021 0017

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Maine Health Alliance (the "Alliance") and William R. Diggins (the "Respondents") have violated and are violating Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

The Nature of the Case

1. Acting through the Alliance, the vast majority of hospitals and physicians located in a five-county area of northeastern Maine have agreed to limit competition among themselves by collectively negotiating contracts – including price terms – with employers, health insurers, and others seeking to provide health-care coverage to the people of northeastern Maine ("payors"). Further, these eleven hospitals and more than 325 physicians have refused to contract individually with those unwilling to meet the Alliance's collective terms. These price-fixing agreements and concerted refusals to deal among otherwise competing hospitals and among otherwise competing physicians, in turn, have kept the price of health care in northeastern Maine above the level that would have prevailed absent the Alliance's illegal conduct. The Alliance has not undertaken any efficiency-enhancing integration sufficient to justify its challenged conduct.

The Respondents

2. The Alliance is a taxable, nonprofit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Maine, and its principal address is 12 Stillwater Avenue,

Suite C, Bangor, Maine 04401. The Alliance was formed in 1995, and its membership currently

10. The Respondents' general business practices and conduct, including the acts and practices alleged herein, are in or affecting "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

11. According to the Alliance's records, as of 2002, the contracts that the Respondents and others have negotiated with payors and entered into on behalf of the Alliance's physicians and hospital members represent "in excess of 100 million dollars in commercial revenue."

Overview of the Market and Competition

12. The Alliance and its physician and hospital members do business in Aroostook, Hancock, Penobscot, Piscataquis, and Washington Counties in northeastern Maine (the "Northeastern Maine Counties").

13. Physicians often contract with payors to establish the terms and conditions, including price and other competitively significant terms, under which they will provide services to subscribers of health plans.

14. Hospitals, likewise, often enter into contracts with payors to establish the terms and conditions, including price and other competitively significant terms, under which they will provide services to subscribers of health plans.

15. Physicians and hospitals entering into payor contracts often agree to discount or lower their prices in exchange for access to additional patients made available by the payors' relationship with their subscribers. These contracts may reduce payors' costs and enable payors to lower the price of health insurance, and reduce out-of-pocket medical care expenditures by subscribers to the payors' health insurance plans.

16. Absent agreements among physicians or hospitals on prices and other contract terms on which they will provide services to subscribers of health plans, competing physicians and competing hospitals decide individually whether to enter into contracts with payors, and at what prices they will accept payment for services rendered pursuant to such contracts.

17. The Medicare Resource Based Relative Value Scale ("RBRVS") is a system used by the Centers for Medicare and Medicaid Services ("CMS") to determine the amount to pay physicians for the services they render to Medicare patients. Under RBRVS, the price for physician services is determined by multiplying a dollar conversion factor, set by CMS, by the Relative Value Unit ("RVU") assigned by CMS to each physician service (*e.g.*, under RBRVS, a Medicare conversion factor of $35 x 2.34 RVU for a physician service = an $82 fee). Payors in many areas of the country make contract offers to individual physicians or groups at a price level specified as some percentage of the RBRVS fee for a particular year (*e.g.*, "110% of 2003 RBRVS"). In the Northeastern Maine Counties, payors

negotiate the conversion factor, rather than a percentage of the RBRVS fee, with physicians. For example, if a Maine payor offers a conversion factor of $42, rather than the Medicare conversion factor of $35, and the RVU that CMS assigns for a particular physician service is 2.34, then the physician's price for that service to the payor would be $42 x 2.34, or $98.28.

18. The Maine Bureau of Insurance has promulgated access to care regulations requiring health maintenance organizations ("HMOs") to make physician and hospital services available within certain travel times and distances from the residences of the HMO's subscribers. To comply with these regulations, an HMO doing business in the Northeastern Maine Counties must include in its provider network a large number of primary care and specialist physicians and hospitals that provide services in the Northeastern Maine Counties.

19. To be competitively marketable in the Northeastern Maine Counties, a payor's health plan must include in its provider network a large number of primary care and specialist physicians and hospitals in the Northeastern Maine Counties.

20. The substantial majority of the primary care and specialist physicians who practice in the Northeastern Maine Counties are members of the Alliance, and more than 85% of the physicians on staff at the Alliance's hospitals are members of the Alliance. Eleven of the sixteen hospitals in the Northeastern Maine Counties are members of the Alliance.

The Alliance Is a Joint Contracting Organization,

24.

c. discouraging Alliance physicians from contracting with other provider networks, and encouraging those who already are members of other networks to "reconsider [their] participation" in those networks, to maintain the Alliance's collective power; and

d. warning Alliance hospitals that contracting outside the Alliance will "'gut' the organization"and "diminish" its purpose and effectiveness.

30. By agreeing with each other to negotiate concertedly through the Alliance, the Alliance's physician members and hospital members have obtained higher compensation and other more favorable contract terms from payors than they would have by negotiating with payors individually.

Aetna, Inc.

31. In September 1996, the Alliance entered into a contract with NYLCare Health Plans of Maine, Inc. ("NYLCare"), a payor doing business in the Northeastern Maine Counties. In 1998, Aetna, Inc. ("Aetna"), acquired NYLCare, and assumed all of NYLCare's contracts with physicians and hospitals in the Northeastern Maine Counties, including NYLCare's contract with the Alliance.

32. Through contract negotiations with NYLCare in 1996, the Alliance, on behalf of its physician members, demanded and received a $65 conversion factor, which is equivalent to approximately 175% of 1996 RBRVS, for services performed for non-HMO subscribers. For NYLCare's HMO subscribers, the Alliance successfully negotiated a $52 conversion factor, which is equivalent to approximately 140% of 1996 RBRVS. At that time, NYLCare contracted with non-Alliance physicians for services rendered to all NYLCare subscribers (HMO and non-HMO) in Maine at conversion factors ranging from $48 to $50, which is equivalent to approximately 130% to 135% of 1996 RBRVS. The prices obtained by the Alliance for its physician members were substantially higher than the physicians could have obtained by negotiating individually with NYLCare.

33. Since Aetna's acquisition of NYLCare in 1998, Aetna and non-Alliance physicians have renegotiated their contracts, resulting in savings for Aetna subscribers. Aetna currently utilizes conversion factors ranging from $44 to $48, which is approximately equivalent to 120% to 130% of 2003 RBRVS, for services rendered by non-Alliance physicians to its subscribers in Maine. Aetna has made repeated attempts to renegotiate the rates that it pays to the Alliance's physician members, but the Alliance, on the collective behalf of its physician members, has refused to reduce the $65 and $52 conversion factors for physician services agreed to in 1996. As a result, Aetna pays Alliance physicians prices that are approximately 40% to 50% higher for non-HMO subscribers, and 10% to 20% higher for HMO subscribers, than Aetna pays to non-Alliance physicians for comparable services.

34. The Alliance's contract with Aetna was set to expire August 31, 1999. In a letter dated March 8, 1999, Aetna approached Alliance physicians directly to negotiate new contracts with individual physicians, to ensure that there would be no interruption of service to its subscribers if Aetna and the Alliance failed to reach an agreement for renewal prior to the termination of the contract.

35. In response to Aetna's attempt to negotiate with Alliance physicians unilaterally, Mr. Diggins told Alliance physicians in a March 18, 1999 memorandum that "[t]he Alliance has strenuously objected" to Aetna about its "bold effort at recruiting physicians around the Alliance." In addition, Mr. Diggins warned the physicians that Aetna's contract offer to the physicians would reduce physician compensation to a conversion factor of $44, which Mr. Diggins characterized as a "significant reduction in compensation" and one to which Aetna realized "the Alliance is unlikely to agree." The $44 conversion factor, which is equivalent to approximately 127% of 1999 RBRVS, was Aetna's arrangement with non-Alliance physicians in 1999.

36. On March 17, 1999, the Alliance's lawyer and business agent sent a letter to Aetna, demanding that Aetna: (a) retract its offers for direct contracts with Alliance physicians; (b) notify the physicians that the Alliance's contract with Aetna governs the relationship between the physicians and Aetna; and (3) "return, marked void, to the physician any contract executed by the physician" in response to Aetna's offer.

37. The Alliance physicians collectively refused to deal with Aetna, other than as a group through the Alliance, and forced Aetna to renew its contract with the Alliance at the $65 and $52 conversion factor rates. Without Alliance physician members in its network, Aetna would have been unable to maintain a competitively marketable health plan in the Northeastern Maine Counties and comply with the Maine Bureau of Insurance access to care regulations.

38. The Alliance's hospital members also negotiated collectively through the Alliance with NYLCare/Aetna for a contract. In 1996, the Alliance, on behalf of its hospital members, negotiated a 5.5% discount from billed charges for services rendered to NYLCare non-HMO subscribers, and an 11% discount from billed charges for services rendered to NYLCare HMO subscribers. Both of these discounts were approximately 33% smaller than the discounts that NYLCare contracted for, on average, with non-Alliance hospitals for the same health plan products. Since it acquired NYLCare, Aetna has attempted to negotiate with the Alliance for new hospital prices. The Alliance refused to accept lower prices and has continuously demanded higher prices.

39. In 1999, the Alliance demanded that Aetna agree to a 6% discount from billed charges for all services provided by Alliance hospitals to Aetna's HMO and non-HMO subscribers. In response, Aetna proposed different rates for different Alliance hospitals, which provide varying services and levels of care. The Alliance refused to agree to anything other than a single discount rate for all of its member hospitals. Aetna counter-offered a 15% discount, which equaled Aetna's statewide average discount for Maine hospitals. The Alliance also rejected this offer, continuing to insist upon a

45. Cigna was forced to continue contracting with the Alliance on the Alliance's collectively demanded terms because, without a majority of Alliance physician and hospital members in its network, Cigna would have been unable to maintain a competitively marketable health plan in the Northeastern Maine Counties and comply with the Maine Bureau of Insurance access to care regulations.

Anthem Health Plans of Maine, Inc.

46. The Alliance and Blue Cross and Blue Shield of Maine ("Blue Cross"), a payor then doing business in the Northeastern Maine Counties, entered into a contract in September, 1997, for the provision of services by the Alliance's hospital members. The agreement provided that Alliance hospital members be paid their billed charges, minus a 6% discount, during the remaining months of 1997, and billed charges minus a 7% discount, for the calendar years 1998 and 1999. Blue Cross had sought lower prices through deeper discounts, but the Alliance hospitals collectively refused to alter their terms. The Alliance's business records show that, by fixing the discount rate, the eleven Alliance hospitals increased their combined annual revenues by approximately $700,000.

47. On June 5, 2000, Anthem Health Plans of Maine, Inc. ("Anthem"), purchased Blue Cross and assumed the Alliance contract. Over the course of negotiations lasting nearly two years, the Alliance insisted that Anthem replace its individual physician contracts with an Alliance contract, and that Anthem not reduce its compensation to Alliance member physicians under the existing individual contracts.

48. In mid-2002, Mr. Diggins told Anthem that the Alliance's physicians would terminate their individual contracts with Anthem, unless Anthem agreed to contract through the Alliance for the physicians' services, at prices agreeable to them collectively. Concerned about losing the Alliance providers from its network, Anthem agreed to include the physicians in its contract with the Alliance, and engaged in several more months of price negotiations. In the midst of the investigation of the Alliance by the Federal Trade Commission and the State of Maine's Office of Attorney General, the Alliance notified Anthem that it could not go forward with the new contract, which would have included all Alliance physician and hospital members, and agreed to an additional one year extension of the 1997 hospital-only contract.

M 997

ranged from $47 [conversion factor] to $51 [conversion factor]." The Alliance's rates were substantially higher than Harvard Pilgrim's standard compensation terms. Nevertheless, Harvard Pilgrim offered the Alliance a 7% discount for its hospital members and a $47 conversion factor for its physicians, which is equivalent to approximately 135% of 1999 RBRVS. The Alliance rejected the offer and countered with a 4% discount off of charges for hospital services and a conversion factor of $49.95 for physician services, which is equivalent to approximately 144% of 1999 RBRVS.

51. The Alliance's repeated demands for higher compensation resulted in Harvard Pilgrim abandoning its contracting efforts with the Alliance. Harvard Pilgrim approached individual Alliance physicians and hospitals for contracts directly with Harvard Pilgrim, but was unable to sign enough

Other Payors

56. Respondents have informed other payors that the Alliance represented the collective

59. In collectively negotiating and entering into contracts with payors, the Alliance and its physician and hospital members have failed to engage in any significant form of financial risk sharing or clinical integration. Respondents' negotiation of prices and other competitively significant contract terms on behalf of Alliance members has not been, and is not, reasonably related to any efficiency-enhancing integration among the Alliance's physician and hospital members.

The Alliance's Conduct Has Had Anticompetitive Effects

60. Respondents' actions described in Paragraphs 11 through 58 of this Complaint have had, or tend to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician and hospital services in the Northeastern Maine Counties in the following ways, among others:

a. price and other forms of competition among Alliance physicians were unreasonably restrained;

b. price and other forms of competition among Alliance hospitals were unreasonably restrained;

c. prices for physician services were increased;

d. prices for hospital services were increased;

e. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians; and

f. health plans, employers, and individual consumers were deprived of the benefits of competition among hospitals.

61. The combination, conspiracy, acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, conspiracy, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, 2003, issues its Complaint against the Maine Health Alliance and William R. Diggins.

By the Commission.

Donald S. Clark
Secretary

SEAL