

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, s.s.

SUPERIOR COURT  
Civil Action No. 95-3591A

\_\_\_\_\_  
IN THE MATTER OF )  
BLUE CROSS BLUE SHIELD OF MASSACHUSETTS )  
\_\_\_\_\_ )

ASSURANCE OF DISCONTINUANCE

The Commonwealth of Massachusetts (the "Commonwealth"), by its Attorney General, has caused an investigation to be made into certain practices of Blue Cross Blue Shield of Massachusetts ("Blue Cross") to determine whether such practices violate the Sherman Act, 15 U.S.C. §1, the Massachusetts Antitrust Act, M.G.L. c. 93, §4, or the Massachusetts Consumer Protection Act, M.G.L. c. 93A, §2.

The investigation concerned whether certain individuals at Blue Cross and Berkshire Medical Center had agreed to or solicited boycotts of Hillcrest Hospital or Harvard Community Health Plan.

Blue Cross denies that it has engaged in any conduct violative of federal or Massachusetts law. Nevertheless Blue Cross has indicated its willingness to enter into this Assurance of Discontinuance. Pursuant to M.G.L. c. 93 and c. 93A, the Attorney General has decided to accept this Assurance on the terms contained herein.

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Assurances

(1) Blue Cross, including its officers, agents, employees, successors, and assigns agrees that it shall, from this date, refrain from agreeing to or soliciting any boycott or other agreement not to contract with or provide service to any health care provider that unreasonably restrains competition.

(2) Blue Cross agrees to offer to Hillcrest Hospital, on fair terms, a contract for its HMO Blue product. Such contract shall be for a term that is consistent with Blue Cross's customary practice for hospital contracts in Western Massachusetts but in any case not less than one year. However, such contract may be superseded at any time by a contract with more favorable terms for Hillcrest Hospital.

(3) In the event that Blue Cross and Hillcrest Hospital are unable to reach agreement on an HMO Blue contract, Blue Cross agrees to offer Hillcrest Hospital "last best offer" arbitration before an arbitrator selected by the Office of the Attorney General. The arbitrator shall select between a final contract proposal made by Blue Cross and a final contract proposal made by Hillcrest Hospital. In determining which of the parties' proposals to select, the arbitrator shall be guided by industry practice and standards, and by overall notions of fairness and equity given the totality of the circumstances including, without limitation, the history of relations between the parties. Blue Cross shall provide to the arbitrator such documents as are required by the arbitrator

to assist him or her in reaching a decision.

(4) Blue Cross agrees to pay the costs of any such arbitration in full including, without limitation, any fees paid to the arbitrator.

(5) In the event that Blue Cross solicits new contractual arrangements for HMO Blue during 1995, Blue Cross will invite Hillcrest Hospital to bid.

(6) Blue Cross agrees to cooperate fully in the Office of the Attorney General's on-going antitrust investigation of the matters raised in this Assurance.

(7) Blue Cross agrees to pay the Commonwealth \$25,000 as reimbursement for the costs of its investigation. Blue Cross will deliver a check for the full amount to the Assistant Attorney General in charge of this case no later than 10 days after this agreement is signed. Such check shall be made payable to the Commonwealth of Massachusetts.

(8) Blue Cross agrees to pay the sum of \$175,000 to the Local Consumer Aid Fund created by M.G.L. c. 12, §11G. Said sum shall be paid by check delivered to the Assistant Attorney General in charge of the case.

(9) For the purposes of determining and securing compliance with this Assurance, Blue Cross agrees to permit duly authorized representatives of the Office of the Attorney General, on reasonable notice to Blue Cross's legal counsel:

- a. to inspect and to copy, during the regular business hours, all books, ledgers, accounts, correspondence,

memoranda, and other records and documents in possession of Blue Cross which reasonably relate to any matters contained in this Assurance

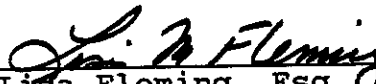
(10) Blue Cross will immediately initiate an antitrust compliance program for all contracts and network development staff members. This compliance program will be in addition to the respondent's general compliance program. Prior to implementation of the proposed program, an outline of the program shall be submitted for approval to the Office of the Attorney General.

(11) The terms of this Assurance shall remain in effect for five (5) years from the date of filing of this Assurance.

Signed this 22 day of June, 1995.


BLUE CROSS BLUE SHIELD  
OF MASSACHUSETTS

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