

Superior Court of Maine, Kennebec County.

STATE of Maine

v.

MID COAST ANESTHESIA, P.A., a professional corp. with offices in Bath, Sagadahoc County, State of Maine, Irl L. Rosner, M.D., an individual residing in Bath, Sagadahoc County, State of Maine, Frank A. Bohmer, M.D., an individual residing in Bath, Sagadahoc County, State of Maine, and Andrew L. Rabinowitz, M.D., an individual residing in Bath, Sagadahoc County, State of Maine.

Civ. A. No. CV 92-9.

Jan. 10, 1992.

Consent Decree

CHANDLER, Justice,

Plaintiff, State of Maine, having filed its Complaint on January 6, 1992, and Plaintiff and Defendants having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein and without this Decree constituting any evidence against, or an admission by, any party with respect to such issue; now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over Plaintiff and Defendants and the subject matter of this action. The Complaint states a claim for relief under 10 M.R.S.A. §§ 1104 (Supp.1990).

II. Injunctions

Defendants hereby are subject to a permanent injunction on the following terms.

1. From the date of this Decree until December 31, 1996, Defendants shall accept assignment under the Medicare program and shall not bill any person receiving reimbursement under the Medicare program for anesthesia services for any excess in Defendants' charges over the full amount of Medicare reimbursement and other insurance amounts payable on behalf of such persons, except for the amount of any co-insurance or deductible authorized under the Medicare program.

2. From the date of this Decree until December 31, 1996, Defendants shall enter into and remain a party to the agreement with the participating professionals then being used by Blue Cross and Blue Shield of Maine for anesthesiologists generally in the State of Maine but in no event shall Defendants bill any person receiving reimbursement under Blue Cross and Blue Shield of Maine for anesthesia services for any excess in Defendants' charges over the full amount of Blue Cross and Blue Shield of Maine reimbursement and other insurance amounts payable on behalf of such persons, except for the amount of any co-insurance or deductible authorized by Blue Cross and Blue Shield of Maine; provided that the method used by Blue Cross and Blue Shield of Maine to

determine the rate and amount of reimbursement to Defendants is no less favorable to Defendants than the method used by Blue Cross and Blue Shield of Maine to determine the rate and amount of reimbursement generally to other anesthesiologists in the State of Maine.

3. Defendants shall participate with a minimum of three managed care providers (including health maintenance organizations or preferred provider organizations), or a lesser number if there are fewer than three such providers actually doing business in the Bath-Brunswick area, on terms (including discounts from regularly charged fees and withholds) no less favorable to the managed care provider than the managed care provider generally applies to anesthesiologists; provided that Defendants shall not be required to participate with any managed care provider which the Department of the Attorney General or this Court concludes, based upon information presented by Defendants,

(a) is not financially sound,

(b) does not have appropriate practices and terms to ensure the quality of patient care,

(c) has policies, practices or terms which conflict with the ethical obligations of physicians,

(d) has management policies which jeopardize either quality of patient care or financial soundness, and

(e) has terms which shift liability for the provider's own negligence or other misconduct to the physicians.

4. Defendants shall adopt as their fees for each procedure, effective on the date the merger is completed, fees no higher than \$1 per unit greater than the lowest of the fees charged by any of the Defendants on the day prior to the completion of the merger (hereinafter known as ““base fees””).

5. Defendants shall limit any increase in the base fees as follows:

(a) Defendants shall not increase the base fees prior to January 1, 1993; and

(b) Defendants shall limit any increase in the base fees from January 1, 1993 until December 31, 1995 so that the fees do not exceed the base fees multiplied by the implicit price deflator for gross national product (published in *Survey of Current Business* by the Bureau of Economic Analysis, U.S. Department of Commerce) (““Index””) for the quarter preceding the increase and divided by the index for the quarter preceding that in which the merger was completed.

6. Defendants shall maintain one fee schedule applicable to self pay patients and patients insured by commercial insurers, managed health care providers and Blue Cross and Blue Shield of Maine; however, nothing in this paragraph shall prohibit Defendants from providing discounts from this schedule to self pay patients, commercial insurers, managed health care providers or Blue Cross and Blue Shield of Maine.

7. Defendants shall not solicit any third party payer or any hospital to enter into an exclusive contract for the provision of anesthesia services.

8. Defendants individually and collectively (as an association, professional corporation, partnership, medical staff or otherwise) shall not decide and collectively shall not recommend to any hospital to grant, deny, limit, restrict or terminate hospital staff privileges for any anesthesiologist. Notwithstanding the above, any individual Defendant anesthesiologist shall be permitted to provide recommendations to any hospital concerning the granting, denial or termination of staff privileges; and, in addition, if any of the Defendants serves as chairman of the Department of Anesthesia at any hospital, then he or his designee shall be permitted to relate to the hospital administration the opinions or recommendations of individual Defendant anesthesiologists concerning these matters expressed privately to the chairman.

9. Defendants individually and collectively (as an association, professional corporation,

partnership, medical staff or otherwise) shall not decide and collectively shall not make recommendations to any hospital with respect to the following:

(a) the decision of the hospital to employ or terminate any certified registered nurse anesthetist (CRNAs);

(b) the decision to grant, deny, limit, restrict or terminate hospital staff privileges for any CRNA;

(c) the decision to increase or reduce the number of CRNAs employed or working in any hospital; and

(d) the decision to change the responsibilities and duties of CRNAs employed by or working at any hospital; and

(e) the criteria for supervision of CRNAs by anesthesiologists.

Notwithstanding the above, any individual Defendant anesthesiologist shall be permitted to provide his recommendation to any hospital concerning the matters set forth above; and, in addition, any of Defendants serving as chairman of the Department of Anesthesia at any hospital, or his designee, shall be permitted to relate to the hospital administration the opinions or recommendations of any individual Defendant anesthesiologist concerning these matters expressed privately to the chairman.

10. Defendants shall provide notice to the Department of the Attorney General as follows:

(a) within thirty days prior to any fee increase; and

(b) within sixty days prior to any merger with any other anesthesiologist; and

(c) within sixty days prior to signing an exclusive contract with any third party payer or any hospital for the provision of anesthesia services.

11. Defendants shall provide the Department of the Attorney General, upon seven days written request, any documents maintained by or in possession of Defendants, but not including (a) clinical or any other confidential information relating to specific patients; and (b) documents privileged under the Maine Rules of Evidence. All such documents requested by the Attorney General shall be treated as investigative records pursuant to 5 M.R.S.A. §§ 200-D.

III. Time Period

This Consent Decree shall terminate seven years after the date it is entered by the Superior Court.

IV. Public Interest

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

V. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of the Consent Decree, or the modification of or termination of any of the provisions hereof, and for enforcement of compliance herewith.

It is hereby Ordered and Decreed as set forth above.