STATE OF MAINE	**BUSINESS AND CONSUMER DOCKET** **Cumberland, ss.** **Docket No. BCD-CV-11-08**

STATE OF MAINE, **Plaintiff** **v.** **MAINEHEALTH, MAINE MEDICAL CENTER, MAINE CARDIOLOGY ASSOCIATES, P.A. and CARDIOVASCULAR CONSULTANTS OF MAINE, P.A.**	)	**CONSENT DECREE**

WHEREAS 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; and

WHEREAS, 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; and

WHEREAS Maine Cardiology Associates, P.A., ("MCA") and Cardiovascular Consultants of Maine, P.A., ("CCM") are distinct for-profit regional physician practice entities whose physicians in the aggregate provide cardiology services at Maine Medical Center, Mercy Hospital and at other facilities and locations; and

WHEREAS MaineHealth and MMC have entered into agreements with MCA and CCM whereby a certain number of cardiologists currently employed by MCA or CCM would become employees of MaineHealth, with the assistance of MMC, under specified conditions, and by which MaineHealth or MMC would acquire the substantial majority of the assets of MCA and CCM; and

WHEREAS MaineHealth, MMC, CCM and MCA have entered into an agreement with Mercy Hospital whereby a certain number of cardiologists currently employed by MCA or CCM would become employees of Mercy Hospital under specified conditions; and

WHEREAS the State of Maine, by and through its Attorney General, filed the Complaint herein alleging violations of 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 MaineHealth's proposed acquisition of the substantial majority of both cardiology practices; and

WHEREAS the parties have consented to the entry of this Decree for the purposes of settlement only, without this Decree constituting evidence against or any admission by any party, and without trial or adjudication of any issue of fact or law, and without this Decree constituting any admission of liability or wrongdoing by Defendants or any other party, and with the understanding that Defendants' position is that they have at all times been in compliance with all applicable laws, and with the understanding that by entering into this Decree, Defendants do not agree or concede that the claims or allegations asserted by

the State have merit, except that the Defendants admit to this Court's jurisdiction;

WHEREAS the purpose of this Consent Decree is to obviate or minimize the potential adverse affects of the loss of competition between MCA and CCM.

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon consent of the parties hereto[1], it is hereby **ORDERED, ADJUDGED and DECREED** as follows:

I. PURPOSES AND GOALS

MaineHealth, Maine's largest health system, with hospitals and related entities across southern Maine, including its flagship hospital in Portland, MMC, desires to employ the majority of cardiologists presently practicing with the only two large cardiology groups in the Portland area, and the cardiologists likewise desire to be employed by MaineHealth, in conjunction with MMC. The Attorney General, with responsibility for ensuring compliance with the antitrust laws of the State of Maine, has investigated the rationale and potential effects of the employment proposal. The Attorney General concluded that without appropriate conditions and restrictions, the loss of competition between the two cardiology practices could result in higher prices for healthcare services for cardiology or other MaineHealth services.

[1] The parties have filed a proposed decree with the original signatures of the authorized party representatives. At the suggestion of the court and with the consent of the parties, this document includes two additional paragraphs, appearing as Section V, subsection D Further Access and Section VIII, subsection D Future Modification, and because of those additions this document does not include the original signatures of the parties.

The purposes and goals of this Consent Decree are: to improve medical outcomes for patients receiving cardiology services in the Portland area, to improve the cardiology component of the medical education program at MMC, to maintain access to necessary cardiology services by all patients regardless of their ability to pay, to maintain access to general cardiology services at outlying clinics and hospitals other than MMC, and to facilitate more cost-efficient provision of care to patients requiring cardiovascular services than would be available without the Proposed Transaction. Any question about the meaning or intended effect of any of the provisions of this Consent Decree should be interpreted in such a manner as to maximize the achievement of these purposes and goals.

II. JURISDICTION

This Court has jurisdiction of the subject matter of this action and over the Defendants. The Complaint states a claim upon which relief can be granted against the Defendants under 10 M.R.S. § 1102-A and 1104 and 5 M.R.S. § 207.

III. DEFINITIONS

As used in this Decree, the following definitions apply:

A. "*MaineHealth*" means MaineHealth and its divisions, units and subsidiaries which are owned, majority owned, or governed by a board of directors the majority of which is electable by MaineHealth, and the officers, directors, agents or representatives of any of the foregoing.

B. "*Maine Medical Center*" or "*MMC*" means Maine Medical Center and its divisions, units and subsidiaries which are owned, majority owned, or governed by a board of directors the majority of which is electable by Maine Medical Center, and the officers, directors, agents or representatives of any of the foregoing.

C. "*Maine Heart Center*" means Maine Heart Center and its divisions, units and subsidiaries, whether or not wholly owned, and the officers, directors, agents or representatives of any of the foregoing.

D. "*MaineHealth Cardiology Practice*" means a corporation or other business entity controlled directly or indirectly by MaineHealth or Maine Medical Center, and which at any time after January 1, 2011, offers the Cardiology Services of cardiologists who were previously employed by either MCA or CCM as of January 1, 2011.

E. "*Commercial Payor*" means any non-governmental entity acting as
(1) a "carrier" as defined by 24-A M.R.S. § 4301-A(3) that offers or administers a "health plan" as defined by 24-A M.R.S. § 4301-A (7);
(2) an administrator licensed under Chapter 18 of Title 24-A to provide administrative services to health care service plans, health maintenance organization or health insurers; and
(3) any private employer- or labor organization-sponsored health plan governed by the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 to 1461.

F. "*Proposed Transaction*" means the acquisition by MaineHealth of substantially all of the assets of MCA and CCM and the contemporaneous hiring by MaineHealth of all but three physicians presently employed by MCA or CCM and by Mercy Hospital of the remaining three cardiologists presently employed by MCA or CCM.

G. "*Default Payment Rate*" means the standard payment that a Commercial Payor offers to physicians providing Cardiology Services in Maine, or (absent a rate specific to cardiologists) offers to physicians who participate in the payor's provider network in Maine, typically expressed as the product of (a) a dollar amount or "conversion factor" and (b) a weight or "relative value unit" assigned to a particular service or procedure.

H. "*Bundled Payments*" means - the payment of a single amount for the facility and Cardiology Services customarily required by a patient who undergoes any of the particular procedures listed on Exhibit A, or whose episode of care is classified under one of the diagnosis-related groups listed on Exhibit A.

I. *"Physician Employment Agreement"* means the employment contract to be executed between MaineHealth, MMC or the MaineHealth Cardiology Practice and a MaineHealth Cardiologist.

J. "*Cardiology Services*" means inpatient and outpatient services rendered to adult patients by physicians who are certified to treat the cardiovascular system, including the heart, arteries, and veins.

K. *"MaineHealth Cardiologist"* means a physician certified to provide Cardiology Services who accepts employment with MaineHealth or MMC as part of the Proposed Transaction and was employed by either Maine Cardiology Associates or Cardiovascular Consultants of Maine as of January 1, 2011.

L. *"Basic Compensation"* means the maximum average base salary per FTE for services provided by a MaineHealth Cardiologist. Basic Compensation does not include: (1) Quality-Based Performance Compensation; (2) productivity-based incentive compensation; (3) employee benefit programs such as health, welfare, disability, and retirement benefits; 4) continuing medical education expense reimbursement; or 5) professional liability insurance.

M. *"Quality-Based Performance Compensation"* means incentive compensation based on the achievement of quality-related benchmarks, as described in Section IV(C)(4).

IV. INJUNCTIONS

Beginning on the first day on which MaineHealth, MMC, and any entity controlling, controlled by, or under common control of MaineHealth or MMC, shall have in their employment in the aggregate at least 25 MaineHealth Cardiologists , and continuing for a period of five years thereafter, but not later than July 31, 2016, MaineHealth and MMC shall abide by the following terms and conditions, and shall cause the MaineHealth Cardiology Practice to abide by the following terms and conditions:

A. Commercial Payor Reimbursement.

1. Default Payment Rates.

   The MaineHealth Cardiology Practice will accept as payment for Cardiology Services, at a Commercial Payor's option, the Default Payment Rate paid by that Commercial Payor to other cardiologists in Maine.

2. MMC Rate Increases.

   Any percentage annual fiscal year increase in the MMC charge master for the procedure/facility listed in Exhibit A (invasive, interventional or EPS procedure/facility) will not exceed the weighted average increase in charges for all MMC services for the same fiscal year.

3. Bundled Payments.

   a. MaineHealth and MMC will continue to offer Commercial Payors the option to purchase the cardiology services now provided by the Maine Heart Center by making Bundled Payments for the hospital and medical services provided to their members. No Commercial Payor will be required to make Bundled Payments for Cardiology Services as a condition of Maine Medical Center's participation in its provider network.

   b. If the Maine Heart Center ceases to be a viable entity, the commitment made in paragraph IV(A)(3)(a) will be fulfilled by offering Commercial Payors the option to purchase the bundled

Cardiology Services now provided through the Maine Heart Center through direct contracts with MaineHealth or MMC.

c. Whether purchased through a contract with the Maine Heart Center, MaineHealth or MMC, the annual increase in a Commercial Payor's Bundled Payments for Cardiology Services provided at MMC will be no more than the lesser of (i) the weighted average increase in the charges for MMC's hospital services, or (ii) the allowed increase in MMC's prices specified in the payor's contract with MaineHealth or MMC.

4. Site of service.

a. The MaineHealth Cardiology Practice will not seek increases in Commercial Payor payments for Cardiology Services rendered at the former MCA and CCM physician office practice sites (or any successor site) as a result of the practices' planned conversion to hospital-based services and will continue to bill Commercial Payors for such services as professional services.

b. The MaineHealth Cardiology Practice will not transfer diagnostic testing or other ancillaries from an outpatient setting to a hospital inpatient or other setting that would result in the billing of commercial payors as if the service were delivered in a location other than a physician's office.

B. Limits on MMC Expense Increases[2] and MaineHealth Consolidated Operating Margins

1. For the fiscal year that will begin October 1, 2011 and each of the following four fiscal years, MaineHealth and MMC will limit the increase in MMC's Cost Per Adjusted Discharge ("CPAD") to no more than 110% of the projected increase in the Hospital Marketbasket Index published by the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services.

a. Except as provided in paragraph b, the calculation of MMC's CPAD will include all expenses related to the provision of inpatient hospital services and outpatient hospital services that are allowable under the Medicare Program's principles of reimbursement. MMC's CPAD during the fiscal year that will end September 30, 2011 will be the base from which future increases will be measured. The calculation of this base period CPAD will include: (1) MMC's actual revenues and incurred expenses; and (2) an adjustment to reflect the full annual impacts of the designation of physician practices, including the proposed MaineHealth Cardiology Practice, as hospital-based facilities.

[2] The next two largest MaineHealth member hospitals after MMC, namely Southern Maine Medical Center ("SMMC") and Pen Bay Healthcare ("PenBay"), are subject to separate limitations as a condition of respective Certificates of Public Advantage issued by the Maine Department of Health and Human Services following regulatory review of the proposed memberships under the Hospital and Health Care Provider Cooperation Act, 22 M.R.S. ch. 405-A. Both SMMC and PenBay must set their respective annual consolidated budgeted operating margins at a level less than or equal to 3% of their respective total operating revenues. In addition, Penobscot Bay Medical Center (the hospital subsidiary of PenBay) must limit increases in reimbursement by commercial payors to 4% or less absent four enumerated circumstances.

b. The following expenses will be excluded in the calculation of MMC's CPAD:

1. Bad debt expenses;

2. State and municipal taxes;

3. Incremental expenses related to projects approved by the Maine Department of Health and Human Services in accordance with the provisions of the Certificate of Need Act; and

4. Incremental expenses related to the expansion of MMC's responsibility for the provision of finance, human resources and information technology services to MaineHealth 's other member organizations provided that MMC is compensated for such expenses by such other member organizations.

c. MMC's compliance with this requirement will be based on its performance during three consecutive three year periods, the first of which will end September 30, 2014. The second such period will end September 30, 2015. The final period will end September 30, 2016.

2. For the fiscal year that will begin October 1, 2011 and each of the following four fiscal years, MaineHealth will limit its budgeted consolidated operating margin to no more than 3.0% of its budgeted operating revenue. If MaineHealth's actual consolidated operating

margin exceeds 3.0% during any of the five years for which this commitment is made, MaineHealth will require one or more of its member hospitals to reduce their prices during the following year in order to return the excess amount to commercial payors and private purchasers.

C. Restrictions on Physician Employment Agreements.

1. Restrictive Covenants.

The Physician Employment Agreements between the MaineHealth Cardiology Practice and any MaineHealth Cardiologist will not contain any covenant not to compete with the MaineHealth Cardiology Practice following termination of the cardiologist's employment with the MaineHealth Cardiology Practice.

2. Compensation Neutrality.

The compensation payable to a MaineHealth Cardiologist will not vary based upon the identity of the hospital at which Cardiology Services are delivered, and will not be reduced based on the volume of hospital-based cardiology procedures that the cardiologist performs at hospitals other than a MaineHealth hospital.

3. Basic Compensation.

The annual Basic Compensation under the Physician Employment Agreements with a MaineHealth Cardiologist shall not in the aggregate exceed an average of $395,000 per FTE. The annual increase in Basic

Compensation for subsequent years during the term of this Consent Decree may not exceed 1.0%.

4. Quality-Based Performance Compensation.

Any Quality Based Performance Compensation in the Physician Employment Agreement with a MaineHealth Cardiologist shall be based on the MaineHealth Cardiology Practice's attaining certain quality outcome benchmarks, as set forth in the following paragraph, and shall not exceed $55,000 per FTE in Year 1. The annual increase in Quality-Based Performance Compensation for subsequent years during the term of this Consent Decree may not exceed 1.0%.

a. Within 120 days of the formation of the MaineHealth Cardiology Practice, MaineHealth or MMC shall submit to the Attorney General three proposed quality outcome benchmarks for hospital inpatient outcomes and two proposed quality outcome benchmarks for ambulatory care outcomes. Such benchmarks may be uniform for the term of this Consent Decree, or may vary by year. Upon approval of the Attorney General, which will not be unreasonably withheld, the parties shall submit the benchmarks to the Court to be incorporated into this Consent Decree. For each of the first three years following the formation of the MaineHealth Cardiology Practice, a percentage of the maximum annual Quality-Based Performance Compensation per FTE may be paid for attainment of each hospital inpatient and

ambulatory care quality outcome benchmark, in accordance with the following schedule:

Hospital Inpatient benchmark #1 . . . . . 14%

Hospital Inpatient benchmark #2 . . . . . 14%

Hospital Inpatient benchmark #3 . . . . . 14%

Ambulatory Care benchmark #1 . . . . . 29%

Ambulatory Care benchmark #2 . . . . . 29%

b. For each of the fourth and fifth years following the formation of the MaineHealth Cardiology Practice, a percentage of the maximum annual Quality-Based Performance Compensation per FTE may be paid for attainment of each hospital inpatient and ambulatory care quality outcome benchmark, as well as for each quality outcome benchmark set forth in paragraphs IV(E)(1, 2 and 3) and IV(F)(2), as follows:

Hospital Inpatient benchmark #1 . . . . . 10%

Hospital Inpatient benchmark #2 . . . . . 10%

Hospital Inpatient benchmark #3 . . . . . 10%

Ambulatory Care benchmark #1 . . . . . 20%

Ambulatory Care benchmark #2 . . . . . 20%

Consent Decree paragraph IV(E)(1) 7.5%

Consent Decree paragraph IV(E)(2) 7.5%

Consent Decree paragraph IV(E)(3) 7.5%

Consent Decree paragraph IV(F)(2) 7.5%

D. Protocols with Mercy Hospital.

MMC will adhere to the protocols set forth in the Cardiology Services Protocol with Mercy Hospital of August 31, 2010, attached as Exhibit B hereto, as amended from time to time by mutual agreement of the parties to that agreement. MMC will provide the Attorney General with any amendment to the Cardiology Services Protocol within 30 days of the effective date of the amendment.

E. Quality Outcome Benchmarks.

1. No later than the end of the third year following the formation of the MaineHealth Cardiology Practice, MMC and the MaineHealth Cardiology Practice will meet or exceed the following quality outcome benchmarks for congestive heart failure and for acute myocardial infarction, as measured by the Center for Medicare and Medicaid Services Hospital Compare publicly reported data:

Congestive Heart Failure

	National Average	**MMC Currently**	**Required Quality Outcome Benchmark**
30-day Mortality Rate Congestive Heart Failure	11.1%	9.1% (18% better than national average)	≤ 9.1%, or at least 18% better than national average (if the national average exceeds 11.1%)

	National Average	MMC Currently	Required Quality Outcome Benchmark
30-day Hospital Readmission Rate for Congestive Heart Failure	24.5%	22.7% (7% better than national average)	≤ 22.0%, or at least 10% better than national average (if national average exceeds 24.5%)

Acute Myocardial Infarction

	National Average	MMC Currently	Required Quality Outcome Benchmark
30-day Mortality Rate Acute Myocardial Infarction	16.6%	12.6% (24% better than national average)	≤ 12.6%, or at least 24% better than national average if national average exceeds 16.6%)
30-day Hospital Readmission Rate for Acute Myocardial Infarction	19.9%	18.2% (8% better than national average)	≤ 16.4%, or at least 8% better than national average (if national average is higher than 19.9%)

2. No later than the end of the third year following the formation of the MaineHealth Cardiology Practice, the MaineHealth Cardiology Practice and Maine Medical Center will achieve a rating of "specialty excellence – cardiac care" in the HealthGrades Center of Excellence hospital

comparison for Maine Medical Center in the category of "specialty excellence – cardiac care" for the term of this Consent Decree.

3. The MaineHealth Cardiology Practice will achieve the highest status (Blue Ribbon Status) under the Maine Health Management Coalition's Pathways to Excellence program no later than the end of the third year following the formation of the MaineHealth Cardiology Practice.

F. Medical Education Metrics.

1. Maine Medical Center Cardiology Fellowship Program.

   a. Maine Medical Center will maintain accreditation for its cardiology fellowship program from the Residency Review Committee of the Accreditation Council for Graduate Medical Education ("ACGME"), and comply with all requirements of the accreditation.

   b. Beginning with the academic year that commences at least two months following the formation of the MaineHealth Cardiology Practice, and continuously thereafter for the term of this Consent Decree, MMC will meet the ACGME fellowship requirement that each designated "key faculty" dedicate on average 10 hours per week throughout the calendar year to the cardiology training program.

2. Cardiology segment of the Maine Medical Center Internal Medicine Residency Program.

No later than the end of the third year following the formation of the MaineHealth Cardiology Practice, and continuously thereafter for the

term of this Consent Decree, the aggregate average test scores for third year MMC internal medicine residents on the cardiology portion of the "in training" board examination for internal medicine residents will be no less than the average test scores in the aggregate of all other parts of the same examination.

G. Access to Cardiology Services.

1. Patients' ability to pay.

The MaineHealth Cardiology Practice will not restrict access to cardiology services based on a patient's inability to pay for the services. The MaineHealth Cardiology Practice will provide free care for cardiology services to uninsured patients whose incomes are below 175% of the then current federal poverty guidelines.

2. Geographic access.

For so long as the local hospital requests it, the MaineHealth Cardiology Practice will continue to staff cardiology clinics at existing FTE levels at Miles Memorial Hospital in Damariscotta, St. Andrews Hospital in Boothbay Harbor, Franklin Memorial Hospital in Farmington, Stephens Memorial Hospital in Norway, Redington-Fairview Hospital in Skowhegan, Rumford Hospital in Rumford and Goodall Hospital in Sanford.

H. Access to Cardiology Services and Facilities by Other Networks.

1. The MaineHealth Cardiology Practice must make its employed cardiologists available to participate in physician networks, including accountable care networks, upon reasonable, non-discriminatory terms.

2. A cardiologist not employed as part of the MaineHealth Cardiology Practice, but otherwise holding the requisite privileges to provide Cardiology Services as a physician on the MMC attending medical staff, shall not be subject to discriminatory exclusion by MMC from access to the MMC catheterization laboratories.

3. A cardiologist not employed as part of the MaineHealth Cardiology Practice, but otherwise holding the requisite privileges to provide Cardiology Services as a physician on the MMC attending medical staff, shall not, by reason of his or her non-employment status alone, be excluded by MMC from participation in the protocol for assignment of otherwise unassigned patients presenting to the MMC Emergency Department who require cardiology services.

V. COMPLIANCE AND ENFORCEMENT

A. Reporting.

1. Within five months of the close of each fiscal year, MaineHealth and MMC will certify to the Attorney General their compliance with the requirements set forth in Section IV of this Consent Decree.

2. Compliance with Section IV(B) (relating to Limits on MMC Expense Increases and MaineHealth Consolidated Operating Margins) will be based on MMC's performance during three consecutive three year

periods, the first of which will end September 30, 2014. The second such period will end September 30, 2015. The final period will end September 30, 2016.

3. In order to assure compliance with Section IV(C), at the request of the Attorney General, MaineHealth and MMC shall provide the Attorney General with copies of employment agreements entered into by MaineHealth or Maine Medical Center with MaineHealth Cardiologists.
4. Compliance with Section IV(E)(1) through (E)(3) shall be measured as of the time when data for the first three years following the formation of the MaineHealth Cardiology Practice becomes available, and no later than July 1, 2016. MMC and the MaineHealth Cardiology Practice will submit an interim compliance report to the Attorney General by July 1, 2014.
5. Compliance with Section IV(F) shall be certified by annual report from MMC's Internal Residency Director or Office of Graduate Medical Education, beginning in July 2012. Compliance with Section IV(F)(2) shall be measured beginning in July 2014, and annually thereafter through July 2016. MMC shall submit an interim compliance report as to Section IV(F)(2) to the Attorney General in 2013.
6. In any filings made with the Court in connection with the implementation of this Consent Decree, either party may seek a protective order restricting the public dissemination of information if deemed proprietary or competitively sensitive.

B. Independent Auditor.

The Attorney General may arrange for an independent audit of the MaineHealth Cardiology Practice, MaineHealth or MMC to provide a report to the Attorney General within five months of the close of each fiscal year for the purpose of evaluating compliance with this Consent Decree. The MaineHealth Cardiology Practice, MaineHealth and MMC will provide reasonable access to facilities, records and personnel necessary to conduct the audit, and, at the Attorney General's option, shall pay up to 50% of the cost of the audit.

C. Noncompliance.

1. If in any fiscal year the MaineHealth Cardiology Practice, MaineHealth or MMC is not in compliance with the requirements set forth in paragraph IV(A), it shall refund to affected Commercial Payors 110% of excess revenue generated from such payor as a result of non-compliance, as determined by the independent auditor.
2. If MaineHealth's actual consolidated operating margin exceeds the limits specified in Section IV(B)(2), MaineHealth will require one or more of its member hospitals to reduce their prices during the following year in order to return the excess amount to Commercial Payors and private purchasers.
3. If in any fiscal year the MaineHealth Cardiology Practice, MaineHealth or MMC is not in compliance with any other of their respective obligations set forth in this Consent Decree, they shall be given a

reasonable opportunity to cure. If they are still not in compliance after a reasonable opportunity to cure, then the Attorney General may request this Court to order MaineHealth or MMC to terminate the employment of at least 5 cardiologists. The MaineHealth Cardiology Practice, MaineHealth or MMC shall make available, at the terminating cardiologists' option, leased space for an office and sell or lease office equipment, all at fair market value. The MaineHealth Cardiology Practice, MaineHealth and MMC shall be precluded from defending against such a remedy on the grounds that such a remedy is impossible, infeasible or beyond the power of the Court. Nothing in this Section shall preclude the MaineHealth Cardiology Practice, MaineHealth or MMC from arguing that such a remedy would be inappropriate under the circumstances then prevailing for the Court to order. Nothing in this Consent Decree limits the Court's authority to enter any other appropriate remedy.

4. If an independent auditor concludes that there has been an increase in reimbursement rates in MaineHealth Commercial Payor contracts resulting from the lessening of competition caused by the cardiologists' employment by MaineHealth, then MaineHealth shall be presumed to be in noncompliance with the requirements of this Consent Decree unless MaineHealth demonstrates that any such increase is attributable to other causes.

D. Further Access.

Nothing in this Consent Decree shall be deemed or construed to limit the authority of the Maine Office of the Attorney General or any other agency of the State of Maine to obtain and/or compel access to any documents and/or information for any lawful purpose, including for the purpose of determining the Defendants' compliance with any term of the Consent Decree.

VI. TERM

Except for the fiscal year 2016 obligations set forth in Section IV(B), this Consent Decree shall expire on July 31, 2016. The obligations set forth in Section IV(B) which relate to the fiscal year ending September 30, 2016 shall expire on the date that MaineHealth and MMC, in accordance with Section V(A)(1), certify to the Attorney General's office their compliance with Section IV(B) for the fiscal year ending September 30, 2016.

VII. PUBLIC INTEREST

Entry of this Consent Decree is hereby found to be in the public interest.

VIII. EFFECT OF CONSENT DECREE

A. State Action Immunity.

MaineHealth and MMC will not assert, before any federal or state court or administrative tribunal that compliance with this Consent Decree confers state action immunity from federal antitrust laws.

B. Allegations of Antitrust Violations under Maine Law.

Except for the acquisition of assets owned by, and the employment of physician members of, MCA and CCM, nothing in this Consent Decree

precludes the State of Maine from challenging during the term of this Consent Decree any conduct by the MaineHealth Cardiology Practice, MaineHealth or MMC as a violation of 10 M.R.S. § 1101 *et seq.* or 5 M.R.S. § 207. Nothing in the Consent Decree precludes the State of Maine from challenging any conduct by the MaineHealth Cardiology Practice, MaineHealth or MMC as a violation of 10 M.R.S. § 1101 *et seq.* or 5 M.R.S. § 207 after the expiration of this Consent Decree.

C. Suspension or Termination of Consent Decree.

In the event of a material change in circumstances, including a material change in the number of MaineHealth Cardiologists employed by MaineHealth or MMC, MaineHealth or MMC may apply to the Court for a suspension or termination of the obligations of this Consent Decree.

D. Future Modification

Nothing in this Consent Decree shall be deemed or construed to limit the authority of the court to add to, remove or otherwise modify any term of this Consent Decree pursuant to applicable law.

Pursuant to M.R. Civ. P. 79(a), the clerk is hereby directed to incorporate this Consent Decree by reference in the docket.

Dated 3 January 2012

A. M. Horton
Justice, Business and Consumer Court

Entered on the Docket: 1.3.12
Copies sent via Mail __ Electronically ✓

Exhibit A

DRG/CPT		Description
242		Permanent cardiac pacemaker implant w MCC
245		AICD generator procedure
246		Percutaneous CV proc w drug-eluting stent w MCC or 4+ vessels/stents
247		Percutaneous CV proc w drug-eluting stent w/o MCC
248		Percutaneous CV proc w non-drug-eluting stent w MCC or 4+ vessels/stents
249		Percutaneous CV proc w non-drug-eluting stent w/o MCC
250		Percutaneous CV proc w/o coronary artery stent w MCC
251		Percutaneous CV proc w/o coronary artery stent w/o MCC
254		Other Vascular Procedure w/o CC/MCC
258		Cardiac pacemaker device replacement w MCC
259		Cardiac pacemaker device replacement w/o MCC
260		Cardiac pacemaker revision except device replacement w MCC
261		Cardiac pacemaker revision except device replacement w CC
262		Cardiac pacemaker revision except device replacement w/o CC/MCC
265		AICD lead procedure
286		Circulatory disorders except AMI w cardiac cath w MCC
287		Circulatory disorders except AMI w cardiac cath w/o MCC
37205		Transcatheter placement of intravascular stent, except coronary, carotid, vertebral, iliac, and lower extremity arteries
37221		Transluminal stent placement to iliac artery
37226		Transluminal stent placement to femoral/popliteal artery
37227		Transluminal stent placement and atherectomy to femoral/popliteal artery
37230		Transluminal stent placement to tibial/peroneal artery
37231		Transluminal stent placement and atherectomy to tibial/peroneal artery
92980		Transcatheter placement of intracoronary stent
92982		Percutaneous transluminal coronary angioplasty (PTCA)
92995		Percutaneous transluminal coronary atherectomy (PTCA)
93452		Left heart catheterization, including left ventriculography when performed
93453		Combined right and left heart catheterization
93454		Coronary angiography, without concomitant left heart catheterization
93455		Coronary angiography, without left heart catheterization, with bypass graft angiography
93456		Coronary angiography, with right heart catheterization
93457		Coronary angiography, with bypass graft angiography, and right heart catheterization

Exhibit A

DRG/CPT		Description
93458		Coronary angiography, with left heart catheterization
93459		Coronary angiography, with left heart catheterization, and bypass graft angiography
93460		Coronary angiography, with right and left heart catheterization
93461		Coronary angiography, with right and left heart catheterization, and bypass graft angiography
93619		EP Study, comprehensive, without induction/attempted induction of arrhythmia
93620		EP Study, comprehensive, with induction/attempted induction of arrhythmia
93624		EP Study, follow-up, testing effectiveness of therapy
93640		EP Study, testing of ICD leads at time of implantation or replacement
93641		EP Study, testing of ICD leads and generator at time of implantation or replacement
93642		EP Study, subsequent or periodic testing of cardioverter-defibrilator function
93650		Catheter ablation of AV-node function
93651		Catheter ablation for treatment of SVT

EXHIBIT B

August 30, 2010

Cardiology Services Protocol

In accordance with the Cardiology Physician Practice Agreement Term Sheet, Mercy Hospital and Maine Medical Center Protocol Development Committee has developed the following protocols for interaction:

Mercy Hospital Cardiology Protocols

Mercy intends to develop a cardiology practice with the following clinical characteristics:

1. Mercy Hospital's hospitalist / critical care service will serve as primary attending for admitted patients, with cardiologists serving as consultants.

2. Mercy Hospital's cardiology practice intends to perform and read all routine graphics at Mercy Hospital including ECG, stress test, ESE, TEE, TTE, nuclear and CTA.

3. Emergent off-hour invasive procedures will be performed at Maine Medical Center as per current protocol.

Coverage at Mercy Hospital

If less than four physicians are employed by Mercy Hospital, MaineHealth's/Maine Medical Center Cardiology (MHMCC) practice would provide coverage as follows:

1. Ensure night and weekend coverage to maintain a call frequency at Mercy Hospital at no more than 1 / 4 nights and weekends for Mercy Cardiologist (MC)
2. Provide consultation coverage to the Mercy Hospitalist Service for new and existing patients
3. Patients who were seen in consult during call by MHMCC at Mercy would be transferred back to MC for daytime coverage.
4. Mercy would handle all outpatients during nights and weekends.
5. Read and report urgent ECGs and echoes.
6. Graphics: It is the expectation that each hospital's employed or contracted groups will read all routine graphics. The exception would be when MHMMC cardiology is covering Mercy Hospital cardiology on nights/weekends when they would need to read the graphics.

ED Protocol:

1. Cardiology patients in ED will be admitted per hospital protocol
2. ED will ask patient requiring cardiac care if he or she is presently under the care of a Cardiologist. If so, ED will contact that Cardiologist to determine if that Cardiologist will serve as the attending physician for the patient's hospitalization at the site hospital or will refer the patient to the Cardiologist's coverage group.
3. If patient does not have a cardiologist, or if patient's current cardiologist does not assume responsibility for patient's hospitalization directly or through his or her group, the hospital-employed group of the site hospital will provide cardiology services during hospitalization.

Patient Protocol:

If a cardiologist employed by Mercy Hospital manages the cardiology care of a patient at Maine Medical Center, or if a cardiologist employed by MaineHealth/Maine Medical Center Cardiology manages the cardiology care of a patient at Mercy Hospital, the managing cardiology will be expected to provide or arrange for 7/24 coverage of the patient.

a. Graphics readings required for such patients, such as ECGs and TTEs, will be performed per the hospital protocol.
b. Procedures such as stress test, ESE and cath/EP procedures will be performed or arranged by the managing cardiologist, provided that the procedure will be performed by a clinician with privileges at the site hospital to perform the procedure.

Admitting a MHMCC cardiology patient at MH by and MHMCC cardiologist or admitting a MH cardiology patient at MMC by a MH cardiologist: Both hospitals maintain active Mid Level services and it is the current standard of care at both hospitals that the cardiologist admits patients with the Mid level provider. The protocol for a cardiologist admitting a patient of his/her coverage group at the other hospital would be to contact the Mid level service and admit the patient to their own service with Mid level coverage. This would require cardiologists to maintain secondary supervising relationships with the Mid level service at both hospitals.

Privileges:

The privilege documents for both hospitals have been reviewed and as currently written would enable physicians to maintain the same privileges in both institutions. The one exception is that MMC requires full EP privileges for ICD insertion.