

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

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)
In the Matter of)
) Docket No. C-4101
SURGICAL SPECIALISTS OF)
YAKIMA, P.L.L.C.,)
a limited liability company,)
)
CASCADE SURGICAL PARTNERS,)
INC., P.S.,)
a corporation, and)
)
YAKIMA SURGICAL ASSOCIATES,)
INC., P.S.,)
a corporation.)
)
)
_____)

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Surgical Specialists of Yakima, P.L.L.C. (“SSY”), Cascade Surgical Partners, Inc., P.S. (“Cascade Surgical”), and Yakima Surgical Associates, Inc., P.S. (“Yakima Surgical”), hereinafter sometimes referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that the counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorney, and counsel for the Commission having thereafter executed

an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent SSY is a for-profit professional limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal address at 307 South 12th Avenue, Yakima, WA 98902.
2. Respondent Cascade Surgical is a for-profit professional service corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal address at 3003 Tieton Drive, Yakima, WA 98902.
3. Respondent Yakima Surgical is a for-profit professional service corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal address at 111 South 11th Avenue, Yakima, WA 98902.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent SSY” means Surgical Specialists of Yakima, P.L.L.C., its officers, directors, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by SSY, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.

- B. “Respondent Cascade Surgical” means Cascade Surgical Partners, Inc., P.S., its officers, directors, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Respondent Cascade Surgical, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- C. “Respondent Yakima Surgical” means Yakima Surgical Associates, Inc., P.S., its officers, directors, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Respondent Yakima Surgical, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- D. “Respondents” means Respondent SSY, Respondent Cascade Surgical, and Respondent Yakima Surgical.
- E. “Medical group practice” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.
- F. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a payor through such entity. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- G. “Payor” means any person that pays, or arranges for the payment, for all or any part of any physician services or hospital services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of physicians or hospitals.
- H. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- I. “Physician” means a doctor of allopathic medicine (“M.D.”), a doctor of osteopathic medicine (“D.O.”), a doctor of chiropractic medicine (“D.C.”), or a doctor of podiatric medicine (“D.P.M.”).
- J. “Preexisting contract” means a contract that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent by Respondent SSY, pursuant to Paragraph IV.A.4 of this Order, of such payor’s right to terminate such contract.
- K. “Principal address” means either (1) primary business address, if there is a business

address, or (2) primary residential address, if there is no business address.

- L. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services in which:
1. all physicians who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the physicians who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
 2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.
- M. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services in which:
1. all physicians who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians who participate jointly to control costs and improve quality by managing the provision of physician services, such as risk-sharing involving:
 - a. the provision of physician services to payors at a capitated rate,
 - b. the provision of physician services for a predetermined percentage of premium or revenue from payors,
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians who participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by physicians in different specialties offering a complementary mix of services, for a fixed, predetermined price, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient’s condition, the choice, complexity, or length of treatment, or other factors; and
 2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

II.

IT IS FURTHER ORDERED that Respondents, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any physicians:
 - 1. to negotiate on behalf of any physician with any payor,
 - 2. to deal, refuse to deal, or threaten to refuse to deal with any payor,
 - 3. regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms, or
 - 4. not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent SSY;
- B. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician’s willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal;
- C. Attempting to engage in any action prohibited by Paragraph II.A or II.B, above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C above.

PROVIDED, HOWEVER, that nothing in this Paragraph II shall prohibit any agreement involving or conduct by Respondent SSY, subject to the provisions of Paragraph III below, or by Respondents Cascade Surgical and Yakima Surgical, that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, or that solely involves physicians in the same medical group practice.

III.

IT IS FURTHER ORDERED that:

- A. Respondent SSY shall, pursuant to each purported qualified risk-sharing joint arrangement or purported qualified clinically-integrated joint arrangement (“Arrangement”), for five (5) years from the date this Order becomes final, notify the Secretary of the Commission in writing (“Notification”) at least sixty (60) days prior to:
1. Participating in, organizing, or facilitating any discussion or understanding with or among any physicians in such Arrangement relating to price or other terms or conditions of dealing with any payor; or
 2. Contacting a payor, pursuant to an Arrangement to negotiate or enter into any agreement concerning price or other terms or conditions of dealing with any payor, on behalf of any physician in such Arrangement.

PROVIDED, HOWEVER, that Notification required by this Paragraph III.A is not required for negotiations or agreements with subsequent payors pursuant to any Arrangement for which this Notification was given; and

- B. Respondent SSY shall include the following information in this Notification:
1. for each physician participant, his or her name, address, telephone number, medical specialty, medical practice group, if applicable, and the name of each hospital where he or she has privileges;
 2. a description of the Arrangement, its purpose, function, and area of operation;
 3. a description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;
 4. an explanation of the relationship of any agreement on prices, or contract terms related to price, to furthering the integration and achieving the efficiencies of the Arrangement;
 5. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities; and
 6. all studies, analyses, and reports, which were prepared for the purpose of evaluating or analyzing competition for physician services in any relevant market, including, but not limited to, Respondent SSY’s, any physician’s, or any medical practice group’s market share of physician services in any relevant market.

PROVIDED, HOWEVER that the expiration of the waiting period described herein shall not be construed as a determination by the Commission, or its staff, that a violation of the law, or of this Order, may not have occurred. In addition, the absence of notice to SSY that the Arrangement has been rejected shall not be construed as a determination by the Commission, or its staff, that the Arrangement has been approved. Provided further that, receipt by the Commission from SSY of any Notification of an Arrangement is not to be construed as a determination by the Commission that any such Arrangement does or does not violate this Order or any law enforced by the Commission.

IV.

IT IS FURTHER ORDERED that Respondent SSY shall:

- A. Within thirty (30) days after the date on which this Order becomes final:
1. send by first-class mail, with delivery confirmation, a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment to each physician who participates, or has participated, in Respondent SSY;
 2. send by first-class mail, return receipt requested, a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment to each officer, director, manager, and employee of Respondent SSY;
 3. send by first-class mail, return receipt requested, copies of this Order, the Complaint, the Analysis of the Proposed Order to Aid Public Comment, and the notice specified in Appendix A to this Order to the chief executive officer of each payor Respondent SSY has a record of having been in contact with since January 1, 2001, regarding contracting for the provision of physician services; and
 4. terminate, without penalty or charge, and in compliance with any applicable laws, any preexisting contract with any payor for the provision of physician services, at the earlier of: (a) receipt by Respondent SSY of a written request from a payor to terminate such contract, or (b) the earliest termination or renewal date (including any automatic renewal date) of such contract. Provided, however, a preexisting contract may extend beyond any such termination or renewal date no later than one year after the date on which the Order becomes final, if prior to such termination or renewal date, (i) the payor submits to Respondent SSY a written request to extend such contract to a specific date no later than one year after the Order becomes final, and (ii) Respondent SSY has determined not to exercise any right to terminate. Provided further, that any payor making such request to extend a contract retains the right, pursuant to part (a) of this paragraph, to terminate the contract at any time.
- B. Within 180 days after the date on which the Order becomes final:

1. revoke the membership in Respondent SSY, without penalty or negative financial consequences, of either Respondent Cascade Surgical or Respondent Yakima Surgical (“Revoked Entity”), including the memberships of the individual physician members of that Revoked Entity; and
 2. cease and desist from all financial and contractual relationships with the Revoked Entity, excluding coordination of clinical activities, including, but not limited to, any arrangement under which Respondent SSY acts or would act as an agent or otherwise on behalf of the Revoked Entity, in dealing with payors regarding contracts under which the Revoked Entity would be compensated for the provision of physician services; provided, however, that Respondent SSY may engage in those activities that are required to comply with the terms of this Order, including, but not limited to Paragraph IV.B.1.
- C. For five (5) years after the date on which this Order becomes final:
1. cease and desist from admitting as a member and having any financial relationship or contractual relationship with any individual doctor, who currently is a member of the Revoked Entity;
 2. notify the Secretary of the Commission in writing at least sixty (60) days prior to admitting into membership any physician or medical group practice, who during the prior year, provided physician services in Yakima County, Washington;
 3. distribute by first-class mail, return receipt requested, a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment to:
 - a. each physician who begins participating in Respondent SSY for the provision of physician services, and who did not previously receive a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment, within thirty (30) days of the time that such participation begins;
 - b. each payor who contracts with Respondent SSY for the provision of physician services, who did not previously receive a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment from Respondent SSY, within thirty (30) days of the time that such payor enters into such contract; and
 - c. each person who becomes an officer, director, manager, or employee of Respondent SSY, and who did not previously receive a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment from Respondent SSY, within thirty (30) days of the time that he or she assumes such status with Respondent SSY; and

4. annually publish in an official annual report or newsletter sent to all physicians who participate in Respondent SSY a copy of the Analysis of the Proposed Order to Aid Public Comment, published in conjunction with this Order and the accompanying Complaint, with such prominence as is given to regularly featured articles; and
 5. notify the Commission at least thirty (30) days prior to any proposed change in Respondent SSY, such as dissolution, assignment, sale resulting in the emergence of a successor, the formation of a medical group practice, the creation or dissolution of subsidiaries or any other change in Respondent SSY that may affect compliance obligations arising out of this Order.
- D. For ten (10) years after the date on which the Order becomes final, cease and desist from readmitting the Revoked Entity as a member.

V.

IT IS FURTHER ORDERED that Respondent Cascade Surgical and Respondent Yakima Surgical shall:

- A. Within thirty (30) days after the date on which the Order becomes final, send by first-class mail, return receipt requested, a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment to each officer, director, manager, and employee of that Respondent;
- B. For five (5) years after the date on which this Order becomes final, distribute by first-class mail, return receipt requested, a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment to each person who becomes an officer, director, manager, or employee of that Respondent, and who did not previously receive a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment, within thirty (30) days of the time that he or she assumes such status with such Respondent;
- C. If it is the Revoked Entity, for five (5) years after the date on which this Order becomes final, distribute by first-class mail, return receipt requested, a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment to:
 1. each physician who begins participating in the Revoked Entity for the provision of physician services, and who did not previously receive a copy of this Order, the Complaint, and the Analysis of the Proposed Order to Aid Public Comment from Respondent SSY, within thirty (30) days of the time that such participation begins; and
 2. each payor who contracts with the Revoked Entity for the provision of physician

services, and who did not contract with Respondent SSY at the date that this Order became final, within thirty (30) days of the time that such payor enters into such contract;

- D. If it is not the Revoked Entity, for three (3) years after the date on which this Order becomes final, cease and desist from admitting into its practice any physician who participated in the practice of the Revoked Entity at the date on which this Order becomes final.

VI.

IT IS FURTHER ORDERED that Respondents shall file verified written reports within sixty (60) days after the date on which this Order becomes final, annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require, setting forth:

- A. In detail, the manner and form in which Respondents have complied and are complying with this Order;
- B. The name, address, and telephone number of each payor with which Respondents have had any contact; and
- C. Copies of the delivery confirmations and signed return receipts required by Paragraphs IV. and V.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in its possession, or under their control, relating to any matter contained in this Order; and

- B. Upon five (5) days' notice to such Respondents, and in the presence of counsel, and without restraint or interference from it, to interview such Respondents or employees of such Respondents.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on November 14, 2023.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: November 14, 2003

Appendix A

[letterhead of Surgical Specialists of Yakima, P.L.L.C.]

[name of payor's CEO]
[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order issued by the Federal Trade Commission against Surgical Specialists of Yakima ("SSY"), and others.

Pursuant to Paragraph IV.A.6. of the enclosed consent order, SSY must allow you to terminate, upon your written request, without any penalty or charge, any contracts with SSY that were in effect prior to your receipt of this letter.

Paragraph IV.A.6. of the consent order also provides that, if you do not terminate a contract, the contract will terminate on its earliest termination or renewal date (including any automatic renewal date). However, at your request, the contract may be extended to a date no later than [appropriate date to be filled in by SSY], but only if SSY waives its right to terminate the contract. If you choose to extend the term of the contract, you may later terminate the contract at any time.

Any request either to terminate or to extend the contract should be made in writing, and sent to me at the following address: [address].

Sincerely,

[CEO of SSY]