

October 4, 2005

Via mail & email

Alessandro A. Iuppa, Superintendent  
Attn: Vanessa J. Leon, Docket No. INS-05-700  
Bureau of Insurance  
Maine Department of Professional and Financial Regulation  
34 State House Station  
Augusta, Maine 04333-0034  
[vanessa.j.leon@maine.gov](mailto:vanessa.j.leon@maine.gov)

Re: Review of Aggregate Measurable Cost Savings Determined by Dirigo Health for the First Assessment Year, Docket No. INS-05-700

Dear Superintendent Iuppa:

Please find enclosed the following:

1. Filing Cover Sheet.
2. Two hard copies of Dirigo Health Response to Maine State Chamber of Commerce Motion to Dismiss.

Thank you for your assistance with this matter.

Yours very truly,

/s/William H. Laubenstein, III

William H. Laubenstein, III  
Assistant Attorney General

cc: William H. Stiles, Esq. (Via U. S. Mail and Email)  
Thomas C. Sturtevant, Jr., Esq. (Via U. S. Mail and Email)  
Roy T. Pierce, Esq. (Via U. S. Mail and Email)  
Christopher T. Roach, Esq. (Via U. S. Mail and Email)  
Rufus E. Brown, Esq. (Via U. S. Mail and Email)  
D. Michael Frink, Esq. (Via U. S. Mail and Email)  
Karynlee Harrington (Via Mail and Email)  
Trish Riley (Via Mail and Email)  
John Kelly (Via U. S. Mail and Email)

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE )  
MEASURABLE COST SAVINGS )  
DETERMINED BY DIRIGO ) FILING COVER SHEET  
HEALTH FOR THE FIRST )  
ASSESSMENT YEAR )  
)  
)  
Docket No. INS-05-700 )

TO: Alessandro Iuppa, Superintendent of Insurance  
Attn: Vanessa J. Leon

Date Filed: October 4, 2005

Name of Party: Dirigo Health Board of Directors

Document Title: Response of Dirigo Health to Maine State Chamber of Commerce  
Motion to Dismiss

Document Type: Memorandum In Opposition to Motion

Confidential: No

Dated: October 4, 2005

Respectfully submitted,

/s/William H. Laubenstein, III

William H. Laubenstein, III  
Assistant Attorney General

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE	)	RESPONSE OF DIRIGO
MEASURABLE COST SAVINGS	)	HEALTH TO MAINE
DETERMINED BY DIRIGO	)	STATE CHAMBER OF
HEALTH FOR THE FIRST	)	COMMERCE MOTION TO
ASSESSMENT YEAR	)	DISMISS
	)	
Docket No. INS-05-700	)	

Intervenor, Maine State Chamber of Commerce (the “Chamber”) has filed a Motion to Dismiss the proceeding for the reasons set forth in the Motion to Dismiss filed by the Maine Automobile Dealers Association Insurance Trust and Bankers Health Trust ( the “Trusts”). In addition to the arguments presented by the Trusts, the Chamber notes that the Board of Directors of Dirigo Health (the “Board”) failed to act on the Chamber’s request for an adjudicatory hearing and argues that the legislative history of P. L. 2005, ch. 400 (the “Act”) supports the argument that the Board was required to hold an adjudicatory hearing in the first assessment year. For the reasons set forth in the Board’s response to the motion to dismiss filed by the Trusts, the Superintendent should deny the motion of the Chamber.

Contrary to the statement made by the Chamber, the Board denied the Chamber’s request for an adjudicatory hearing at the Board meeting of September 14, 2005. See Attachment A-1. The Board has not to date responded to the request in writing, but will do so and will deny the request.

The Board in its response to the motion of the Trusts demonstrated that the legislative history and structure of the Act show that the Legislature adopted two distinct processes for determining aggregate measurable cost savings, one for the first assessment

year and one for subsequent years. Neither Senator Weston nor Snowe-Mello appear to have recognized the difference between the process before the Board in the first assessment year and subsequent years. It noteworthy, too, that Senator Snowe-Mello was concerned about the short time frame allowed for a final determination of aggregate measurable cost saving, although she mistakenly understood that the Board had only 6 weeks to make its determination rather than the Superintendent. In fact, the Board was given even less time as the Act was written. It is the short frames in the Act that support the Board's position that the Legislature did not intend that the Board hold an adjudicatory hearing in the first assessment year.

The Chamber argues that the rejection of the minority report evidences legislative intent that the Board conduct an adjudicatory hearing. The minority report, however, does not contain any distinct provision for the first assessment year. It is the Legislature's enactment of a separate process for first assessment year and its deletion from the process before the Board of any mention of an adjudicatory hearing that undermines the Chamber's argument and supports the Board's position. See Response of Dirigo Health to Maine Automobile Dealers Association Insurance Trust, et al, Motion to Dismiss, p. 10, f.n. 4.

For the reasons set forth herein and in the Board's response to the Motion to Dismiss of the Trusts, the Board requests that the Superintendent deny the Chamber's Motion to Dismiss.

Dated: October 4, 2005

Respectfully submitted,

/s/William H. Laubenstein, III

William H. Laubenstein, III  
Assistant Attorney General

**Transcript of  
DIRIGO HEALTH  
BOARD OF DIRECTORS  
September 14, 2005 Board Meeting**

ROBERT MCAFEE: For those of you who are HBO fans, this must be like the final episodes of Sopranos. On the other hand I suspect for many of us it will be another season, another opportunity. Let me tell you how we're going to do things today because it's going to be a little bit different than the usual workload. I'm going to make a few statements to begin with, just a couple of housekeeping things I want to bring up to date. We are then inviting each side to present to us, up to 15 minutes, final presentation with the accompanying financial data that we've been waiting for to see. We then are going to start the process of deliberation which will be limited to the board. This includes the voting members of the board and the non-members of the board. The board has an opportunity to question anyone in the room for additional information if they need it today. But, in order to expedite things I'm not going to allow additional presentations unless it is something that is specific to our needs in order to reach our decision. I just want to be mindful of the time and be sure that we get our work done today in order to meet our deadlines for filing. Several of us are committed beyond today to a variety of things that at this point. And then we have some other agency issues that we'll deal with as we finish that we talked about yesterday we need to vote on. And then we'll set a date for that next meeting. We still have an agenda of other things to do that the legislation demands of us and we'll continue to do that up until the date of filing. Let me first explain the absence of Charlene Rydell. I chatted with her late last evening; I've been aware of her medical

condition for quite sometime. It is by virtue of her treatment, several times in the course of her treatment that she has been extremely vulnerable to being out in public because of diminished immunity and in addition to her severely diminished stamina, she is nearly finished with her course of chemotherapy; one more to go. And realizing that Freedom of Information demanding people being present to vote, I was, as a physician, keenly aware of the effect this would have on her, so I made it clear last night that she was to stay home. I'm not telling tales out of school but half the time she's on the phone, she's lying down. It's just not that good of an endeavor, getting a ride here and back and whatever. I'm not to violate any confidentiality with Charlene, it's just that that's the way it was. I think with provisions of the Disability Act, I felt I had to make that decision. Since then, unfortunately, I know that all our hearts and prayers are with Charlene, but her mother is in the process of dying today and so she is forced to leave her home and go to be with her mother during her last hours, so she will not be part of the deliberation. Everyone else, I think, on the board is here for voting members. Christine Bruenn, non-voting member will be joining us by phone to join us in our deliberations. OK, let me simply acknowledge a letter we received yesterday from the Chamber under Kristine Ossenfort's signature as the Senior Governmental Affairs Specialist, many of you know has been participating in these discussions since day one. This is to notify us that we should consider this letter a request from the Maine Chamber to hold an adjudicatory hearing as required in Title V in the original statutes. We have read the original statute and are fully prepared to hold a hearing as we begin this deliberation while the

legislature is still in session trying to set dates, etc. As you know, as I explained yesterday, the legislative committee re-opened the issue of the bill and redirected the manner in which we would be determining a whole bunch of things, not the least of which is the savings offset payment. The legislation created a ten-person committee which has deliberated and presented us with their findings. At the same time, it presented to the Insurance Commissioner a plan and he adopted the position that he would hold an adjudicatory hearing this first year in as much as there were some relatively unique issues to be discussed, we were then, as the (inaudible) committee, asked to be intermediaries ourselves between the committee, the actuaries, both sides, filter this information, craft our recommendation and present it as part of that particular hearing. It is our intent and desire from this point on to hold an adjudicatory hearing annually if this is the way that we can best arrive at carrying out our duties. We have discussed this with our legal council and Attorney General's office and have been instructed that this is the way in which we must proceed at this time. So I'm simply acknowledging the receipt of the letter that I am aware of and understand and we will formulate a response to this. Anything else the staff wishes to raise at this time before we go?

KARYNLEE HARRINGTON: I'm passing out a letter which I received this morning from Consumers for Affordable Health Care which is addressed to the Chair and members of the Board.

ROBERT MCAFEE: We will accept this in the spirit it's given. It is a letter that provides additional information regarding the opinions of the Consumers for

## CERTIFICATE OF SERVICE

I, William H. Laubenstein, III, Assistant Attorney General for DIRIGO Health, do hereby certify that on this date the foregoing document was served on all counsel of record via U.S. first class mail, postage prepaid, and electronic mail as follows:

Roy T. Pierce, Esq.  
Preti Flaherty Beliveau Pachios & Haley  
45 Memorial Circle  
P.O. Box 1058  
Augusta, ME 04332-1058  
[rpierce@preti.com](mailto:rpierce@preti.com)

John Kelly, Esq.  
Compass Health Analytics, Inc.  
465 Congress St., 7<sup>th</sup> Fl.  
Portland, ME 04101  
[jck@compass-inc.com](mailto:jck@compass-inc.com)

William H. Stiles, Esq.  
Verrill Dana, LLP  
One Portland Square  
P.O. Box 586  
Portland, ME 04112-0586  
[wstiles@verrilldana.com](mailto:wstiles@verrilldana.com)

Thomas C. Sturtevant, Jr., AAG  
Office of Attorney General  
6 State House Station  
Augusta, ME 04333-0006  
[tom.sturtevant@maine.gov](mailto:tom.sturtevant@maine.gov)

Christopher T. Roach, Esq.  
Pierce Atwood, LLP  
One Monument Square  
Portland, ME 04101  
[croach@pierceatwood.com](mailto:croach@pierceatwood.com)

Rufus E. Brown, Esq.  
Brown & Burke  
85 Exchange Street, Suite 201  
P.O. Box 7530  
Portland, ME 04112  
[rbrown@brownburkelaw.com](mailto:rbrown@brownburkelaw.com)

D. Michael Frink, Esq.  
Curtis, Thaxter, Stevens, Broder & Micoleau, LLC  
One Canal Plaza  
P.O. Box 7320  
Portland, ME 04112-7320  
[dfrink@curtisthaxter.com](mailto:dfrink@curtisthaxter.com)

Dated: October 4, 2005

/s/William H. Laubenstein, III  
William H. Laubenstein, III, Bar No. 1394  
Assistant Attorney General  
Office of Attorney General  
6 State House Station  
Augusta, ME 04333-0006  
(207) 626-8800