

| | | |
|----------------------------------|---|----------------|
| IN THE MATTER OF THE TERMINATION |) | |
| OF THE CONTRACT BETWEEN |) | ADMINISTRATIVE |
| UNIVERSITY HEALTH PLANS, INC. |) | ORDER |
| AND ST. CLARE'S HOSPITAL |) | |

THIS MATTER having been opened by the Department of Health and Senior Services (hereinafter, "DHSS") in accordance with the authority at N.J.S.A. 26:1A-15, and N.J.S.A. 26:2J-1 et seq.;

WHEREAS, on or about January 20, 2003, the New Jersey Hospital Association contacted DHSS concerning the alleged termination of the contract between University Health Plans, Inc. (hereinafter, "University") and St. Clare's Hospital/Denville (hereinafter "St. Clare's") on December 22, 2002; and

WHEREAS, on January 22, 2003, DHSS staff contacted University to verify whether University had terminated its contract with St. Clare's; and

WHEREAS, on January 22, 2003, Susan Goodman, Director of Provider Services at University, orally confirmed that University had terminated its contract with St. Clare's¹ effective December 22, 2002 and indicated an intent to provide written notification of the termination to DHSS; and

WHEREAS, subsequent to December 22, 2002, University continued to "aggressively negotiate the outstanding contract issues" with St. Clare's to develop a new contract; and

WHEREAS, University failed to provide any written notification to DHSS of the hospital termination until February 5, 2003, wherein DHSS received a FAX copy of a letter from Alexander McLean, University President and Chief Executive, indicating that

¹ University actually terminated its contract with two hospitals - St. Clare's/Denville and St. Clare's in Sussex. All references to "St. Clare's" within this Order include both St. Clare's Hospital locations.

University and St. Clare's had resolved the outstanding contract issues pursuant to an agreement executed on January 28, 2003; and

WHEREAS, University failed to provide DHSS with any documentation indicating that University and St. Clare's had executed a postponement of the December 22, 2002 contract termination date or taken any other actions to ensure that the contract would not terminate; and

WHEREAS, N.J.S.A. 26:2J-11.1, which requires that the terms of a contract between a hospital and an HMO that is terminated be extended for at least a four-month period following the date of termination, also requires that, following the date of termination, an HMO provide notice to its members and other health care providers with which the HMO is contracted of the extension of the terms of the contract with the hospital, setting forth the options of the members and other health care providers during and following the conclusion of the four-month extension period; and

WHEREAS, N.J.A.C. 8:38-3.5(e) specifies that, when a contract between the HMO and hospital terminates, an HMO provide notice to members and other health care providers no later than 15 business days following the date of the termination; and

WHEREAS, N.J.A.C. 8:38-2.7(a) requires an HMO to provide 30 days prior notice to DHSS and the Department of Banking and Insurance of the possible termination of a contract with a hospital, and to satisfy both agencies that removal of the hospital from the HMO's provider network will not have an adverse impact upon the HMO's ability to meet the network adequacy requirements of N.J.A.C. 8:38-6; and

WHEREAS, University failed to provide DHSS with 30 days prior notice of the termination of the contract between University and St. Clare's, consistent with the requirements of N.J.A.C. 8:38-2.7(a); and

WHEREAS, University failed to send notice to members or providers as required by N.J.S.A. 26:2J-11.1 and N.J.A.C. 8:38-3.5(e)²

NOW, THEREFORE, IT IS ORDERED on this 17th day of March, 2003 that:

1. University shall pay a fine of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250)³ for failing to notify DHSS and the Department of Banking and Insurance as required by N.J.A.C. 8:38-2.7(a) for at least 61 days multiplied by \$250 per day, calculating the date of termination to be December 22, 2002, and the date of the 30 day prior notice period being November 21, 2002.

2. University shall pay a fine of Two Thousand Dollars (\$2,000), determined by multiplying eight (8) days by \$250, for failing to provide notice of the termination to members and health care providers within 15 business days following the date of the termination of the contract between University and St. Clare's in accordance with N.J.A.C. 8:38-3.5(e).⁴

² In accordance with N.J.A.C. 8:38-3.5(e), University should have provided members and health care providers with notice of the termination of the contract between University and St. Clare's no later than January 14, 2003. Although University and St. Clare's were able to execute a new contract on January 28, 2003, eliminating the need for this Order to address any continuing obligation to send such notice, this was not a fact to be relied upon prior to the execution of the new contract.

³ In determining the amount of the fine, DHSS notes that although University terminated with two hospitals, both were governed under the terms of a single contract. The fine reflects the termination of a single contract with two hospitals - St. Clare's/Denville and St. Clare's Sussex.

⁴ In calculating the 15-day time period, the Department excluded from the calculation December 25, 2002 (Christmas day) and January 1, 2003 (New Year's Day).

3. University shall submit payment of the penalties by check or money order made payable to "Treasurer, State of New Jersey," in a single sum no later than the date on which this paragraph becomes effective, as specified in Paragraph 8 of this Order. University shall forward payment to the Director of the Office of Managed Care, P.O. Box 360, Trenton, New Jersey 08625-0360.

4. Nothing set forth in this Order shall be interpreted to prejudice the interests of University or St. Clare's in any legal action, and nothing set forth in this Order shall be interpreted to prejudice the interests of health care providers or members in any legal action that has been or may be brought against University or St. Clare's.

5. Nothing set forth in this Order shall be construed to preclude DHSS from taking enforcement action against University for related matters not set forth herein.

6. Obligations under this Order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of public health, safety and welfare and are not intended to constitute a debt or debts subject to limitation or discharge in a bankruptcy proceeding.

7. All numbered paragraphs of this Order, other than paragraphs 1, 2 and 3, shall be effective as of the date of the Order.

8. Paragraphs 1, 2 and 3 shall not become effective until 30 days following the date of this Order, in accordance with N.J.A.C. 8:38-2.14(c), unless University, prior to the end of the 30-day period, files with DHSS a written request for a hearing and a written request to Stay the Order with respect to Paragraphs 1, 2 and 3 until the conclusion of an administrative hearing and the rendering of a final decision by the

DHSS Commissioner. A request for a hearing shall be accompanied by a written response to the violations set forth in this Order.

9. If University wishes to request an administrative hearing, University shall submit such a request in writing no later than 30 days following the date of this Order to: Carol Slimm, Office of Legal and Regulatory Affairs, P.O. Box 360, Trenton, New Jersey 08625-0360, or by fax at 609-292-5333.

Questions regarding this Order should be submitted to Marilyn Dahl, Senior Assistant Commissioner at 609-9843939 or to Sylvia Allen-Ware, Director of the Office of Managed Care, at 609-633-0660.

MARILYN DAHL
Senior Assistant Commissioner
Health Planning and Regulation
New Jersey Department of Health and
Senior Services

/s/Marilyn Dahl