unduly burdensome and not reasonably calculated to provide information relevant to the focus of the FTC's investigation, the relevant transaction.

*Specification 12.*

*Submit all documents (including, but not limited to, each draft as well as the final report or study and the underlying data, information, and materials for each draft as well as for the final report or study) relating to cost savings, economies, quality of care improvements, or other efficiencies of whatever kind that have been or could be achieved through a joint venture, internal cost-cutting, or any transaction other than the relevant transaction.*

**Objection:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege. This request is vague and unclear.

**Proposal:**

MaineHealth does not believe that it has documents responsive to the request. However, to the extent the provision of such documents would not violate work-product, attorney client or any other applicable privilege and to the extent they exist MH will provide documents sufficient to show any cost savings, economies, quality of care improvements, or other efficiencies of whatever kind related to cardiology services that have been or could be achieved through a joint venture, internal cost-cutting, or any transaction.

*Specification 13.* Submit documents sufficient to show in detail the Company's policies and procedures relating to the retention and destruction of documents.

**Objection:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege.

**Proposal:**

To the extent the provision of such documents would not violate work-product, attorney client or any other applicable privilege, MH will provide such documents.

*Specification 14. Submit all documents relating to any patient, consumer, health plan, or employer surveys or opinions of the Company within the relevant area.*

**Objections:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege. This request is also unduly burdensome and not reasonably calculated to provide information related to the relevant transaction.

**Proposal:**

To the extent the provision of such documents would not violate work-product, attorney client or any other applicable privilege, and to the extent such documents exist and relate to the relevant services (as defined by the subpoena) MH will provide documents that refer to surveys of patient, consumer, health plan, or employer opinions concerning MMC's, SMMC's or Maine Heart Center's provision of cardiologist services.

*Specification 15.*

*Submit all documents relating to the "Maine Legislature's Joint Standing Committee on Health and Human Services regarding the Act to Establish the Hospital and Health Care Provider Cooperative Act."*

**Proposal:**

MH does not believe there are any such documents relating to the *Joint Standing Committee on Health and Human Services* and the *Hospital and Health Care Provider Cooperation Act* within the time parameters identified in the subpoena. However, even to the extent that such documents did exist MH would object to the request to the extent that the documents are privileged, or would not likely to lead to the provision of relevant evidence.

*Specification 16.*

*Submit all documents discussing the relationship among and between:*

- a. The Company, Maine PHO, Maine Medical Partners, and any other physician hospital organization affiliated with MaineHealth; and*
- b. Maine PHO and independent physician groups in the relevant area.*

**Objections:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege. This request is also unduly

burdensome and not reasonably calculated to provide information related to the relevant transaction.

**Proposal:**

MH will provide a narrative of the relationships noted in this Specification. In addition, MH has already provided all of the Maine PHO, MMC PHO and Maine Heart Center contracts to the FTC.

*Specification 17.*

*Submit all documents relating to the reasons for the relevant transaction including, but not limited to, cost savings, benefits, risks associated [sic] anticipated as a result of the relevant transaction, and quality of care or service improvements.*

**Objection:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege.

**Proposal:**

To the extent the provision of such documents would not violate work-product, attorney client or any other applicable privilege, and to the extent such documents exist, MH will provide documents referring to any cost savings, benefits, risks associated or anticipated as a result of the relevant transaction, and quality of care or service improvements associated or anticipated as a result of the relevant transaction.

*Civil Investigative Demand*

*Specification 1*

*For each hospital operated by the Company for any relevant service in the relevant area provide:*

- a. for each month, the total patient days, patient discharges, inpatient gross revenue, and inpatient net revenue broken down by particular procedures (e.g., CPT4 codes) for any relevant service;*
- b. for each year, outpatient visits, outpatient gross revenue, and outpatient net revenue broken down by particular procedures (e.g., CPT4 codes) for any relevant service;*
- c. a list provided both in hard copy and as computer file(s) showing for each cardiologist who has held professional staff privileges at the hospital:
  - (i) name;*
  - (ii) current (or last known) office address;*
  - (iii) cardiology sub-specialty (if any);*
  - (iv) medical practice group (if any);*
  - (v) professional license number;**

- (vi) any other uniform physician identification number;*
  - (vii) type of staff privileges currently or most recently held;*
  - (viii) each other hospital at which he or she holds (or most recently held) professional staff privileges and the type of privileges held at each hospital;*
  - (ix) the time period during which he or she held admitting privileges at the hospital;*
  - (x) the time period, if any, he or she was employed by the hospital; and*
  - (xi) the number of inpatients, and the number of outpatients, he or she admitted to the hospital in each year.*
- d. a list provided both in hard copy and as computer file(s) showing for each year, listed by the transferring hospital, the total number of patients admitted to, and the patient days and revenues of, the hospital resulting from patients being transferred from another hospital;*
- e. a list provided both in hard copy and as computer file(s) showing for each year, listed by the transferee hospital, the total number of patients transferred by the hospital to other hospitals;*
- f. a list provided both in hard copy and as computer file(s) showing for each year, each day on which the hospital went on diversion (i. e. refused to admit additional patients), the reason the hospital was on diversion, and the patient census of the hospital on the day the diversion occurred;*
- g. the principles used by the Company for accounting for contractual allowances and bad debt; the criteria used to determine which accounts receivable are recorded as bad debt; and the circumstances, if any, under which bad debt or contractual allowances are attributed to charity care or some similar account; and*
- h. for each year, the amounts of bad debt and charity care recorded by the Company for each hospital in the relevant area and the amount of bad debt that was rerecorded as charity care.*

**Objection:**

MaineHealth objects to the extent this request is unduly burdensome. MaineHealth provides very limited cardiology services (as defined by the Civil Investigative Demand (“CID”)).

**Proposal:**

To the extent such data exist in current databases at MMC and SMMC and can be provided in a manner that is not unduly burdensome to MH, MH will provide such information.

*Specification 2.*

*Identify for each hospital operated by the Company in the relevant area each person who is now or was responsible for the Company's negotiation of contracts with health plans or physician organizations, the entities for which each such person negotiates, and the time periods of that person's responsibilities.*



**Objection:**

MaineHealth objects to the extent this request exceeds the scope of the investigation. MaineHealth does not negotiate contracts on a service line basis. In addition, very few MaineHealth facilities provide cardiology services (as defined by the CID).

**Proposal**

MH will provide the name of the individual who is responsible for negotiations of contracts with health plans or physician organizations for Maine Heart Center, Maine Medical Center PHO, Maine Medical Center and SMMC.

*Specification 3.*

*Submit for each year from 2006 to the present, for each inpatient admission or discharge or outpatient treatment episode at any hospital operated by the Company relating to any relevant service in the relevant area, all data (masked to preserve patient privacy pursuant to Instruction W) currently maintained regarding each admission, discharge, or treatment episode including, but not limited to:*

- a. the identity of the hospital at which the patient was treated;*
- b. the patient's 5 digit residence ZIP code;*
- c. the patient's age, gender, ethnicity, and race;*
- d. whether the treatment episode was inpatient or outpatient and:  
(i) if inpatient, the date of admission and date of discharge; and  
(ii) if outpatient, the date of the procedure;*
- e. all DRG and ICD9 diagnosis and procedure codes, indicating which codes are primary;*
- f. all UB92 revenue codes and revenue code units;*
- g. the primary associated CPT4 code, and any secondary CPT4 codes;*
- h. whether the treatment provided was for an emergency;*
- i. the source of the patient (such as by referral from another hospital);*
- j. the primary source of payment, including the identity of the health plan (for example, Medicare, Cigna, Aetna, etc.) and the specific insurance product (for example, HMO, PPO, etc.);*
- k. the identity of any secondary sources of payment;*
- l. whether the hospital was a participating provider under the patient's health plan;*
- m. whether there was a capitation arrangement with the health plan covering the patient (identify the arrangement);*
- n. the hospital's billed charges, the contractually-allowed amount under the patient's health plan, the amount of charges paid by the health plan, and any additional amounts received from the patient;*
- o. a breakdown of the hospital's charges by classification of hospital services rendered to the patient (such as cardiology, medical/surgical, obstetrics, pediatrics, or ICU);*

- p. the identity of the patient's admitting physician, referring physician, and treating physician; and*
- q. the patient's status upon discharge.*

**Objection:**

MaineHealth objects to this request as it is unduly burdensome.

**Proposal:**

To the extent such information resides in a MH data base at Maine Medical Center and SMMC and can be compiled without undue burden on MH, MH will provide such information.

*Specification 5.*

*Identify, provide the title, and describe the contents of each financial statement, budget, profit and loss statement, customer or product line profitability report, and other financial report regularly prepared by or for the Company on any periodic basis relating to any relevant service. For each such statement or report: (a) state how often it is prepared; (b) the person responsible for its preparation; and (c) submit all such reports on both a monthly basis and a yearly basis since January 1, 2007.*

**Objection:**

MaineHealth objects to this request as it is unduly burdensome.

**Proposal:**

To the extent such information refers to the relevant services (as defined by the CID) and can be compiled without undue burden on MH, MH will provide such information on an annual basis. MH will also provide the name of the person responsible for preparing such statement or report. MH will also provide a summary of how frequently such reports or statements are compiled.

*Specification 6.*

*State the name and address of each person that has entered or attempted to enter into, or exited from, the provision of the relevant service in the relevant area from January 1, 2006, to the present. For each such person, identify the date of its entry into or exit from the market. For each entrant, state whether the entrant built a new facility, converted assets previously used for another purpose (identifying that purpose), or began using facilities that were already being used for the same purpose.*

**Objections:**

MaineHealth objects to this request as it is unduly burdensome and it requires MaineHealth to create a report.

**Proposal**

If MH has one or more existing documents that provide the analysis requested in Specification 6, MH will provide that analysis.

*Specification 7.*

*Identify and describe (including the bases for your response):*

*a. requirements for entry into any relevant service in the relevant area including, but not limited to, planning and design, professional and facility licenses, sales and marketing activities, and any necessary governmental approvals, and the time necessary to meet each such approvals;*  
*b. the total costs required for entry into the provision of the relevant service; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the provision of the relevant service; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;*

*c. possible new entrants into the provision of the relevant service in the relevant area; and*

*d. the minimum viable scale, minimum number of full time equivalent cardiologists, minimum scope of skills, mix of sub-specialties, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the provision of the relevant service.*

**Objections:**

MaineHealth objects to this request as it is unduly burdensome and requires MaineHealth to create a report.

**Proposal**

If MH has any documents that it has created or commissioned containing an analysis of the requirements for entry and minimum scale for entry by cardiologists, MH will provide that analysis.

*Specification 8.*

*Identify and describe each of the Company's prior acquisitions, since January 1, 1999, including: cost savings, new service introductions, service improvement, quality of care improvements, and economies or other efficiencies that were derived from each acquisition and provide:*

*a. the steps that the Company took to achieve the efficiency and the time and costs required to achieve it;*

- b. the dollar value of the efficiency and a detailed explanation of how that was calculated;*
- c. an explanation of how each prior acquisition helped the Company achieve the efficiency;*
- d. the reason(s) the Company could not have achieved the efficiency without the prior acquisition;*
- e. the proportion of the dollar value of the efficiency that the Company passed on to consumers and the manner and form (e.g., lower prices, better quality of care) in which the company passed on the efficiency;*
- f. the identity of each person (including the person's title and business address) employed or retained by the Company (including Company's counsel) with any responsibility for achieving, analyzing, or quantifying any efficiency described; and*
- g. for each efficiency that involved cost savings, state separately:*
  - (i) the one time fixed cost savings; and*
  - (ii) the variable cost savings (in dollars per unit and dollars per year).*

**Objections:**

MaineHealth objects to this request as it is unduly burdensome, overly broad, not reasonably calculated to provide information related to the relevant transaction and requires MaineHealth to create a report.

*Specification 9.*

*Submit all information described in Instruction Y below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.*

**No objections.**

*Specification 10.*

*List:*

- (a) each federal judicial district (e.g., District of Columbia, Southern District of New York) within the United States in which the Company has an agent to receive service of process as well as each such agent's name, current business and home addresses, and telephone numbers;*
- (b) each federal judicial district within the United States in which the Company is incorporated or licensed to do business or currently is doing business; and*
- (c) each federal judicial district within the United States in which the Company has an office or a facility, and, for each such office or facility, list the address and the individual in charge (with his or her title).*

Nancy Park  
February 4, 2010  
Page 16

**Response:**

(a) District of Maine, only. The registered agent for MaineHealth is William L. Caron, Jr. MaineHealth 465 Congress Street, Suite 600 Portland, ME 04101 3537. 207-775-7001.

(b) District of Maine only

(c) District of Maine only

*Specification 11.*

*Identify the person(s) responsible for preparing the response to this Request and submit a copy of all instructions prepared by the Company relating to the steps taken to respond to this Request. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.*

**Objection:**

MaineHealth objects to the extent the Specification requests information subject to work-product, attorney-client or any other applicable privilege.

*Specification 12.*

*Describe the relationship among and between:*

*a. The Company, MainePHO, Maine Medical Partners, and any other physician hospital organization affiliated with MaineHealth; and*

*b. MainePHO and independent physician groups in the relevant area.*

**Response:**

MaineHealth will provide a narrative describing the relationship among the parties indicated in Specification 12.

Please let me know your responses to the above proposals as soon as possible.

Sincerely,

  
William G. Kopit



**EPSTEIN BECKER & GREEN, P.C.**

ATTORNEYS AT LAW  
1227 25TH STREET, NW, SUITE 700  
WASHINGTON, DC 20037-1175  
202.861.0900  
FAX: 202.296.2882  
EBGLAW.COM

WILLIAM G. KOPIT  
TEL: 202.861.1803  
FAX: 202.296.2882  
WKOPIT@EBGLAW.COM

February 5, 2010

**VIA ELECTRONIC MAIL**

Sam Sheinberg  
Federal Trade Commission  
601 New Jersey Ave., N.W.  
Washington, D.C. 20001

Re: Response to Letter of February 5, 2010

Dear Sam:

Thank you for your letter of February 5, 2010. As requested, this letter is to inform you that you have either misunderstood or misstated our position with regard to MaineHealth, Cardiovascular Consultants of Maine, and Maine Cardiology Associates. We will be happy to discuss this with you further during our call on Monday, February 8, 2010.

We note, however, we continue to be faced with February 9<sup>th</sup> deadline for either producing all of the information you have requested or for filing a petition to modify or quash.

Very truly yours,



William G. Kopit

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C



**Patricia Wagner**

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**From:** Armstrong, Norman [NARMSTRONG@ftc.gov]  
**Sent:** Monday, February 08, 2010 4:30 PM  
**To:** William Kopit; Reilly, Matthew J.; Feinstein, Richard  
**Cc:** Patricia Wagner  
**Subject:** RE: Emergency Request for Extension

Mr. Kopit,

Thank you for your email. Based on your email, we will extend the time to file a petition to limit or quash the subpoenas and Civil Investigative Demands issued to Maine Health, Cardiovascular Consultants of Maine and Maine Cardiology Associates until Friday, February 12, 2010.

Regards,  
 Norm

---

**From:** William Kopit [mailto:WKopit@ebglaw.com]  
**Sent:** Monday, February 08, 2010 3:38 PM  
**To:** Reilly, Matthew J.; Feinstein, Richard; Armstrong, Norman  
**Cc:** Patricia Wagner  
**Subject:** Emergency Request for Extension

On behalf of our clients, MaineHealth, Cardiovascular Consultants of Maine ("CCM"), and Maine Cardiology Associates ("MCA") and pursuant to 16 CFR 2.7(d)(3), we are requesting an emergency extension of time to file a petition to limit or quash a subpoena and Civil Investigative Demand. Pursuant to 16 CFR 2.7(d), any petition to limit or quash must be filed prior to the response date of the subpoena and CID; and requests for an extension of time to file those petitions may be granted only by the Bureau Director, the Deputy Director, and the Assistant Director.

MaineHealth, CCM and MCA each received a subpoena and Civil Investigative Demand on January 25, 2010. The response time listed on each subpoena and CID was February 10, 2010. Since that time, we have met with the FTC staff and had phone conversations with the FTC staff to try to come to an agreement on limitations and timing for production. We had scheduled another such call for today, February 8, 2010. However, due to the inclement weather, the staff was unable to participate in that call. (We understand that the storm has produced significant power outages across the region). Staff had requested, through voice mail, that a call be scheduled for Tuesday, February 9, 2010. Unfortunately, I am scheduled to be traveling tomorrow, and the deadline for filing such a petition is tomorrow.

For MCA and CCM, we believe that most if not all of the few remaining issues can be resolved by an additional phone call. We remain committed to trying to reach a reasonable alternative for MaineHealth, and believe that further discussions may at least limit the scope of any petition filed.

For these reasons, and the uncertainty of the weather this week, we request an extension to file a petition to limit or quash the subpoenas and Civil Investigative Demands until February 16, 2010.

**WILLIAM KOPIT** | [BIO](#)  
 (202) 861-1803 (DIRECT) | (202) 861-3551 (FAX)  
[WKOPIT@EBGLAW.COM](mailto:WKOPIT@EBGLAW.COM)

**EPSTEINBECKERGREEN**  
 1227 25TH STREET, NW | WASHINGTON, DC 20037

(202) 861-0900 (MAIN) | [WWW.EBGLAW.COM](http://WWW.EBGLAW.COM)

*Think Green. Please consider the environment before you print this message. Thank you.*

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UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Jon Leibowitz, Chairman  
Pamela Jones Harbour  
William E. Kovacic  
J. Thomas Rosch

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**Investigation of the Proposed  
Acquisition by MaineHealth of  
Maine Cardiology Associates and  
Cardiovascular Consultants of Maine, P.A.**

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**File No. 101-0010**

**Statement of Good Faith**

Pursuant to 16 C.F.R. § 2.7(d)(2), counsel for Respondent MaineHealth provides the following statement in support of counsel's representation of attempting, in good faith, to resolve by agreement the issues raised by the petition and has been unable to come to an agreement on these issues.

Specifically, counsel for Respondent met with the FTC staff on February 2, 2010 to discuss the issues surrounding the FTC's investigation, and raised issues regarding the burden imposed on Respondent. Attending that meeting for the FTC were staff members Samuel Sheinberg, Nancy Park and Paul Nolan, as well as two FTC economists. Counsel for Respondent at the meeting were William Kopit and Patricia Wagner. During that meeting Counsel provided the FTC staff a diagram containing all of the entities related to MaineHealth and a listing of MaineHealth employees who had been involved in the transaction. Counsel explained that many of the entities had different information systems, and that most of the individuals within most of the entities had nothing to do with the proposed transaction. Counsel therefore suggested that the request be limited to a limited set of entities and individuals.

Counsel and FTC staff agreed that issues should be specifically identified in a letter to FTC staff addressing each of the specifications. On Thursday, February 4, 2010 counsel again raised some of the issues addressed in the petition with FTC staff in a call with the FTC staff. Attendees on the call were the same as at the meeting on February 2<sup>nd</sup>. On Thursday February 4, 2010 counsel for Respondent also sent a letter to the FTC staff detailing Respondent's objections to the request with regard to each of the specifications.

On Thursday February 4, 2010 FTC staff (Paul Nolan, Nancy Park and Samuel Sheinberg) in further conversations with counsel for Respondent (William Kopit), expressed dissatisfaction with the proposals contained in the letter submitted by Counsel, and represented that the staff would get back to counsel with its final decision. On Friday February 5, 2010 counsel for Respondent received correspondence from the FTC rejecting Counsel's proposal. Counsel responded to that correspondence indicating that counsel believed that the FTC staff had misstated or misunderstood Respondent's position, but that counsel would be happy to discuss in the call on February 8, 2010. The FTC staff and counsel made email arrangements to attempt to resolve issues for the two cardiology groups by conference call on Monday February 8, 2010.

Early Monday morning, February 8, 2010, counsel for Respondent received a call from FTC staff (Nancy Park) indicating that the staff would be unable to participate in the conference call given the weather which had forced a closing of the Federal government. By e-mail to the FTC staff counsel for Respondent (Patricia Wagner) offered to continue with the conference call using a call in number, and counsel (William Kopit and Patricia Wagner) dialed in to the number in case the staff was able to attend the call. The staff did not join.

On Monday February 8, 2010 counsel for Respondent (William Kopit) also sent a request

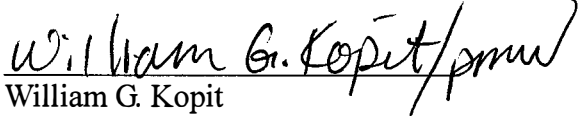
to the Director, the Deputy Director and the Assistant Director of the Bureau of Competition requesting an extension to file a petition to limit or quash. Given the inclement weather and the need to discuss issues further with the staff, counsel requested the extension until Tuesday February 16, 2010. Deputy Director Norman Armstrong granted limited relief to Respondent, giving Respondent until Friday, February 12, 2010 to file any petition.

On Tuesday February 9, 2010, counsel for Respondent (Patricia Wagner) sent an email to the FTC staff requesting a conference call to discuss remaining issues. In that email, counsel suggested that the call take place on Wednesday February 10, 2010, or alternatively (for Thursday February 11, 2010). Counsel sent a call in number, so that participants could join the call regardless of location. On Wednesday February 10, 2010, Counsel (William Kopit and Patricia Wagner) called in at the designated time, but the staff did not, apparently unable to call in because of the weather. On Thursday February 11, 2010, Counsel (William Kopit and Patricia Wagner) called in at the designated time, but again the staff did not, apparently unable to call in because of the weather.

Counsel for Respondent (Patricia Wagner) then sent another email to the FTC staff requesting a conference call for Friday February 12, 2010 at 10 a.m. As before, counsel sent a call in number, so that participants could join the call regardless of location. Counsel for Respondent (William Kopit and Patricia Wagner) called in at the designated time, but again the staff did not.

February 12, 2010

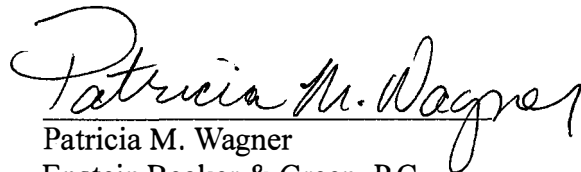
Respectfully submitted  
Counsel for Respondent MaineHealth

Handwritten signature of William G. Kopit in cursive script, with a horizontal line drawn across the signature.

William G. Kopit  
Epstein Becker & Green, P.C.  
1227 25<sup>th</sup> Street NW  
Washington D.C., 20037  
(202) 861-1803

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of February 2010, I caused the original and twelve (12) copies of Petition to Limit with attached Exhibits to be filed by hand delivery with the Secretary of The Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C., 20580; and three (3) copies of same to be filed by hand delivery with Nancy Park, Esq., Attorney, Bureau of Competition, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C., 20580



Patricia M. Wagner  
Epstein Becker & Green, P.C.  
1227 25<sup>th</sup> Street NW  
Washington D.C., 20037  
(202) 861-4182