STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
Docket No.

STATE OF MAINE,	)	
	)	
Plaintiff	)	
	)	**COMPLAINT**
v.	)	**(Injunctive Relief Requested)**
	)	
MAINEHEALTH, MAINE MEDICAL CENTER, MAINE CARDIOLOGY ASSOCIATES, P.A. and CARDIOVASCULAR CONSULTANTS OF MAINE, P.A.	)	

I. INTRODUCTION

1. This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 10 M.R.S. §§ 1101, 1102, 1102-A, 1104, and 5 M.R.S. § 207, seeking injunctive relief to remedy and prevent potential adverse effects on competition which may result from the proposed acquisition by MaineHealth, an integrated healthcare system headquartered in Portland, Maine, of the substantial majority of the assets of Maine Cardiology Associates, P.A., ("MCA") headquartered in South Portland, Maine, and Cardiovascular Consultants of Maine, P.A., ("CCM") headquartered in Scarborough, Maine, and to employ the majority of physicians presently employed by MCA and CCM.

II. PARTIES

2. Plaintiff, the State of Maine, sues in its sovereign capacity. The State, through the Office of the Attorney General, is charged by statute with the

enforcement of the antitrust laws, including 10 M.R.S. §§ 1101, 1102, 1102-A, 1104, and 5 M.R.S. § 207.

3. Defendant Maine Medical Center ("MMC") is a nonprofit public benefit corporation governed by 13-B M.R.S. § 101 et seq., and is licensed under Title 22 M.R.S. §§ 1811 *et seq.* to provide hospital services at various locations in and around Portland, Maine.

4. Defendant MaineHealth is a nonprofit public benefit corporation governed by 13-B M.R.S. § 101 *et seq.*, headquartered in Portland, Maine, and is the sole corporate member of Maine Medical Center.

5. Defendant Maine Cardiology Associates, P.A., is a for-profit business corporation headquartered in South Portland, Maine, which employs 21 physicians specializing in cardiovascular health care.

6. Defendant Cardiovascular Consultants of Maine, P.A., is a for-profit business corporation headquartered in Scarborough, Maine, which employs 18 physicians specializing in cardiovascular health care.

III. JURISDICTION & VENUE

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

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

IV. FACTS

9. MaineHealth is Maine's largest health system, with hospitals and related entities across southern Maine, including its flagship hospital in Portland, MMC.

10. MMC is Maine's largest hospital, a tertiary center with a large and highly recognized cardiac program. MMC is a teaching hospital and offers extensive training to medical students through a partnership with Tufts Medical School.

11. MCA and CCM are the largest independent cardiology practices in the Portland area and are comparable in size (approximately 20 cardiologists in each group), quality and scope, offering a broad range of general and subspecialty cardiac services.

12. MaineHealth, MMC, MCA and CCM filed an application under the Hospital and Health Care Provider Cooperation Act ("Hospital Cooperation Act") in February 2010 seeking approval for MaineHealth to acquire all of the assets of the two major Portland-area cardiology practices, MCA and CCM, and to employ all of the physicians from both groups.[1]

13. The Attorney General ("AG"), the Federal Trade Commission ("FTC"), the Governor's Office of Health Policy and Finance ("GOHPF"), Mercy

[1] The Hospital and Health Care Provider Cooperation Act (Title 22, ch. 405-A) permits hospitals, physicians and other health care providers to seek Maine DHHS approval for collaborations that reduce competition but achieve benefits that more than offset that loss. The AG is a necessary party to an administrative proceeding filed under the Act. If DHHS approves, the transaction is subject to ongoing monitoring and DHHS oversight to police the advantages versus disadvantages.

Hospital, Anthem Health Plans of Maine, Inc. and Central Maine Medical Center all intervened in the proceeding.

14. In March 2010, Mercy filed a Motion to Dismiss on the grounds that the Hospital Cooperation Act specifically excludes hospital/physician collaborations (as opposed to hospital-to-hospital or physician-to-physician). All intervenors agreed with Mercy's position and the parties withdrew the application.

15. In July 2010, MaineHealth, MMC, MCA, CCM and Mercy proposed a modified transaction, whereby a certain number of cardiologists currently employed by MCA or CCM would become employees of Mercy and the balance would be employed by a newly formed subsidiary of MaineHealth or MMC.

16. On two previous occasions the two Portland cardiology practices proposed to merge their practices, first in 1993 and then again in 1997. Both times the Attorney General concluded that the merger would likely result in significant anticompetitive effects that could not be adequately resolved with conditions in a consent decree and would oppose the transaction, after which the practices abandoned their plans. This is the first time that MH and MMC have been part of a proposed merger of the cardiology practices.

17. Under the present structure of the proposed merger, three MCA and CCM cardiologists would become employed by Mercy and 36 would become employees of the MaineHealth subsidiary.

18. The rationale offered by MaineHealth, MMC, MCA and CCM for the merger among them is to ensure ongoing access to patients needing cardiology

services without regard to ability to pay, ongoing access to cardiology services at clinics and hospitals outside of the Portland area, and to ensure adequate resources for the cardiac medical education program at MMC.

V. MARKET DEFINITION

19. For the purposes of this Complaint, the relevant line of commerce in which to analyze the competitive effects of the proposed merger is the provision of general, interventional and electrophysiological cardiovascular services.

20. For the purposes of this Complaint, the relevant geographical area in which to analyze the competitive effects of the proposed merger is southern Maine, defined as that portion of the State of Maine south of a line running east to northwest from the vicinity of Rockland through Waterville and through Rangeley.

VI. MARKET EFFECTS

21. The relevant market is highly concentrated.

22. MCA and CCM combined account for a high share of the relevant market.

23. MCA and CCM combined possess a substantial degree of market power in the relevant market.

24. There are significant barriers to entry into the relevant market due to the high level of required investment, necessity to obtain hospital privileges, call coverage and sufficient referrals from primary care physicians.

Horizontal Effects

25. The effect of the merger may be to substantially lessen competition and to tend to create a monopoly in the relevant market in violation of 10 M.R.S. § 1102-A and the merger would restrain trade in violation of 10 M.R.S. § 1101 by:

a. eliminating direct competition between MCA and CCM;

b. increasing the likelihood that the merged practices will unilaterally exercise market power by increasing prices or reducing quality or innovation; and

c. increasing the likelihood of collusion by the merged practices in the relevant market.

Vertical Effects

26. The effects of the merger may be to tend to create a monopoly in the relevant market in violation of 10 M.R.S. § 1102-A or to create or attempt to create a monopoly in the relevant market in violation of 10 M.R.S. § 1102 by foreclosing access to hospital based cardiovascular service providers in the relevant market by competing hospitals and health systems to a large extent.

VII. CAUSE OF ACTION

Count 1
Violation of Monopolies & Profiteering Law

27. The proposed merger that is the subject of this Complaint would violate 10 M.R.S. §§ 1101, 1102 and 1102-A.

Count 2
Violation of Unfair Trade Practice Act

28. The proposed merger that is the subject of this Complaint would violate of 5 M.R.S. § 207.

VII. REQUEST FOR RELIEF

WHEREFORE, the State of Maine requests that this Court:

A. Enjoin the proposed merger or subject it to terms and conditions which will protect the relevant market from the anticompetitive effects described above; and

B. Award such further relief as the Court deems just and proper.

Dated at Augusta, Maine this 21st day of March, 2011.

WILLIAM J. SCHNEIDER
ATTORNEY GENERAL

CHRISTINA M. MOYLAN (Maine Bar No. 7095)
Assistant Attorney General
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8838